

NAVIGATION.

No. 4 of 1913.

An Act relating to Navigation and Shipping.

[Reserved, 24th December, 1912.]

[Royal Assent proclaimed, 24th
October, 1913.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—INTRODUCTORY.

Short title and
commencement

1. This Act may be cited as the *Navigation Act* 1912, and shall commence on a day to be fixed by proclamation after the King's approval thereto has been proclaimed in the Commonwealth.

Application of
Act.

2.—(1.) This Act shall not apply in relation to any Australian-trade ship, limited coast-trade ship, or river and bay ship, or her master or crew, unless the ship—

(a) is engaged in trade or commerce with other countries or among the States ; or

(b) is on the high seas, or in waters which are used by ships engaged in trade or commerce with other countries or among the States ; or

(c) is in the territorial waters of any Territory which is part of the Commonwealth.

(2.) This Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Exemptions.
Cf. M.S.A. 1894,
s. 741.
N.Z. 1908, No.
178, s. 2 (3).

3. This Act shall not apply to ships belonging to the King's Navy, or the Navy of the Commonwealth or of any British possession, or to the Navy of any foreign Government.

4. The provisions of this Act relating to steam-ships shall apply, with such modifications as are prescribed, to ships propelled by electricity or other mechanical power.

Application of provisions relating to steam-ships. M.S.A. 1894, s. 743. Parts.

5. This Act is divided into Parts as follows:—

- Part I.—Introductory, ss. 1-9.
- Part II.—Masters and Seamen, ss. 10-176.
- Part III.—Foreign Seamen, ss. 177-186.
- Part IV.—Ships and Shipping, ss. 187-269.
- Part V.—Passengers, ss. 270-283.
- Part VI.—The Coasting Trade, ss. 284-293.
- Part VII.—Wrecks and Salvage, ss. 294-329.
- Part VIII.—Pilots and Pilotage, ss. 330-355.
- Part IX.—Courts of Marine Inquiry, ss. 356-377.
- Part X.—Legal Proceedings, ss. 378-405.
- Part XI.—Miscellaneous, ss. 406-425

6. In this Act, unless the contrary intention appears—

Definitions.

“Vessel” means any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation:

“Ship” includes every vessel used in navigation not ordinarily propelled by oars only:

“Foreign-going ship” includes every ship (other than an Australian-trade ship) employed in trading or going between places in Australia and places beyond Australia:

“Australian-trade ship” includes every ship (other than a limited coast-trade ship or river and bay ship) employed in trading or going between places in Australia, and every ship employed in trading between (a) Australia and (b) territories under the authority of the Commonwealth, New Zealand, or the islands of the Pacific:

“Limited coast-trade ship” means a sea-going ship exclusively engaged in making short voyages from and to any port in Australia within limits (not exceeding a radius of four hundred miles) determined for the port by the Governor-General:

“River and bay ship” includes every ship which trades exclusively within the limits of any port, bay, or river, or within prescribed limits in any gulf or gulfs, within the Commonwealth, including a Territory being part of the Commonwealth:

“Boilers and machinery” includes engines and everything connected therewith employed in propelling a steam-ship, 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:

“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 connexion with, or necessary for the navigation and safety of, the ship, including apparatus for preventing or extinguishing fires, buckets, compasses, charts, axes, lanterns, and loading and discharging gear and apparatus of all kinds :

“ Owner ” includes the manager or secretary of any company or body corporate or any person to whom the whole or a part of a ship belongs :

“ Master ” means any person other than a pilot having command or charge of a ship :

“ Officer ” in relation to a ship means the master, mates, and engineers of the ship :

“ 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 :

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

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

“ 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 the last ship in which he served :

“ Wages ” includes emoluments of any kind :

“ Incompetent ” means unable, from any cause whatever, to perform efficiently the duty of the person in relation to which the word is used :

“ Misconduct ” includes careless navigation, drunkenness, tyranny, any failure of duty or want of skill, or any improper conduct :

“ Passenger ” means any person other than the master and crew or the owner, his family or servants, carried on board a ship with the knowledge or consent of the owner, agent, or master thereof :

“ Collector ” means the Chief Officer of Customs at any port :

“ Official ” includes all persons in the service of the Commonwealth or of a State employed under this Act for any purpose or duty in relation to which the term is used :

“ Superintendent ” means—

(a) the Superintendent at a mercantile marine office under this Act, and, where not otherwise provided, the Superintendent for the port where the ship in reference to which he is acting is, and, at ports where no mercantile marine office has been established, the Collector ; and

(b) a deputy of such Superintendent in respect of any acts or duties which such deputy is authorized to perform :

N.S.W. 1898,
No. 46, s. 3.

1b. s. 3.

“Proper authority” means—

- (a) at a port in Australia, a superintendent;
- (b) at a port in any other part of the British Dominions, a superintendent, or, in the absence of a superintendent, the chief officer of customs at or near the port;
- (c) at a port elsewhere, the British Consular Officer, or if there is no such officer at the port, any two British merchants resident at or near the place, or if there is only one British merchant so resident, that British merchant:

“Pilot” means any person appointed or licensed as such under this Act, and not belonging to a ship, who has the conduct thereof:

“Justice” means any Justice of the Peace:

“Consul” includes Consul-General, Vice-Consul, Consular Officer or Agent recognised as such by the Governor-General:

“Court” means any Court, Magistrate, or Justice having jurisdiction in the matter to which the proceeding relates:

“Answer questions” means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information, and belief, truly answer all questions on the subject mentioned asked by an official:

“Documents” includes books:

“Effects” includes all personal property and documents:

“Go to sea” includes the getting under way for the purpose of going to sea, plying, or running of a ship or proceeding on a voyage:

“Take to sea” has a meaning corresponding with “go to sea”:

“Send to sea” has a meaning corresponding with “go to sea”:

“Harbor” means and includes harbors properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers, and haven, roadstead, channel, or creek:

“Port” includes place and harbor:

“Tidal waters” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbor:

“This Act” includes the Regulations:

“The Merchant Shipping Act” means the Imperial Act known as the *Merchant Shipping Act* 1894, and includes any Imperial Act amending it or substituted for it:

Any reference to failure to do any act or thing includes a reference to refusal or neglect to do that act or thing.

7. A ship shall be deemed to be engaged in the coasting trade, within the meaning of this Act, if she takes on board passengers or cargo at any port in a State, or a Territory which is part of the Commonwealth, to be carried to, and landed or delivered at, any other port in the same State or Territory or in any other State or other such Territory:

Definition of coasting trade.

Provided that a ship shall not be deemed to be engaged in the coasting trade by reason of the fact that she carries—

- (a) passengers who hold through tickets to or from a port beyond Australia and the Territories under the authority of the Commonwealth ; or
- (b) cargo consigned on a through bill of lading to or from a port beyond Australia and those Territories and which is not transhipped to or from any ship trading exclusively in Australian waters which is not licensed under this Act ; or
- (c) mails between any ports in Australia or in any of those Territories:

Provided further that the Governor-General may by order declare that the carrying of passengers or cargo between ports in any Territory which is part of the Commonwealth, or between ports in any such Territory and any other Australian ports, shall not be deemed engaging in the coasting trade.

Administration.

8. This Act shall be administered by the Minister for Trade and Customs, and the Department of Trade and Customs shall be the Department to carry it into effect.

Delegation by
a Minister.

9. In relation to any particular matters or class of matters, or as to any particular part or port of the Commonwealth, the Minister may by writing under his hand delegate any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the powers or class of matters specified or the part or port defined in the instrument of delegation.

PART II.—MASTERS AND SEAMEN.

- Division 1.—General, ss. 10–12.
- Division 2.—The Superintendent, s. 13.
- Division 3.—Officers, ss. 14–27.
- Division 4.—Supplying Seamen, ss. 28–33.
- Division 5.—Apprentices, ss. 34–38.
- Division 6.—Rating of Seamen, ss. 39–42.
- Division 7.—The Crew, ss. 43–45.
- Division 8.—The Agreement, ss. 46–60.
- Division 9.—Discharge of Seamen, ss. 61–68.
- Division 10.—Seamen's Wages, ss. 69–94.
- Division 11.—Seamen's Money Orders, ss. 95–98.
- Division 12.—Discipline, ss. 99–115.
- Division 13.—Provisions, ss. 116–122.
- Division 14.—Health, ss. 123–134.
- Division 15.—Accommodation, ss. 135–138.
- Division 16.—Protection of Seamen, ss. 139–148.
- Division 17.—Property of Deceased Seamen, ss. 149–160.
- Division 18.—Relief to Seamen's Families, ss. 161–162.
- Division 19.—Distressed Seamen, s. 163.
- Division 20.—The Master, ss. 164–169.
- Division 21.—The Log, ss. 170–175.
- Division 22.—Inquests, s. 176.

DIVISION 1.—GENERAL.

10. The provisions of this Part of this Act relating to ships and to their owners, masters, and crews, shall, unless the subject-matter requires a different application, apply only to British ships and to their owners, masters, and crews.

Application.
M.S.A. 1894.
s. 260.

11. The Governor-General, where he is satisfied that the laws and regulations of any part of the British Dominions relating to any subject-matter dealt with in this Part of this Act are as effective as the provisions of this Part of this Act relating thereto, may by proclamation direct that (subject to such conditions, limitations, and exceptions as are expressed in the proclamation), on proof of a ship registered in that part of the British Dominions having complied with those laws and regulations, she shall not be required to comply with the provisions of this Part of this Act relating to that subject-matter.

Power to exempt
British ships.

12. A General Register of Seamen shall be kept at the places and in the manner prescribed.

Registry of
seamen.
Cf. M.S.A.
s. 252.

DIVISION 2.—THE SUPERINTENDENT.

13.—(1.) An office called the Mercantile Marine Office shall be established in each such port as the Minister thinks fit.

Mercantile
marine offices.
M.S.A. s. 246.

(2.) An officer called the superintendent shall be appointed at each Mercantile Marine Office.

(3.) Deputy superintendents may be appointed at any Mercantile Marine Office and shall have the same powers as the superintendent.

DIVISION 3.—OFFICERS.

14.—(1.) If a ship registered in Australia or engaged in the coasting trade goes to sea without a duly certificated master and officers, according to the scale set out in Schedule I. or as prescribed, the master and owner of the ship shall be guilty of an offence.

Certificated
officers.
M.S.A. 1894,
s. 92.

(2.) Every British ship (other than those registered in Australia or engaged in the coasting trade), when going to sea from any place in Australia shall be provided with a duly certificated master and such duly certificated officers as are, by the law of that part of the British Dominions in which the ship is registered, prescribed as being necessary for her when going to sea from any place in that part of the British Dominions.

Penalty: One hundred pounds.

15.—(1.) Certificates of competency (in this Division referred to as certificates) shall be granted in accordance with this Act for each of the following grades of officers (that is to say):—

Certificates of
competency.
Ib. s. 93.
N.Z. 1908,
s. 22.

Foreign-going ship (steam sail or other motive power)—

Master

First mate

Second mate

Limited coast-trade ship (steam sail or other motive power)—

Master

First mate

Second mate

River and bay ship (steam sail or other motive power)—

Master

Mate

Engineers—

First class

Second class

First class coast engineer

Second class coast engineer

Third class coast engineer

First class marine engine-driver { For vessels propelled by
Second class marine engine-driver { other motive power
than steam.

(2.) The holder of a foreign-going certificate may ship in the corresponding grade in an Australian-trade ship, a limited coast-trade ship, or a river and bay ship.

(3.) The holder of a second-mate's foreign-going certificate may ship as first mate of a limited coast-trade ship, or as mate of a river and bay ship.

(4.) The holder of a limited coast-trade certificate may ship in the corresponding grade in a river and bay ship.

(5.) The holder of a second class engineer's certificate, or of a coast engineer's certificate, shall be deemed to be duly certificated for service in such ships and for such voyages and in such capacities as are prescribed.

(6.) The regulations shall be so framed as—

(a) to allow the holder of an engineer's certificate of any grade to serve in such ships, and for such voyages, and in such capacities, as will enable him to qualify for a certificate of the next higher grade ;

(b) to allow the holder of a third or second class coast engineer's certificate to qualify for a coast engineer's certificate of the next higher grade by service in river and bay ships.

Examinations
for certificates.
M.S.A. 1894,
s. 94.

Candidates
must be
British
subjects.
N.Z. 1908,
s. 23 (4).

Issue of
certificates.
M.S.A. 1894,
s. 98.

16. Examinations of candidates for certificates shall be held at such places and under such rules as are prescribed.

17. No person shall be admitted to examination for a certificate unless he is a British subject, and speaks the English language intelligibly, and possesses the prescribed qualifications.

18.—(1.) Subject to the condition in the next sub-section mentioned, a certificate in the form prescribed shall be delivered to every applicant who passes the prescribed examination satisfactorily, and gives satisfactory evidence that he possesses the qualifications prescribed for the holder of the certificate, and of his sobriety, experience, ability, physical fitness, and general good conduct.

(2.) The Minister may, at any time before the delivery of a certificate—

(a) require a re-examination of the applicant by the examiners who made the examination or by any other examiners ; and

(b) order a further inquiry into the applicant's testimonials and character ;

and if not satisfied with the result may order that a certificate shall not be delivered to the applicant.

19. All certificates shall be in duplicate, and one part shall be delivered to the person entitled to the certificate, and the other shall be preserved and recorded in the manner directed by the Minister.

Certificates in duplicate.
M.S.A. 1894,
s. 100.

20.—(1.) If at any time the holder of any certificate appears to be unfit to perform the duties required of him, the Minister may require him to submit himself for medical examination, and, if it then appears that the unfitness exists and is likely to be permanent, may require the delivery of the certificate to him.

Incapacity of certificated person.

(2.) The holder shall thereupon, on demand by the Minister, deliver up his certificate.

Penalty : Twenty-five pounds.

(3.) The Minister shall thereupon cause an inquiry to be held by a Court of Marine Inquiry into a charge of incompetency against the grantee.

(4.) If the Court finds that the charge is not proved, the certificate shall be returned to the grantee ; but if the Court finds that the charge is proved, the certificate shall be retained by the Minister, and a certified copy thereof, with the result of the inquiry indorsed thereon by the Clerk of the Court, shall be delivered to the grantee.

(5.) If, where the Court has found the charge to be proved, it appears at any time thereafter to the Minister that the unfitness no longer exists, the Minister may cause an inquiry into the matter to be held by a Court of Marine Inquiry, and if the Court finds that the unfitness no longer exists, the finding shall be indorsed on the certified copy of the certificate by the Clerk of the Court, and the original certificate shall be returned to the grantee.

21. If any person proves to the satisfaction of the Minister that he has lost or been deprived of a valid certificate granted to him under this Act, the Minister may cause a certified copy of the certificate to be delivered to him, and the certified copy shall have all the effect of the original.

Lost certificates.
M.S.A. 1894,
s. 101.

22. Any master's or officer's certificate recognised by the Board of Trade of the United Kingdom shall be recognised for the purposes of this Act.

Imperial certificates.
N.Z. 1908,
s. 21 (3).

23. Every officer who is the lawful holder of a valid certificate appropriate to a position of any grade shall be deemed duly certificated in that grade and in all lower grades.

Meaning of certificated.
M.S.A. s. 92 (f).

State
certificates of
competency.

24.—(1.) All uncanceled and unexpired certificates of competency for masters or ship's officers issued under any State Act shall continue as if issued under this Act, but shall be valid only for the purposes for which, and to the extent to which, they would have been valid in accordance with the provisions of the State Act under which they were issued.

(2.) Any such certificate may be dealt with as if issued under this Act.

(3.) The holder of any such certificate may, subject to any prescribed restrictions and limitations, surrender it for a certificate of a similar or corresponding grade under this Act.

Employment of
uncertificated
persons.
M.S.A. 1894,
s. 92 (2).

25.—(1.) No person shall—

(a) engage as an officer unless he is duly certificated; or

(b) take into employment as an officer any person who is not duly certificated.

Penalty: One hundred pounds.

(2.) For the purpose of this section "officer" means an officer who is required to be duly certificated in compliance with section fourteen of this Act, but does not include officers carried in excess of that requirement.

British national-
ity and English
language.
Cf. M.S.A. 1906,
s. 12.

26. No person shall engage or go to sea as an officer, in any ship registered in Australia or engaged in the coasting trade, who is not—

(a) a British subject; and

(b) thoroughly conversant with the English language.

Offences in
connexion with
certificates.

Cf. M.S.A. 1906,
s. 104.

27. Whoever—

(a) makes any false representation for the purpose of obtaining any certificate for himself or any other person; or

(b) forges or fraudulently alters any certificate or any official copy thereof; or

(c) fraudulently uses a certificate or a copy of a certificate which is forged, altered, cancelled, or suspended, or to which he is not justly entitled; or

(d) fraudulently lends his certificate to, or allows it to be used by, any other person,

shall be guilty of an indictable offence.

DIVISION 4.—SUPPLYING SEAMEN.

Application of
Division.

28.—This Division shall apply to all ships, British and foreign.

Engagement
and supply of
seamen.

Ib. s. 111.

29.—(1.) No person, other than a superintendent, a seamen's inspector, or the owner, master, mate, or engineer of a ship, shall engage or supply a seaman or apprentice to be entered on board the ship.

(2.) No person shall employ, for the purpose of engaging or supplying a seaman or apprentice to be entered on board a ship, any person, other than a superintendent, a seamen's inspector, or the owner, master, mate, or engineer of the ship.

Penalty: Fifty pounds or three months' imprisonment.

30.—(1.) A seamen's inspector may be appointed for any port.

Seamen's
inspector.

(2.) The seamen's inspector for a port shall—

- (a) keep a register of persons desiring to be entered as seamen or apprentices on board ships at the port; and
- (b) supply seamen and apprentices to be entered on board ships at the port.

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

Receiving
seamen supplied
in contravention
of Act.

Penalty: Fifty pounds or three months' imprisonment.

32. No person shall demand or receive, 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.

Penalty for
receiving fees
for supply.
Cf. M.S.A. 1906,
s. 112.

Penalty: Twenty-five pounds.

33. Nothing in this Division shall refer to any premium on apprenticeship charged by any ship-owner.

Apprenticeship
premiums.
S.A. 1881, No.
237 s. 51.

DIVISION 5.—APPRENTICES.

34. All indentures of apprenticeship to the sea service made in Australia shall be in the prescribed form, and shall be executed by the parties thereto in the presence of a superintendent.

Indentures.
N.S.W. 1898,
No. 46, s. 13.

35.—(1.) Before the execution of the indentures, the superintendent shall satisfy himself that the intended apprentice—

Binding of
apprentices.
M.S.A. 1894,
s. 107.

- (a) freely consents to be bound;
- (b) has attained the age of fourteen years;
- (c) is of sufficient health and strength and physically fit for the service of the sea; and
- (d) is to be bound to a person who is a proper person for the purpose.

(2.) All indentures of apprenticeship made in Australia whereby a person under the age of twenty-one years is bound without the concurrence of his parent or guardian, shall, with the approval of the Minister, be voidable by the parent or guardian.

Indentures
voidable in
certain cases.
N.S.W. 1898,
No. 46, s. 13.

(3.) Indentures of apprenticeship shall be in duplicate, and one part shall be recorded and kept as directed by the Minister, and the other with an indorsement thereon of the fact that it has been recorded, shall be handed to the master of the apprentice.

Recording of
indentures.

36. In the event of the death or desertion of an apprentice, or the cancellation or assignment of his indentures, his master shall as soon as practicable send notice thereof, for record, to the superintendent.

Notice of death,
&c.
M.S.A. 1894,
s. 108.

Penalty: Ten pounds.

Entry of
indentures on
articles.
M.S.A. 1894,
s. 109.

37. The master of every ship, except limited coast-trade ships of less than fifty tons gross registered tonnage and river and bay ships, shall, before taking an apprentice to sea—

- (a) cause his name to be entered on the ship's articles, together with the date of his indentures and of any assignment thereof, and the name of every port at which they have been registered;
- (b) cause him to appear before the superintendent; and
- (c) produce the indentures, and every assignment thereof, to the superintendent.

Production of
apprentice.

Penalty : Five pounds.

Provided that, in the case of other than foreign-going ships, it shall not be necessary to cause the apprentice to reappear before the superintendent more frequently than once in six months:

Provided also that, in the case of foreign-going ships, it shall not be necessary to cause the apprentice to reappear before the superintendent except at the last port of departure from Australia.

Insolvency of
owner.
N.Z. 1908,
s. 38.

38. Where the owner of any ship carrying an apprentice dies, becomes insolvent, or ceases to have any interest in the ship, the indentures shall cease, and a proportionate part of the premium paid (if any) shall be repaid, and until repaid shall be a charge upon the ship:

Provided that the name of the person by whom the ship has been acquired may, with the consent of the apprentice and of the superintendent, be inserted in the indentures as the master of the apprentice in lieu of the previous owner, in which case the indentures shall continue.

DIVISION 6.—RATING OF SEAMEN.

Rating of
A.B.
M.S.A. 1894,
s. 126.
M.S.A. 1906,
s. 58.

39.—(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 three years before the mast or as an apprentice and is eighteen years of age, but employment in limited coast-trade ships under thirty tons shall only count as sea service up to the period of two years of that employment:

Continuance of
rating as A.B.

Provided that any seaman who has been lawfully rated as A.B. before the commencement 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.

Proof of
rating.

(3.) A superintendent before whom a seaman is engaged shall refuse to enter a seaman as A.B., O.S., greaser or fireman in the agreement, unless the seaman gives to him satisfactory proof of his title to be so rated.

40.—(1.) No seaman shall be permitted to engage in any capacity unless he delivers to the superintendent, or, in the case of a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, to the person engaging him—

Discharge or permit to be produced.
N.Z. 1908, s. 52.

(a) a discharge or certificate showing his right to be rated in the capacity in which he desires to be shipped; or

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

(2.) The superintendent 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.

41.—(1.) No seaman shall be rated—

Rating of greasers and firemen.
Ib. s. 53.

(a) as "greaser," who has not served six months as fireman at sea; or

(b) as "fireman," who has not served six months as a trimmer or fireman at sea.

Provided that persons rated as firemen or greasers before the commencement of this Act shall continue to be entitled to be so rated.

Continuance of rating.

(2.) 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 superintendent that he can pull an oar and handle a boat: Provided that this sub-section shall not apply to the engagement of a seaman who has not previously served at sea.

Seamen to be able to row and handle a boat.

42.—(1.) When the master of a ship 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 so furnished.

Notice of disrating of seamen.
M.S.A. 1906, s. 59.

(2.) Any reduction of wages consequent on the disrating of the seaman shall be deemed to be a deduction from wages within the meaning of section seventy-six of this Act.

DIVISION 7.—THE CREW.

43. Every ship registered in Australia, and every other ship (British or foreign) engaged in the coasting trade, shall carry as crew the number and description of persons specified in the scales set out in Schedule II. or prescribed, or specified for the ship by the Minister, after advice from the Marine Council to be appointed under this Act:

Ship's complement.
N.Z. 1908, s. 54.

Provided that the Minister may exempt any ships from the operation of this section in regard to boys or apprentices.

44.—(1.) The owner of a ship shall not suffer her to go to sea and the master shall not take her to sea without carrying the crew prescribed or specified in the last preceding section.

Penalty.
Ib. s. 54.

Penalty: One hundred pounds.

Limitation of
action.

(2.) If a ship 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.

Employment of
crew in loading
and unloading.

45.—(1.) Except as prescribed, a member of the crew of a foreign-going ship (whether British or foreign) shall not be employed in handling cargo or ballast in connexion with the loading or unloading of a ship.

Provided that the regulations shall not allow the employment of the crew of such ship in handling cargo or ballast where a sufficiency of other labour is available.

Penalty (on master, owner, agent, or charterer): One hundred pounds.

(2.) The regulations may forbid the employment, except as prescribed, of members of the crews of Australian-trade ships in handling cargo or ballast in connexion with the loading or unloading of ships.

DIVISION 8.—THE AGREEMENT.

Agreement to be
entered into.
M.S.A. 1894,
s. 113.

46.—(1.) The master of a ship, other than a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, who engages any seaman in Australia, shall enter into an agreement with him in the prescribed form, in the presence of the superintendent.

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

Penalty: Five pounds in respect of each seaman.

(3.) The agreement shall be—

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

(4.) The superintendent shall retain one part of the agreement, and deliver the other part to the master.

(5.) 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 ship.

Form of
agreement.
Ib. s. 114.

Provision for
substitutes.
Ib. s. 115 (3).

47.—(1.) No seaman shall be permitted to sign any agreement who in the opinion of the superintendent 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.

Seamen to have knowledge of English.
M.S.A. 1906,
s. 12.

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

Penalty for an offence against this sub-section : Twenty pounds.

48. 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 ship'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.
M.S.A. 1894,
s. 115 (4).

- (a) the engagement shall, when practicable, be made before a superintendent or Customs officer ; but
- (b) 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 to the superintendent of the mercantile marine office at the first port of call, and deliver to him one part of the agreement.

Penalty : Ten pounds.

49. When, in the case of a ship not registered in Australia, the agreement is made out in accordance with the law of the place where the crew was engaged, and the master engages single seamen in Australia, those seamen shall sign the agreement in the presence of a superintendent, and no other agreement shall be required, but in all other respects the requirements of this Act shall be complied with.

Single seamen on original articles.
N.Z. 1908,
s. 41 (6).

50.—(1.) An agreement may be made for a voyage, or, if the voyages of the ship 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.
M.S.A. 1894,
s. 115 (5).

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

Provided that every such agreement shall, in any case, remain in force until the ship's arrival at a port of destination and in the case of foreign-going ships the discharge of cargo consequent on that arrival, and the crew shall be considered engaged when the agreement is first signed, and discharged when the employment ends :

Provided further that when a ship 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 a port of destination, and

the ship is not then on her way back to the port of discharge mentioned in the agreement, the crew shall be entitled to claim their discharge, and the master or owner shall be liable to provide them with a passage to the port of discharge or to such other port as is mutually agreed to with the approval of the proper authority.

Agreement with
master or
owner.
M.S.A. 1894,
s. 116.

51. In the case of limited coast-trade ships, the agreement may, notwithstanding anything in this Act, be made with either owner or master. In the case of Australian-trade ships the agreement shall, notwithstanding anything in this Act, be made with the master.

Changes in
crew.
Ib. s. 117.

52.—(1.) The master of every foreign-going ship shall, before finally leaving Australia, sign and send to the nearest superintendent, on the prescribed form, a full and accurate statement of every change which takes place in his crew before finally leaving Australia.

Penalty : Five pounds.

(2.) Such statement shall be admissible in evidence.

Copy of
agreement to be
exhibited.
Ib. s. 120.

53.—(1.) The master of every ship 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 ship which is accessible to the crew, and shall use all reasonable precautions to keep it so posted during the voyage.

(2.) No person shall wilfully deface or destroy any such copy.

Penalty : Five pounds.

Agreement to be
delivered to
superintendent.
Ib. s. 118 (3).

54. The master of every foreign-going ship shall, within forty-eight hours after arrival at her final port of destination in Australia or upon the discharge of his crew, whichever first happens, deliver the agreement to the superintendent.

Penalty : Fifty pounds.

Erasures and
alterations.
Ib. s. 122.

55.—(1.) 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.

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

- (a) of the witness attesting the signature of the person so interested ; or
- (b) of some justice ; or
- (c) in any part of the King's dominions beyond Australia—of a shipping master or superintendent ; or
- (d) elsewhere than in the King's dominions—of a British Consul, or, where there is no British Consul, two British merchants.

Offences.
Ib. s. 121.

56. Any person who—

- (a) fraudulently alters an agreement, or
- (b) makes a false entry in an agreement, or
- (c) delivers a false copy of an agreement.

shall be guilty of an indictable offence.

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

Evidence as to agreement.
M.S.A. 1894,
s. 123.

58.—(1.) The master of any ship—

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

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

(2.) The superintendent shall satisfy himself that the officers are properly certificated.

Certificates of officers to be produced.
Ib. s. 103.

59. In—

(a) every contract of service, express or implied, between the owner of a ship and the master, or between the owner or master and any seaman or apprentice, and

(b) every instrument of apprenticeship relating to the sea, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner and the master, and every agent charged with loading the ship or preparing her for sea or sending her to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage begins, and to keep her in seaworthy condition for the voyage during the voyage.

Obligation as to seaworthiness.
Ib. s. 458.

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

Fees to be paid.
N.Z. 1908,
s. 159.

(2.) All such fees with costs may be recovered from any such person in a summary manner.

DIVISION 9.—DISCHARGE OF SEAMEN.

61.—(1.) When a seaman is discharged from any ship (except a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship) the master shall sign and give the seaman, in the presence of the superintendent, a discharge in the prescribed form.

Discharges to be given.
M.S.A. 1894,
ss. 127, 128.

(2.) When a seaman is discharged from a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship, the master shall sign and forthwith deliver to the superintendent a discharge of the seaman in the said form attested by a witness.

(3.) When discharging a seaman, the master shall return to him all his previous discharges in the master's possession.

Penalty for contravention of any of the preceding sub-sections :
Ten pounds.

Sanction
required for
discharge of
seamen not
shipped in
Australia.
Cf. M.S.A. 1906,
s. 30.

62.—(1.) A seaman not shipped in Australia shall not be discharged (except at the end of his service at the time specified in his agreement) unless the master has previously obtained the sanction of the superintendent indorsed on the agreement.

(2.) The superintendent shall examine into the grounds on which a seaman is to be discharged, and may, if he think fit, administer oaths, and may grant or refuse his sanction as he thinks just ; but his sanction shall not be unreasonably withheld.

(3.) A master of a ship not complying with this section shall be guilty of an indictable offence, and in any legal proceeding for the offence it shall lie on the master to prove that the sanction was obtained or was unreasonably withheld and it shall be a good defence if the master proves that under the circumstances it was not reasonably practicable for him to apply for the sanction.

False
discharges.
N.Z. 1908,
s. 53 (3.).

63. No person shall give 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.

Penalty : Fifty pounds.

Attestation.
N.S.W. 1898,
No. 46, s. 35.

64. The superintendent 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.

Limited coast-
trade and river
and bay ships.
M.S.A. 1894,
s. 127 (3.).

65. If the master or not less than two of the seamen of any limited coast-trade ship of less than fifty tons gross registered tonnage or any river and bay ship so desire, the seamen of that ship may be discharged as provided in the case of ships other than such limited coast-trade ships and river and bay ships.

Return of
certificate of
competency.
Ib. s. 128 (2.).

66. The master, on the discharge of every certificated officer, shall return to him his certificate of competency if it has been delivered to and detained by him.

Penalty : Twenty pounds.

Reports of
seaman's
character.
Cf. Ib. s. 129.

67.—(1.) Upon every discharge effected before a superintendent the master shall make and sign, in the prescribed form, and forthwith deliver to the superintendent, a report of the conduct, character, and qualifications of the seaman discharged.

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

Offences as to
discharges.
Ib. s. 130.

68. Whoever—

(a) knowingly makes any false certificate of discharge or report of character ; or

(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 indictable offence.

DIVISION 10.—SEAMEN'S WAGES.

Advance and Allotment.

69.—(1.) An agreement made in Australia shall not contain any stipulation for the payment in advance, to any seaman or other person, of the wages or any portion thereof.

Advance
of wages
prohibited.

Cf. M.S.A. 1884,
s. 140.
U.S. 1898, c. 28,
s. 10.

(2.) No ship-owner, master, or other person, shall pay or agree to pay any wages in advance to or on account of any seaman engaged in Australia.

Penalty : Fifty pounds.

(3.) Any agreement relating to advance of wages to or on account of any seaman engaged in Australia 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.

70.—(1.) A seaman engaged in Australia on a foreign-going ship for a voyage calculated to exceed two months may, before the commencement of the voyage, make stipulations, subject to the approval of the superintendent as to terms and conditions, for the allotment, during his absence, by means of an allotment note—

Allotment notes.
Cf. ib. s. 141.

(a) to his grand-parents, parents, wife, brothers, sisters, children, or grand-children, or any of them ; or

(b) to a Savings Bank,

of any portion of the wages which he may earn on the voyage.

(2.) Except by agreement with the master an allotment note shall not provide for payment of a greater sum than one-half of the seaman's wages.

1 & 2 Geo. V.,
c. 8, s. 1.

(3.) The stipulations shall be inserted in the agreement, and shall state the amounts and times of the payments to be made, and the persons to whom they are to be made.

(4.) All allotment notes shall be in the prescribed form.

(5.) Except as provided in this Act, no allotment of the wages of any seaman engaged in Australia shall be made, and no stipulation for such allotment shall be valid.

(6.) The superintendent before whom a seaman is engaged shall, after the seaman has signed the agreement, inquire of the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation shall insert it in the agreement, and any such stipulation shall be deemed to have been agreed to by the master.

M.S.A. 1906,
s. 61.

71.—(1.) When an allotment note is made in favour of any person, he may sue for and recover the wages allotted by it, when and as they are made payable, with costs, from any person who has authorized the drawing of the note, in a County Court, District Court, or Local Court of any State, or in a court of summary jurisdiction.

Right to sue
upon allotment
notes.

M.S.A. 1894,
s. 143.

(2.) In any such proceeding, it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or master, or some authorized agent; and the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court by—

- (a) the official statement of the change in the crew caused by his absence, signed and sent to the superintendent by the master, as by this Act is required; or
- (b) a certified copy of some entry in the official log-book to the effect that he has left the ship; or
- (c) such other evidence as the Court, in its absolute discretion, considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

(3.) No recovery shall be made on an allotment note if the seaman is shown, in manner aforesaid, to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid.

(4.) The wife of a seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereby forfeit all right to further payment of any allotment of his wages made in her favour, but the Minister may direct the allotment to be made in favour of any other relative of the seaman to whom an allotment may be made under this Act.

Commence-
ment of
payment.
M.S.A. 1906,
s. 62.

72.—(1.) Payment under an allotment note shall, except as provided by sub-section (2.) of this section, begin at the expiration of one month from the date of the agreement and shall be made at the expiration of every subsequent month after the first month, and shall be made only in respect of wages earned before the date of payment.

1 & 2 Geo. V.,
c. 8, s. 1.

(2.) By agreement with the master an allotment note may be granted to a seaman providing for payment at a period earlier than one month from the date of the agreement and at intervals more frequent than one month.

Allotment to
Savings Banks.
M.S.A. 1894,
s. 142 (1.).

73. An allotment to a Savings Bank shall be in favour of such persons, and carried into effect in such manner, as is prescribed.

Payments by
Savings Banks.
I b. s. 142 (2.).

74. The sums received by a Savings Bank on an allotment note shall be paid out only on application made, through a superintendent, by the seaman himself, and in case of his death by some person to whom his property, if under One hundred pounds in value, may be paid under this Act.

Payment of Wages.

Wages to be
paid before a
superintendent.
N.Z. 1908,
s. 58.

75. When a seaman is discharged before a superintendent, the master or owner of the ship shall pay his wages through or in the presence of a superintendent.

Penalty: Ten pounds.

76.—(1.) Every master shall, before discharging a seaman, deliver to him at the time prescribed a full and true account, in the prescribed form, of his wages, and of all deductions to be made therefrom on any account whatever.

On discharge of seaman master to deliver account of wages.
M.S.A. 1894,
s. 132.

Penalty : Five pounds.

(2.) 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.

Deductions from wages.

(3.) 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 initialed or signed by the seaman and no deduction shall be allowed unless so entered.

(4.) The Minister may disallow any such deduction.

77.—(1.) The master or owner of every foreign-going ship registered in Australia shall pay to every seaman, at the prescribed times, his wages or prescribed portions thereof :

Time for payment of wages on foreign-going ships.

Provided that this provision shall not apply to cases where the seaman by the terms of his agreement is wholly compensated by shares in the profits of the adventure.

Cf. ib. ss. 134-5.
N.Z. 1908, s. 62.

(2.) In cases where the seamen are engaged on time or running agreement on an Australian-trade or limited coast-trade ship, all wages earned shall be paid monthly not later than the first day of each month, or thereafter within twenty-four hours after the ship first arrives at any port in Australia at which there is a bank.

Wages to be paid monthly on Australian-trade and limited coast-trade ships.
N.Z. 1908, s. 63.

(3.) 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.

ib. s. 62.

78. 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.

Wages to run on in certain cases.
M.S.A. 1894,
s. 134 (c).

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

Superintendent may receive wages.
N.Z. 1908,
s. 61 (b).

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

Settlement of wages.

(a) Where a seaman is discharged, and the settlement of his wages completed, before a superintendent, the master or

Release to be signed before superintendent.
M.S.A. 1894, s. 136.

owner and the seaman shall, in the presence of the superintendent, sign in the form prescribed a mutual release of all claims in respect of the past engagement :

M.S.A. 1906,
s. 60.

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.

Attestation.

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

To be a
discharge.

(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 noted upon the release as above-mentioned.

No other receipt
to be a
discharge.

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

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

Voucher to be
given to master
and to be
evidence.

(e) Upon any payment being made by a master before a superintendent, 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.

Decision of
questions by
superintendent.

M.S.A. 1894,
s. 137.
N.Z. 1908,
s. 65.

81.—(1.) A superintendent 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 superintendent 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 superintendent shall be final and conclusive as to the rights of the parties.

(4.) Any document under the hand of the superintendent purporting to be such decision shall be admissible as evidence thereof.

Rights of Seamen in respect of Wages.

Right to wages
and provisions
when to begin.
M.S.A. 1894,
s. 155.

82. 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.

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

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

No forfeiture of lien.
M.S.A. 1894,
s. 156.

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

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

Stipulations inconsistent with Act to be void.

(4.) Nothing in this section shall apply to a stipulation made by any seaman, belonging to a ship 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 ship to any other ship.

Agreement for salvage service.

84. 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 ship in which he has 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 not to be dependent on the earning of freight.

Ib. s. 157.

But in all cases of wreck or loss of the ship, 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.

85.—(1.) Where the service of any seaman terminates before the period contemplated in his agreement, by reason of the wreck or loss of the ship, he shall be entitled to wages up to the time of such termination of service only.

Right to wages in case of termination of service by wreck.

Ib. s. 158.

(2.) Where a seaman, whose service terminates by reason of the wreck or loss of the ship, 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 by the run.
Cf. N.Z. 1908,
s. 79 (3.).

86. 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; or
- (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.

Wages not to accrue during refusal to work or imprisonment.

M.S.A. 1894,
s. 159.

Ib. s. 160.

87. 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.

Ib. s. 161.

Compensation
for premature
discharge.

Cf. M.S.A. 1894,
s. 162.

88.—(1.) If a seaman is discharged, otherwise than in accordance with the terms of his agreement, 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.

Cf. M.S.A. 1906,
s. 32.

(2.) If the seaman is so discharged elsewhere than at the port of discharge mentioned in the agreement, the master or owner shall provide him with a passage to that port or such other port as is mutually agreed to with the approval of the proper authority.

Wages in full
up to time of
discharge.

N.Z. 1908,
s. 79 (1.).

89. Every seaman (wherever engaged) who is discharged in Australia 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.

Wages not to
be attached, &c.

Ib. s. 83.

M.S.A. 1894,
s. 163.

90.—(1.) As to wages due or accruing to a seaman or apprentice—

- (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.

(2.) Nothing in this section shall affect the provisions of this Act with respect to allotment notes.

Mode of Recovering Wages.

Jurisdiction of
court as to
wages.

N.Z. 1908,
s. 85.

91.—(1.) The Supreme Court of any 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:—

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

(2.) If in any such cause tried in the Supreme Court of a State, or in a Court having Admiralty jurisdiction, the plaintiff does not recover Fifty pounds, he shall only be entitled to such costs as the Court or a Judge allows, such costs not to exceed reasonable costs on the scale usually allowed 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.

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

N.Z. 1908
s. 84 (2.).
M.S.A. 1894,
s. 105.

- (a) the owner of the ship is declared bankrupt or insolvent; or
- (b) the ship is under arrest or is sold by the authority of any Court; or
- (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.

92.—(1.) Where any sum not exceeding Fifty pounds is due for wages to any seaman or apprentice, he, or a person duly authorized on his behalf, may sue for and recover it with costs in a County Court, District Court, or Local Court of a State or a Court of summary jurisdiction, in or near the place—

Summary
proceedings
for wages.
Ib. s. 164.

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

(2.) Every judgment or order for payment made by the Court under this section shall contain a direction that the person liable shall pay the amount thereby made 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.

(3.) Every judgment or order made under this section shall be final and without appeal.

93.—(1.) Where a seaman is engaged in Australia for a voyage or engagement which is to terminate in Australia he shall not be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as is required by law and with the written consent of the master or proves such ill-usage on the part or by the authority of the master as to warrant reasonable apprehension of danger to his life or health if he were to remain on board.

Wages not
recoverable
abroad in
certain cases.
Cf. Ib. s. 166.

(2.) If a seaman, on his return to Australia, proves that the master or owner has been guilty of any conduct or default which, but for this section, would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover, in addition to his wages, such compensation as the Court hearing the case thinks reasonable.

94.—(1.) The master of a ship 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.
Ib. s. 167.

(2.) The master of a ship 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 ship 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 counter-claim 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 11.—SEAMEN'S MONEY ORDERS.

Regulations as to money orders.
N.Z. 1908, s. 72.

95.—(1.) Regulations under the *Post and Telegraph Act* 1901 may provide for the issue of money orders called seamen's money orders, and prescribe the time and mode of their payment, and the persons by or to whom they are to be paid.

(2.) All regulations so made shall, while in force, be binding upon all persons interested or claiming to be interested in the orders, as well as upon the officers employed in issuing or paying them.

Right of Minister to cause money order to be paid.
Ib. s. 73.

96. The Minister may, if he thinks fit, cause the amount of any seaman's money order to be paid to the person in whose favour it has been granted, or to the personal representative, or any legatee or next-of-kin of that person, notwithstanding that the order is not in his possession, and after such payment the Commonwealth and the Postmaster-General shall be free from liability in respect of the money order.

Fraud by postal officials.
Ib. s. 74.

97. Every officer in the Postal Service who grants or issues a seaman's money order with a fraudulent intent shall be guilty of an indictable offence.

Facilities to seamen for remitting wages.
M.S.A. 1906 s. 63.

98. Where—

- (a) the balance of wages due to a seaman is more than Five pounds; and
- (b) the seaman asks the master of the ship to afford him facilities for remitting all or any part of the balance to a savings bank, or to a relative in whose favour an allotment note may be made,

the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of Five pounds, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port, or otherwise than conditionally on the seaman going to sea in the ship.

Penalty : Ten pounds.

DIVISION 12.—DISCIPLINE.

Acts tending to endanger ship or life.
M.S.A. 1894 s. 220.

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

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

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

shall be guilty of an indictable offence.

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

Column 1.
Offences.

Desertion.

Failure or refusal without reasonable cause to join the ship or proceed to sea in the ship.

Absence without leave from duty without reasonable cause, such absence not amounting to desertion or not treated as such by the master.

Insubordination at sea, or wilful disobedience to any lawful command at sea.

Insubordination, or wilful disobedience to any lawful command.

Continued wilful disobedience to lawful commands, or continued wilful failure in duty.

Assaulting master or ship's officer without lawful justification.

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.

Wilfully damaging the ship.

Embezzling or wilfully damaging the cargo, stores, or equipment of the ship.

Secreting a stowaway or deserter.

Column 2.
Punishments.

Forfeiture of all accrued wages not exceeding Twenty pounds, or a penalty of Twenty pounds. M.S.A. 1894, s. 221.
Penalty of Ten pounds.

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. Ib. s. 221 (b).

One month's imprisonment or forfeiture of ten days' wages. Ib. s. 225 (b).

Forfeiture of two days' wages, or a penalty of Ten pounds.

Forfeiture of two days' wages for each day during which the offence continues. Ib. s. 225 (c).

Three months' imprisonment, or a penalty of Twenty pounds. Ib. s. 225 (d).

Six months' imprisonment. Ib. s. 225 (e).

Twelve months' imprisonment, or a penalty equal in amount to the loss sustained. Ib. s. 225 (f).

Six months' imprisonment, or a penalty equal in amount to the loss sustained.

Forfeiture of two days' wages.

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.

Smuggling by
crew.
M.S.A. 1894,
s. 225 (g).

101.—(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 ship, 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.

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

Assaults on
crew.
N.Z. 1908,
s. 131.

102. The master or an officer of a ship who, without lawful justification, assaults any person belonging to the ship, shall be guilty of an offence.

Penalty: Twenty pounds, or imprisonment for three months.

Inciting to
breach of
agreement.
M.S.A. 1894,
s. 236.

103. No person shall—

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

(b) wilfully harbor or secrete a seaman or apprentice who has deserted from or wilfully failed to join his ship.

Penalty: Twenty pounds.

Stowaways.
Ib. s. 237.

104.—(1.) No person shall secrete himself and go to sea in a ship without the consent of some person entitled to give that consent.

Penalty: Twenty pounds, or imprisonment for four weeks.

Stowaways and
distressed
seamen liable
to discipline.

(2.) Every person whom the master of a ship is legally compelled to convey, and every person who goes to sea in a ship without such consent as aforesaid, shall, so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline as if he were a member of the crew, and had signed the agreement.

Seamen may be
sent on board
in lieu of
penalty.
Ib. s. 224.

105. 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.

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

Proceedings against seaman after departure of ship.
N.S.W. 1898,
No. 46, s. 88.
Cf. N.Z. 1908,
s. 133 (5.).

- (a) after the departure of the ship from Australia ; or
- (b) so shortly before the departure of the ship 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 superintendent shall 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.

107. On complaint of a master, or mate, or owner or agent of a ship, that any other ship (British or foreign) has on board any seaman who has deserted from the first-mentioned ship, any justice, or officer of Customs or police, may detain the seaman and lodge him in safe custody until he is dealt with according to law :

Deserter may be apprehended.
N.S.W. 1898,
No. 46, s. 91.

Provided that the seaman shall be so dealt with as soon as possible.

108.—(1.) Every superintendent 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 ships after signing the agreement.

List of deserters to be shown.
M.S.A. 1894,
s. 230.

(2.) No superintendent shall be liable to any action in respect of any entry in such list.

No action for exhibiting.

109. Subject to the provisions of section one hundred 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.

Payment of wages when imprisoned.
Ib. s. 137.

110.—(1.) When a seaman belonging to a foreign-going ship is imprisoned on summary conviction for any term, and his ship is about to leave Australia before the expiration of his sentence, the Minister may, with the consent of the seaman, cause the seaman to be delivered to the master of the ship at any time within twenty-four hours before sailing, and the master shall keep the seaman on board under custody till the ship has left port.

Foreign-going seamen may be returned to their ship.
N.Z. 1908,
s. 133 (4.).

(2.) All expenses incurred in connexion with such delivery and custody shall be paid by the master.

Entry in the log
of offence and
offender's
defence.
M.S.A. 1894, s.
228.

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

- (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 ; and
- (b) the offender, if still in the ship, shall, before the next arrival of the ship at any port, or if the ship 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 ; and
- (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 act of misconduct.

Evidence of
desertion in
proceeding for
forfeiture.
Ib s. 231.

112.—(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 ship ; and
- (b) either that he unlawfully left the ship before the completion of the voyage or engagement ; or, if the voyage was to terminate in Australia and the ship has not returned, 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 superintendent of mercantile marine or a consul.

(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 ship.

Questions as to
forfeiture and
deductions.
Ib s. 233.

113. 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.

Forfeiture
under unusual
agreement.
Ib s. 234.

114. 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 such wages comes before it.

115.—(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.
M.S.A. 1908,
s. 44.

If the offender is discharged in Australia, and the offence, and the entry in the log-book required by this Act in respect thereof, are proved to the satisfaction, in case of a foreign-going ship, of the superintendent before whom the offender is discharged, and, in the case of an Australian-trade ship, or a limited coast-trade ship of fifty tons gross registered tonnage or upwards, of the superintendent at or nearest the port at which the crew are discharged, the master or owner shall deduct the fine from the wages of the offender, and pay it to the superintendent.

(2.) The master or owner shall not, without reasonable cause, fail to pay the fine promptly to the superintendent.

Penalty : Five pounds.

(3.) An act of 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.

DIVISION 13.—PROVISIONS.

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

Bad provisions
or water.
Ib. s. 198

(2.) If the superintendent, or person making the examination, finds that the provisions or water are of bad quality or deficient in quantity, he shall, by writing, require the master to provide provisions and water of good quality, or sufficient in quantity, as the case may be, and to 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 : Twenty pounds.

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

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

117. The master of every ship registered in Australia or engaged in the coasting trade for which an agreement with the crew is required under this Act shall furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale set out in Schedule III. applicable to the ship, or as is prescribed.

Statutory scale
of provisions.
Ib. s. 25.

Penalty : 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.

Supplying bad
water or pro-
visions.
M.S.A. 1894,
s. 199.

118.—(1.) On every ship registered in Australia or engaged in the coasting trade in either of the following cases, namely :—

- (a) if during a voyage the allowance of any of the provisions required by the prescribed scale is reduced ; or
- (b) if it is shown that any of the provisions are or have during the voyage been of bad quality,

Compensation.

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 :—

- (i.) 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 ;
- (ii.) If his allowance is reduced by more than one-third of that quantity, a sum not exceeding Two shillings a day ;
- (iii.) In respect of bad quality, a sum not exceeding Two shillings a day.

(2.) Provided that if it is shown to the satisfaction of the Court—

- (a) that 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
- (b) that, 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 those circumstances into consideration, and shall modify or refuse the compensation as justice requires.

Weights and
measures.
Ib. s. 201.

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

Penalty : Ten pounds.

Inspection of
provisions.
Ib. s. 206.

120.—(1.) The provisions and water for the use of the crews of ships leaving any port in Australia for a place beyond Australia or New Zealand shall be inspected by such persons and under such circumstances as the Minister directs :

Provided that, where the provisions or water have already been inspected and approved by an officer of the Board of Trade of the United Kingdom, no further inspection shall be required unless complaint be made or the Minister deem further inspection necessary.

(2.) If the person so inspecting finds that the provisions or water are not of good quality, the ship shall be detained until provisions or water are supplied to his satisfaction.

M.S.A. 1906,
s. 26.

(3.) If any provisions or water are found deficient in quality under this section, the master of the ship shall be guilty of an offence, unless it is proved to the satisfaction of the Court—

- (a) that the finding of the inspecting official was not justified ; or
- (b) that the responsibility for the defects in the provisions or water rests upon some other person.

Penalty : One hundred pounds.

(4.) The owner of any ship, or his agent, or any other person, supplying or causing to be supplied provisions or water which are afterwards found deficient under this section shall be guilty of an offence, unless it is proved to the satisfaction of the Court—

- (a) that the provisions or water were not deficient when supplied ; or
- (b) that when the provisions or water were supplied 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.

Penalty : One hundred pounds.

(5.) The master of every ship, and every person having charge of any provisions or water liable to inspection, shall give the inspecting officer every reasonable facility for the purpose of his inspection under this section.

Penalty : Twenty-five pounds.

121.—(1.) Every British ship of five hundred tons gross registered tonnage or upwards, registered in Australia or engaged in the coasting trade, and going to sea from any port in Australia, shall carry a duly certificated cook, who is able to prove one month's service at sea in some capacity.

Certificated
cooks.
Cf. M.S.A. 1906,
s. 27.

(2.) A cook shall not be deemed to be duly certificated, within the meaning of this section, unless he is the holder of—

- (a) a certificate issued as prescribed ; or
- (b) a certificate granted or approved by the Board of Trade of the United Kingdom ; or
- (c) certificates of discharge showing at least two years' service as cook prior to the first of January One thousand nine hundred and twelve, or at least six months' service as first or second cook on a passenger ship prior to that date.

(3.) The cook shall be rated in the ship's articles as ship's cook, or, in the case of ships of not more than one thousand tons gross registered tonnage, or ships in which the crew or three-fourths of the crew provide their own provisions, either as ship's cook or as cook and steward.

Penalty (on master or owner) for contravention of above sub-sections : Fifty pounds.

(4.) The Minister may cancel or suspend the certificate of any cook for incompetency or misconduct.

Disposal of bad provisions.

122. All provisions examined or inspected under this Division and found to be of bad quality shall be disposed of as the Minister directs.

DIVISION 14.—HEALTH.

Medical inspector.

Cf. M.S.A. 1894, s. 204 (2.).

Medical examination of seamen.

Ib. s. 203.

123.—(1.) The Minister may appoint any person legally qualified as a medical practitioner in any State to be a Medical Inspector of Seamen, and may fix his remuneration.

(2.) A Medical Inspector of Seamen shall, on application by the owner or master of a ship, or by the superintendent, examine any seaman applying for employment or employed in that ship, and give to the superintendent 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.

(3.) The applicant for the examination shall pay to the superintendent the prescribed fees.

Scale of medicines.
Ib. s. 200.

124.—(1.) The Minister 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 master or owner of every foreign-going ship shall provide and cause to be kept on board a supply of medicine and medical and surgical stores and appliances of the prescribed quality according to the scale appropriate to the ship and the voyage, and also the said books or one of them, or a book similar to that issued by the Board of Trade of the United Kingdom.

Penalty : One hundred pounds.

(3.) The master or owner of every such ship, except such as are exempted by order of the Minister, shall provide and cause to be kept on board a sufficient quantity of anti-scorbutics as prescribed, and the master shall serve out the anti-scorbutics to the crew in the prescribed manner.

Penalty : One hundred pounds.

(4.) If a master of a ship is convicted under this section through the act or default of the owner, he may recover the penalty and costs from the owner.

(5.) The owner or master shall not be liable to any penalty under this section if he proves that the non-compliance did not arise from any default on his part.

(6.) Any person, other than the master or owner, who is in any way a party to failure to comply with this section, shall be liable to the same penalty as the master or owner for a like offence.

(7.) If a seaman or apprentice fails to take the anti-scorbutics when served out, that fact shall be entered in the official log-book, and the entry signed by the medical practitioner on board, if any.

125.—(1.) No person shall manufacture, sell, supply, keep, or offer for sale any medicines or medical or surgical stores for sea use which are not of good quality or are deficient in strength.

Medical stores,
sale, &c.
M.S.A. 1894,
s. 200 (7).

Penalty : Twenty pounds.

(2.) The standards set out in the British Pharmacopœia shall, where applicable, and except as prescribed, apply to medicines, medical stores, and anti-scorbutics for sea use, and all medicines, medical stores, or anti-scorbutics which do not comply with or are not equal to the standard applicable thereto, or the prescribed standard, shall be deemed to be either not of good quality or deficient in strength.

126.—(1.) The Minister may nominate any duly qualified person to inspect the medicines, medical and surgical stores, and anti-scorbutics, required by this Part of this Act to be carried.

Inspection of
medicines.
Ib. s. 202.

(2.) The master, on being required by that person, shall make good any deficiency in quantity or quality of such articles.

Penalty : Twenty pounds.

127.—(1.) If the master or a seaman or apprentice belonging to a ship—

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

Owner liable
for medical
attendance,
&c.
Ib. s. 207.
M.S.A. 1906,
s. 34.

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, if shipped in the King's Dominions, to the port at which he was shipped, 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 ship, without any deduction therefor from his wages.

(2.) If the master or a seaman or apprentice is, on account of any such illness, temporarily removed from his ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship, shall be defrayed in like manner.

And for
maintenance.

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

And for
expenses on
board.

(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.

Deduction from
wages for
burial.

Recovery of
expenses from
owner.

M.S.A. 1894,
s. 208.

M.S.A. 1906,
s. 35.

128.—(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 this Act by the master or owner, are paid by any authority on behalf of the Commonwealth, or
- (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 ship.

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

- (a) from the master or owner of the ship for the time being ; or
- (b) where the ship has been lost—from the person who was the owner of the ship at the time of loss ; or
- (c) where the ship 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 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.

(3.) In any proceeding for such recovery, a certificate of the facts, signed by the said 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
where seaman
left behind.
Cf. *ib.* s. 36.

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

(2.) The superintendent shall examine into the grounds on which a seaman is to be left behind, and for that 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 fail to comply with 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 in any legal proceeding for the offence it shall lie on the master to prove that the certificate was obtained, or could not be obtained without unreasonable delay to the ship, or was unreasonably withheld.

Account of
wages where
seaman left
behind.
Cf. *ib.* ss 37, 38.

130.—(1.) The master of a ship leaving a seaman behind at any place in Australia, on the ground of his unfitness or inability to go to sea, shall deliver to the superintendent a full and true account of the

wages due to the seaman, and shall pay to the seaman the amount of such wages, or, if for any reason payment direct to the seaman is not practicable, shall pay the wages due to the superintendent.

Penalty : Twenty pounds, in addition to payment of wages.

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

Penalty : Twenty-five pounds, in addition to payment of wages.

131. Any person wrongfully forcing a seaman on shore from any ship 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.

Wrongfully leaving seaman behind.
M.S.A. 1906, s. 43.

132.—(1.) Where a seaman or apprentice is left on shore from a ship at any place in Australia in any manner authorized by law, by reason of illness or accident in the service of the ship incapacitating him from performing his duties, he shall be deemed to be discharged from his ship.

Seamen lawfully left behind to be deemed discharged.
N.Z. 1908, s. 119.

(2.) Where the ship is registered in Australia—

As to seamen left ashore from Australian ships.

(a) the master or agent shall deposit with the superintendent the full amount of wages then due to the seaman or apprentice, together with a sum equal to his wages to the end of his engagement, according to his agreement, not exceeding a period of three months, and, in addition, such reasonable sum as is estimated by the superintendent to cover the expenses of the maintenance and medical and other attendance of the seaman or apprentice in a public hospital until his recovery or the end of his engagement, or, in cases where the engagement expires within one month from the commencement of the illness, then during one month after such expiry ;

(b) if, on the recovery of the seaman or apprentice, and after payment of the charges aforesaid, there is any balance of the moneys so deposited, the superintendent shall apply it, so far as it will extend, in payment to the seaman or apprentice of a sum equal to his wages according to his agreement, up to the expiration of one week after the date of his recovery as certified by his medical attendant, and the remainder thereof (if any) shall be returned to the master or agent who paid it ;

Payment of balance.

(c) the seaman or apprentice shall, on being so left on shore, be entitled to a certificate or other evidence of his discharge required by law to be given to a seaman or apprentice on his discharge ;

To be discharged.

(d) the seaman or apprentice may require the owner or master of the ship, instead of complying with the foregoing provisions of this sub-section, to provide him with a free passage to the port in Australia where, in accordance

Owner may be required to find passage.

with his agreement, he would be entitled to be discharged ; and if such passage is so provided, and on payment of all wages payable up to the arrival of the seaman or apprentice at that port, the liability of the master or owner in respect of that seaman or apprentice shall be deemed to have determined.

(3.) If the master of a ship leaves a seaman or apprentice on shore without the requirements of this section being complied with, he shall be guilty of an offence.

Penalty : One hundred pounds.

Seamen not entitled to benefit of section when illness their own fault.

(4.) The illness which shall entitle a seaman or apprentice to the benefits provided for in this section shall—

(a) be such as wholly to incapacitate him from the performance of his duty, and

(b) be or appear to be of such a nature as to require or be likely to require medical treatment for a period of not less than fourteen days, and

(c) so far as can be ascertained, have been contracted on board or in the service of the ship or its owners :

Provided that if the illness has been caused by his own wilful act or default he shall not be entitled to the benefits herein referred to.

Payment to superintendent.

(5.) Payment of wages to a superintendent under this section shall be deemed a payment to the seaman.

Certain ships to carry medical man.
M.S.A. 1894,
s. 209.

133.—(1.) The owner or master of every—

(a) foreign-going ship, or

(b) Australian-trade ship on a voyage between consecutive ports of call which exceeds a prescribed distance,

having one hundred persons or upwards on board shall cause to be carried as part of her complement, a duly qualified medical practitioner.

Penalty : One hundred pounds.

Certain ships to carry person qualified to render "first aid."

(2.) The owner or master of every—

(a) foreign-going ship, or

(b) Australian-trade ship on a voyage between consecutive ports of call which exceeds a prescribed distance,

having more than ten and less than one hundred persons on board, and not carrying a duly qualified medical practitioner as part of her complement, shall cause to be carried as part of her complement a person certified to by a medical inspector or by an approved authority as qualified to render "first aid."

Penalty : Fifty pounds.

Supply of clothing, blankets, and tobacco.

134.—(1.) The owner of every foreign-going ship registered in Australia, and going to sea from any port in Australia to any port beyond Australia and New Zealand, shall cause to be carried in the ship a supply of all articles of clothing ordinarily required for a seaman's use, having special reference to the voyage then entered upon, and also a supply of woollen blankets and of tobacco sufficient for the wants of the crew.

(2.) All such articles shall be of good quality, and shall be sold to the crew at a price not exceeding ten per cent. advance on the wholesale cost price at the port of shipment.

Penalty : Fifty pounds.

DIVISION 15.—ACCOMMODATION.

135. The owner of every steam-ship registered in Australia, or engaged in the coasting trade, shall—

Accommodation
for officers.
Cf. N.Z. 1908,
s. 121.

- (a) make provision to the satisfaction of the medical inspector or the prescribed official for the adequate ventilation of the officers' rooms, engine-room, and stoke-hole ; and
- (b) except as in the next two paragraphs mentioned, provide for each officer, up to at least four, 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
- (c) in the case of limited coast-trade steam-ships of less than three hundred tons gross 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
- (d) in the case of river and bay ships—provide for the officers such accommodation as is prescribed.

Penalty : Twenty pounds, with Five pounds for every day after the first day during which such default continues.

136.—(1.) Every place in a ship registered in Australia or engaged in the coasting trade, which is appropriated to the berthing accommodation of seamen or apprentices, shall—

Accommodation
for seamen and
apprentices.
Cf. M.S.A. 1894,
s. 210.
Cf. M.S.A. 1906,
s. 64.

- (a) have for each seaman or 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 ;
- (b) not be below the winter load-line of the ship ;
- (c) 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 ;
- (d) not have built in it, or so near to it as to be in the opinion of a qualified medical inspector nominated by the Minister likely to be prejudicial to the health of the occupants, any paint or chain locker, latrine, or similar erection ;
- (e) 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 be detrimental to the health and comfort of the persons berthed therein ;

- (f) be ventilated in such manner as to insure a flow of not less than three thousand cubic feet of fresh air per hour for each seaman or apprentice, evenly diffused by means approved by a qualified medical inspector nominated by the Minister, with an intake and outtake of such size and so arranged as to prevent such draught as would in the opinion of the medical inspector be likely to be prejudicial to the health of the seamen or apprentices ; and
- (g) be fitted with bunks made of metal of the prescribed construction.

Penalty (on the owner) : One hundred pounds.

(2.) The owner of every such ship 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 Minister, 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 winter load-line, or, if in the opinion of the Minister this is not practicable, shall provide folding or sliding tables of sufficient size to enable the seamen or apprentices to take their meals in comfort in the forecastle.

Penalty : One hundred pounds.

(3.) The owner of every such ship shall provide such sanitary, hospital, and lavatory accommodation, including bath-rooms, as in the opinion of a qualified medical inspector nominated by the Minister is sufficient for the requirements of the crew, and in the case of steam-ships the provision shall include an adequate supply of hot fresh water for the use of all members of the crew employed in connexion with the engines of the ship.

Penalty : One hundred pounds.

(4.) Sub-sections (2.) and (3.) of this section shall not apply to river and bay ships, but the owner of every such ship shall make such provision as is prescribed for accommodation for the taking of meals by the seamen and apprentices, and for their sanitary and lavatory accommodation, including bath-rooms.

(5.) If the requirements of the foregoing sub-sections of this section in regard to any space in the ship 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 of the persons so affected, the cause of complaint is allowed to continue.

(6.) If the Minister is satisfied, on expert evidence, that it is not practicable to make any alterations necessary to meet the requirements of paragraph (a) of sub-section (1.) of this section, the

Minister may permit similar and equivalent accommodation in another part of the ship to be substituted for the crew space which does not fulfil the requirements of this Act.

137. The Minister may by order in writing exempt a ship built before the commencement of this Act from compliance with any or all of the provisions of this Division (except paragraphs (c), (d), (e), (f), and (g) of sub-section (1.) of the last preceding section) if he is satisfied that the accommodation in the ship for officers and men is not insanitary, or that all such alterations have been made in the ship as are in his opinion necessary to make the accommodation sanitary.

Application to ships built before commencement of Act.

138. For the purpose of any prosecution or proceeding under this Division, service on or notice to the master or agent of a ship shall be service on or notice to the owner.

Service or notice.

DIVISION 16.—PROTECTION OF SEAMEN.

139.—(1.) Any seaman or apprentice may demand permission to go ashore at a convenient time in order to consult a superintendent or justice, or to take legal proceedings against the master or any officer of his ship.

Facilities for making complaints.
M.S.A. 1894, s. 211.

(2.) No master or officer, knowing that any seaman is desirous of going ashore for any such purpose, shall prevent his going or unreasonably refuse him leave.

Penalty : Fifty pounds.

(3.) A seaman or apprentice who by any false statement or pretence obtains leave to go ashore for any such purpose shall be guilty of an offence.

Penalty : Two pounds.

(4.) This section shall not apply to any seaman who has not asked for leave of absence for any such purpose within seven days after the arrival of his ship in port ; or, if the cause of action or prosecution accrued after the arrival, then within three days from its accrual.

140. An assignment or sale of salvage prior to the accruing thereof shall not bind a seaman or apprentice, and a power of attorney or authority to receive any such salvage shall not be irrevocable.

Assignment of salvage.
Ib. s. 212.

141. A debt exceeding Five shillings incurred by a seaman after he is engaged shall not be recoverable until the termination of his agreement.

Not liable for debt till end of agreement.
Ib. s. 213.

142. No person shall demand or receive from a seaman or apprentice payment in respect of his board or lodging in the house of that person for a longer period than the seaman or apprentice has actually resided or boarded therein.

Illegal charge for maintenance.
Ib. s. 215.

Penalty : Ten pounds.

143.—(1.) Any person who receives, or takes into his possession or under his control, any money or effects of a seaman or apprentice, and does not return them or pay their value when required by the seaman

Illegally detaining effects.
Ib. s. 216.

or apprentice (subject to such deduction as is justly due by the seaman or apprentice), or absconds therewith, shall be guilty of an offence.

Penalty : Ten pounds.

(2.) A court of summary jurisdiction may, besides inflicting a penalty, by order direct that the amount of the money or the value of the effects, subject to such deduction as aforesaid (if any), or the effects themselves, shall be forthwith delivered to the seaman or apprentice.

Soliciting
seamen.
M.S.A. 1894,
s. 217.

144. No person shall, within twenty-four hours after the arrival of a ship in Australia, or within twenty-four hours before her projected departure therefrom,

(a) solicit a seaman belonging to the ship to become a lodger at any house, or

(b) take out of the ship any effects of a seaman, except under his direction, and with the permission of the master.

Penalty : Twenty-five pounds.

Persons not to
board ship
arriving.
Ib. s. 218.

145.—(1.) No person, not being in the King's service, or not authorized by law, shall—

(a) go on board any ship which is about to arrive, is arriving, or has arrived at the end of her voyage, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or

(b) remain on board a ship in Australia after being warned to leave by the master or by a police officer, or by an officer of Customs.

Penalty : Twenty pounds or imprisonment for six months.

(2.) Any officer of the ship, or of Customs or police, may take any offender under this section into custody, and cause him forthwith to be taken before a proper Court to be dealt with.

Foreign ships.
Ib. s. 219.

146. Whenever it is made to appear to the Governor-General—

(a) that in any foreign country provisions similar to those in the last preceding section are in force in that country in regard to British ships; and

(b) that the Government of that country is desirous that the provisions of the last preceding section shall apply to ships of that country within Australia,

the Governor-General may order that those provisions shall apply to the ships of that country to the same extent as to British ships.

Exemption
from serving on
jury.

147. Masters and seamen of all ships shall be exempt from serving on juries in any Federal or State Court.

Rescission of
contract.
Ib. s. 168.

-148.—(1.) In any proceeding before any Court affecting the relation between a seaman or apprentice and the master or owner of any ship, the Court may rescind any contract in existence between the parties on such terms as the Court deems just.

(2.) This power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

(3.) Any of the parties to any such contract may institute proceedings under this section for the rescission of the contract.

DIVISION 17.—PROPERTY OF DECEASED SEAMEN.

149. This Division does not apply to ships registered in the United Kingdom. Application.

150.—(1.) If a seaman or apprentice belonging to any ship, the voyage of which is to terminate in Australia, dies during that voyage, the master of the ship shall take charge of any money and effects belonging to the seaman or apprentice which are on board the ship. Effects of dead, seamen to be taken charge of. M.S.A. 1894, 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 said 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.

151.—(1.) Where a seaman or apprentice dies as aforesaid, and the ship, prior to arrival in Australia, remains for forty-eight hours at some port elsewhere, the master shall report the case to the British Consul at the port, or if the port is in the British dominions, to the Superintendent or Officer of Customs there, and shall give to the consul or officer any information he requires as to the destination of the ship and probable length of the voyage. Death of seamen abroad. Ib. s. 170.

(2.) The consul or officer may, if he think it expedient, require the property to be paid and delivered to him, and shall thereupon give to the master a receipt therefor, and indorse upon the agreement such particulars with respect thereto as the Minister requires.

(3.) The receipt shall be produced by the master to a superintendent within forty-eight hours after his arrival at his port of destination in Australia.

(4.) Where the ship proceeds at once to a port in Australia, without touching at a port elsewhere, or the Consul or officer does not require the payment and delivery of the property as aforesaid, the master shall, within forty-eight hours after his arrival at his port of destination in Australia, pay and deliver the property to the superintendent.

(5.) In all cases where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the consul or officer to whom payment and delivery is made as aforesaid such account in such form as he requires of the property of the deceased.

(6.) A deduction claimed by the master in the account shall not be allowed unless verified by an entry in the official log-book, and also by such other vouchers (if any) as are reasonably required by the consul or officer to whom the account is given.

Penalty for not
accounting for
effects.

M.S.A. 1894,
s. 171.

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

- (a) taking charge of the property of a deceased seaman or apprentice, or
- (b) making in the official log-book the proper entries relating thereto, or
- (c) procuring the proper attestation of those entries, or
- (d) the payment or delivery of the property,

he shall be accountable for the property to the Minister, 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.

(2.) If any such property is not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for it, and the property shall be recoverable from him accordingly; and if he fails to account for and pay or deliver it he shall, in addition to his liability therefor, be liable to the same penalty as the master for a like offence.

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

Effects of
deceased
seamen other
than on board
ship.

1b. s. 172.

153. If a seaman or apprentice belonging, or who has belonged within the period of six months prior to his death, to any ship the voyage of which is to terminate in Australia, dies at any place out of Australia, leaving any money or effects elsewhere than on board the ship, the Chief Officer of Customs in the case of the British dominions, and in other cases the British Consul at or near the place, shall claim and take charge of the money and effects; and they shall be deemed to be property of a deceased seaman or apprentice within the meaning of this Division.

Recovery of
wages due to
deceased
seamen.

1b. s. 174.

154.—(1.) Where a seaman or apprentice is lost with his ship, the Minister may recover the wages due to him from the owner of the ship 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 ship left port twelve months or more before the institution of the proceedings and has not been heard of since the time of departure, the ship 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, or the certificate of any consul or public officer at any port beyond the Commonwealth stating that certain seamen and apprentices were shipped in the ship from that port, shall, in the absence of proof to the contrary, be deemed sufficient evidence that they were on board the ship at the time of her loss.

155. If a seaman or apprentice dies in Australia, and is at the time of his death entitled to claim from the master or owner of the ship in which he has served any effects or unpaid wages, the master or owner shall pay and deliver or account for such property to the superintendent or as the Minister directs.

Seamen dying
in Australia.

M.S.A. 1894,
s. 175.

Penalty: Fifty pounds.

156.—(1.) Where any property of a deceased seaman or apprentice comes into the hands of the Minister; the Minister, after deducting such sum as he 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:—

Right of
Minister to
dispose of
effects.

Ib. s. 176.

(a) If the property exceeds in value One hundred pounds, he 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, he may either—

(i.) pay or deliver the residue to any claimant who is proved to his satisfaction to be the widow or a child of the deceased, or to be legally entitled to the personality of the deceased, or to be a person entitled to take out representation, although no such representation has been taken out, and shall be thereby 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.

(2.) Every person to whom any such residue is so paid or delivered shall apply it in due course of administration.

Penalty: Twenty pounds.

157.—(1.) Where a deceased seaman or apprentice has left a will, the Minister may refuse to pay or deliver the above-mentioned residue—

Wills of
deceased
seamen.

Ib. s. 177.

(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 ship; 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 superintendent, or is a minister of religion officiating in the place in which the will is made, or is a justice, or, where there are no such persons, a British Consul, or Officer of Customs.

(2.) Where the Minister 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.
M.S.A. 1894,
s. 178.

158.—(1.) A creditor shall not be entitled to claim from the Minister 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 Minister an account in writing, in a form approved by the Minister, 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 Minister shall give notice to the creditor of the allowance of the claim.

(5.) If no claim has been allowed, the creditor shall satisfy the Minister as to the justice of his account, and the Minister may then pay over to the creditor such sum as he allows, and the Minister 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 Minister 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 Minister under this Act, the Minister may pay and deliver it to that person.

(7.) Where the property has been paid and delivered by the Minister to any person, as widow, next of kin, or legatee of the deceased, 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.

Disposal of effects when no claim.
Ib. s. 179.

159. 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 Minister, the Minister may in his 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 the Consolidated Revenue Fund.

160. Every person who, for the purpose of obtaining, either for himself or for any other person, any property of any deceased seaman or apprentice—

Offences in connexion with deceased seamen's property.
M.S.A. 1894,
s. 180.

(a) forges or fraudulently alters any document purporting to show or assist in showing any right to the property ; or

(b) makes use of any document which has been so forged or fraudulently altered as aforesaid ; or

(c) gives any false evidence knowing it to be false ; or

(d) makes any false representation knowing it to be false,

shall be guilty of an indictable offence.

DIVISION 18.—RELIEF TO SEAMEN'S FAMILIES.

161.—(1.) Where, during the absence of any seaman on a voyage, his wife, or any of his children or step-children, becomes chargeable to or obtains relief from any public body or institution for the relief of destitute persons in Australia, that institution shall be entitled to be reimbursed, out of the wages of the seaman earned during the voyage, any sums properly expended during his absence in the maintenance of those members of his family or any of them, so that the sums do not exceed the following proportions of his wages, that is to say :—

Relief of families by public institutions.
Ib. s. 182.
N.Z. 1908,
s. 101.

(a) If only one of those members is chargeable or obtains relief, one-half of the wages ;

(b) If two or more of those members are chargeable or obtain relief, two-thirds of the wages.

(2.) If, during the absence of any seaman, any sums have been paid by the owner of his ship to or on behalf of any such member as aforesaid, under an allotment note made by the seaman in favour of the member, any claim for reimbursement shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

162.—(1.) For the purpose of obtaining reimbursement as aforesaid, such official as the Minister authorizes may give to the owner or agent of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make a claim, and requiring the owner or agent to retain that proportion in his hands for a period not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring the owner or agent, immediately on the seaman's return, to give notice in writing thereof to the official.

Reimbursement of institutions.
M.S.A. 1894,
s. 183.
N.Z. 1908,
s. 102.

(2.) The owner or agent, after receiving any such notice, shall retain the said proportion of wages, and give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim.

Penalty: Five pounds.

(3.) The institution may, upon the seaman's return, apply to a court of summary jurisdiction for an order for reimbursement ; and

the Court may make a summary order for the reimbursement to the whole extent claimed, or to such lesser amount as, under the circumstances, it thinks fit; and the owner or agent shall pay to the institution out of the seaman's wages the amount so ordered to be paid by way of reimbursement, and shall pay the residue of the wages to the seaman.

(4.) If no order for reimbursement is obtained within the period mentioned in the notice given to the owner or agent as aforesaid, the proportion of wages to be retained by him shall immediately on the expiration of that period, and without deduction, be payable to the seaman.

DIVISION 19.—DISTRESSED SEAMEN.

Ship liable
for expenses of
distressed
seamen.
M.S.A. 1906,
s. 42.
N.Z. 1908,
s. 108.

163.—(1.) Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Commonwealth, or are incurred by any Government and repaid to that Government by or on behalf of the Commonwealth, on account of any distressed seaman or apprentice, either for his maintenance, necessary clothing, conveyance to the port where he was shipped, or in case of death for his burial, or otherwise in accordance with this Act, those expenses, together with the wages (if any) due to the seaman or apprentice, shall be a charge upon the ship, whether British or foreign, to which the distressed seaman or apprentice belonged, and shall be a debt to the Crown—

- (a) from the master or owner of the ship for the time being; or
- (b) where the ship has been lost—from the person who was owner of the ship at the time of loss; or
- (c) where the ship 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 transfer,

and also, if the ship is a foreign ship, from the person, whether principal or agent, who engaged the seaman or apprentice for serving in the ship.

(2.) The debt, in addition to any penalties which may have been incurred, may be recovered by the Minister on behalf of the Commonwealth either by ordinary process of law, or in the Court and manner in which wages may be recovered by seamen.

(3.) In any proceeding for such recovery, the production of the account (if any) of the expenses furnished, and proof of payment of the expenses by or on behalf of the Minister, or by his direction, shall be sufficient evidence that the expenses were incurred or repaid under this Act by or on behalf of the Commonwealth.

(4.) For the purposes of this section "distressed seaman" shall include any master, seaman, or apprentice—

- (a) who, by reason of having been discharged from or left behind by or shipwrecked in any British ship beyond the limits of Australia, is in distress there; or

- (b) who, being a British subject, has been engaged by any person acting as principal or agent to serve in a ship belonging to the Government or to a subject or citizen of a foreign country, and is in distress in any place outside Australia.

(5.) For the purposes of this section, excepted expenses are expenses incurred in cases where the Minister is satisfied that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge by a Naval Court on the ground of misconduct.

DIVISION 20.—THE MASTER.

164.—(1.) All ships may be searched by any Officer of Customs or any superintendent, or by any officer of police authorized in writing by the Collector or by any superintendent. All ships may be searched.

(2.) No master of any ship shall—

- (a) refuse to permit such officer or superintendent to thoroughly search the ship; or
- (b) fail to cause the ship to be hove to when called upon or signalled in the prescribed manner so to do, by any such officer or superintendent, for the purpose of enabling the officer or superintendent to board the ship; or
- (c) conceal any person on board his ship.

Penalty: Twenty pounds.

165.—(1.) The master—

- (a) of a foreign-going ship whose crew is discharged in Australia; and
 - (b) of an Australian-trade ship or limited coast-trade ship,
- shall make out and sign a list of the crew in the prescribed form and containing the prescribed particulars.

List of crew.
M.S.A. 1894
s. 253.

(2.) The list of the crew—

- (a) in a case of a foreign-going ship, or Australian-trade ship, shall be delivered by the master to the superintendent within forty-eight hours after the arrival of the ship at her port of destination in Australia, or upon the discharge of the crew, whichever first happens; and
- (b) in the case of a limited coast-trade ship, shall be transmitted by the master or owner to some superintendent in Australia on or within twenty-one days after the termination of the agreement.

Penalty: Five pounds.

166. The master of every ship shall record in the official log-book every birth death and marriage happening on board his ship, and the prescribed particulars concerning them, and, upon his arrival at any port in Australia, shall transmit to the superintendent in the prescribed form a return of the facts recorded by him in respect of any birth death or marriage.

Record of births,
deaths, and
marriages.
Ib. s. 254.

Penalty: Five pounds.

Agreements to
be produced.
M.S.A. 1894,
s. 257.

167.—(1.) Whenever a foreign-going ship arrives at any principal port in Australia, as defined by the regulations, the master shall immediately deliver to the superintendent the agreement with the crew, and the list of the crew, and also all indentures and assignments of apprenticeships.

Penalty : Twenty pounds.

(2.) The superintendent shall return the documents to the master within a reasonable time before his departure, with a certificate indorsed on the agreement stating the times when the documents were delivered and returned.

(3.) If it appears that any breach of this Act has taken place, the superintendent shall make an indorsement to that effect on the agreement.

Documents to
be handed over
to master's
successor.
1b. s. 258.

168.—(1.) If during the progress of a voyage the master is removed or superseded, or for any other reason quits the ship, he shall deliver to his successor the various documents in his custody relating to the navigation of the ship and to the crew thereof.

Penalty ; One hundred pounds.

(2.) His successor shall, immediately on assuming the command of the ship, enter in the official log-book a list of the documents so delivered to him.

Burial of
deceased
persons.

169. The master of any ship in port shall, with all convenient despatch, cause the body of any person who dies on board to be buried on shore.

Penalty : One hundred pounds.

DIVISION 21.—THE LOG.

Application.

170.—This Division applies only to ships registered in Australia or engaged in the coasting trade.

Official log to
be kept.
1b. s. 239.

171.—(1.) An official log in the prescribed form shall be kept in every ship other than a limited coast-trade ship of less than fifty tons gross registered tonnage or a river and bay ship.

(2.) Forms of official log-books may be different for different classes of ships, and the particulars to be inserted therein shall be as prescribed.

(3.) The official log may, at the discretion of the master or owner, be kept distinct from, or united with, the ship's log, but so that in all cases the spaces in the official log-book be duly filled up.

(4.) An entry required by this Act in an official log-book shall be—

(a) made as soon as possible after the occurrence to which it relates ;

(b) made and dated so as to show the date of the occurrence and of the entry respecting it.

Penalty : Thirty pounds.

(5.) 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.

(6.) Every entry in the official log-book shall be signed by the master, and by the mate or some other member of the crew, and also—

(a) if it is an entry of illness, injury, or death—by the medical officer on board (if any); and

(b) if it is an entry of wages due to, or of the sale of the effects of, a deceased seaman or apprentice—by both the mate and some member of the crew besides the master; and

(c) if it is an entry of wages due to a seaman who enters the King's naval service—by the seaman, or the officer authorized to receive the seaman into that service.

Penalty (on the master): Ten pounds

(7.) Every entry made in an official log-book in manner provided by this Act shall be admissible in evidence.

172. Whoever wilfully destroys or mutilates or renders illegible any entry in, or wilfully makes a false or fraudulent entry in or omission from, an official log-book, shall be guilty of an indictable offence.

Offences in regard to official log.

M.S.A. 1894, s. 241 (3.).

173.—(1.) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at the port of destination in Australia, or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the superintendent.

Delivery of official log.

Ib. s. 242.

(2.) The master or owner of every Australian-trade or limited coast-trade ship 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 some superintendent in a State in which the ship plies or trades.

Penalty: Ten pounds.

174.—(1.) Where for any reason the official log-book or list of the crew ceases to be required in respect of a ship or to be required at the same date, the master or owner of the ship shall, if the ship is then in Australia within one month, and if she is elsewhere within six months, after the cessation transmit to the superintendent at the port to which the ship belonged the official log-book and list of crew (if any) made up to the time of the cessation.

Transmission of logs and crew lists to superintendent.

Ib. s. 243.

(2.) If a ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, transmit to the superintendent the official log-book (if any) duly made out to the time of the loss or abandonment.

Penalty (on master or owner): Ten pounds.

175.—(1.) On every steam-ship 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 the entries required to be made

Engineer's logs.

N.Z. 1908, s. 156.

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.

Penalty : Five pounds.

(2.) The engine-room log shall be kept under the supervision of the master, and shall be produced when required to a superintendent or surveyor.

Penalty : Five pounds.

(3.) Nothing in this section shall affect the duty or liability of the master in regard to the official log.

DIVISION 22.—INQUESTS.

Investigation of
accidents.
M.S.A. 1894,
s. 690.

176.—(1.) Where a case of death, or accident incapacitating from work, happens on board any foreign-going ship, the master shall report it to the superintendent at the port in Australia where the ship first arrives, and the superintendent shall inquire into the cause of the death or accident, and shall make in the official log an entry of the result of the inquiry, and a copy of such entry shall be forwarded to the Minister.

(2.) If it appears to the superintendent that the death or accident has been caused by violence or other improper means, he shall report the matter to the Minister, and, if the emergency of the case so requires, shall take immediate steps for bringing the offender to justice.

PART III.—FOREIGN SEAMEN.

Definition of
seaman.

177. In this Part of this Act—

“Seaman” means a seaman belonging to a foreign ship.

Apprehension of
seaman.
N.S.W. 1898,
No. 47, s. 3.
M.S.A. 1894,
s. 238.

178. If any seaman is absent from his duty without leave whilst his ship is within Australia, any justice upon complaint on oath may issue his warrant for the apprehension of the seaman, and thereupon may, at the request of the Consul of the country to which the ship belongs, and on proof of the absence without leave, order the seaman to be conveyed on board the ship, or delivered to the master or mate of the ship, or to the owner of the ship or his agent, to be so conveyed :

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his consent.

Offences by
foreign seaman.
N.S.W. 1898,
No. 47, s. 4.

179. Every seaman who commits any offence mentioned in Column 1 hereunder shall be liable to a punishment not exceeding the punishment set against the offence in Column 2 :—

Column 1.—Offence.

For desertion.

For assaulting any officer.

For wilful disobedience to any lawful command of an officer.

Column 2.—Punishment.

A penalty of Twenty pounds.

Three months' imprisonment,
or a penalty of Twenty pounds.

A penalty of Ten pounds.

180.—(1.) The Minister may order any seaman sentenced under this Part of this Act to be put forcibly or otherwise on board his ship, and the master thereof shall keep the seaman in custody till the ship has left port:

Return to ship.
N.S.W. 1898,
No. 47, s. 5.

Provided that, in the case of a seaman who is an Australian citizen, no such order shall be made without his consent

(2.) Such order shall be a sufficient warrant to the gaoler of any prison to deliver the seaman into custody for the purpose aforesaid.

181.—(1.) Any justice, upon the complaint on oath of the master of any foreign ship that he has good cause for suspecting that any deserter from his ship is harbored or concealed on board any vessel or in any house or place, may issue a warrant directing some officer of police to search the vessel house or place and to apprehend the seaman.

Apprehension of
deserters.
Ib. s. 6.

(2.) The warrant shall be executed accordingly, and the deserter shall upon his apprehension be brought with all convenient speed before some justice to be dealt with according to law.

182. No person shall knowingly harbor or employ any seaman who is illegally absent from duty.

Harboring
deserters.
Ib. s. 7.

Penalty: Twenty pounds for the first offence and Fifty pounds for a second or subsequent offence.

183. No warrant shall be issued and no offence shall be punished under this Part of this Act unless either—

Proceedings at
instance of
Consul only.
Ib. s. 8.

- (a) the action is taken at the instance of the Consul of the country to which the ship belongs; or
- (b) the Governor-General has notified in the *Gazette* that the Government of that country has, in regard to seamen belonging to ships of that country, requested that this Part of this Act may be enforced.

184.—(1.) In any prosecution under this Part of this Act it shall not be necessary, for the purpose of proving the articles of agreement by which any seaman has engaged to serve on board any ship, to call any subscribing or attesting witness thereto.

Proof of
agreement.
Ib. s. 9.

(2.) A copy of any articles of agreement, certified to be true by the Consul of the country to which the ship belongs, shall be admissible in evidence in proof of the existence and contents thereof.

185. All expenses incidental to the apprehension, imprisonment, and removal of any seaman, pursuant to this Part of this Act, shall be paid by the Consul at whose instance the proceedings were instituted.

Expenses to be
paid by Consul.
Ib. s. 10.

186. If any foreign seaman is left behind at any port in Australia from any ship, unless with the consent of the Consul of the country to which the ship belongs, and also that of the superintendent, the master or the owner of the ship shall be liable for all expenses which may be incurred by the Commonwealth Government in returning the seaman to his native country.

Expenses of
returning
seaman left
behind.

PART IV.—SHIPS AND SHIPPING.

- Division 1.—General, ss. 187-192.
- Division 2.—Steam-ships, ss. 193-206.
- Division 3.—Unseaworthy Ships, ss. 207-214.
- Division 4.—Life-saving Appliances, ss. 215-217.
- Division 5.—Deck and Load Lines, ss. 218-227.
- Division 6.—Signals of Distress, ss. 228-231.
- Division 7.—Adjustment of Compasses, ss. 232-234.
- Division 8.—Boat Drill, s. 235.
- Division 9.—Anchors, Chain Cables, and Gear, ss. 236-247.
- Division 10.—Dangerous Goods, ss. 248-257.
- Division 11.—Lights, Signals, and Sailing Rules, ss. 258-265.
- Division 12.—Private Signals, ss. 266-267.
- Division 13.—Report of Accidents, ss. 268-269.

DIVISION 1.—GENERAL.

Application.

187. This Part of this Act shall apply to all ships, British or foreign.

Power to exempt ships.

Cf. M.S.A. 1894, s. 445.

Cf. N.Z. 1909, s. 57.

188. The Governor-General, where he is satisfied that the laws and regulations of any country relating to any subject-matter dealt with in this Part of this Act, are as effective as the provisions of this Part of this Act relating thereto, may by proclamation direct that (subject to such conditions, limitations, and exceptions as are expressed in the proclamation) on proof of a ship of that country having complied with those laws and regulations, she shall not be required to comply with the provisions of this Part of this Act relating to that subject-matter :

Provided that this section shall not apply in the case of a foreign country in which it appears to the Governor-General that reciprocal advantages are not extended to British ships.

All ships liable to survey and inspection.

Appointment of surveyors.

Cf. N.Z. 1908, s. 15.

189. All ships shall be liable to inspection and survey.

190.—(1.) The Minister may appoint persons to be surveyors.

(2.) Persons appointed to be surveyors shall be skilled in regard to—

- (a) wooden hulls and equipment ;
- (b) metal hulls and equipment, and boilers ; or
- (c) engines and machinery.

Regulations may be made.

191. The regulations may prescribe the manner in which surveys and inspections shall be made, the equipment to be carried by each class of ship, the conditions under which certificates of survey and of equipment may be granted, and the requirements necessary to the issue thereof.

Appeal.

M.S.A. 1894, s. 275.

192.—(1.) Any ship-owner aggrieved by a refusal to grant any certificate of survey or of equipment may appeal to a Court of Marine Inquiry.

(2.) The Court may, on the hearing of the appeal, order that any certificate of survey or equipment be granted or refused.

DIVISION 2.—STEAM-SHIPS.

193. Subject to the power of the Minister to extend the time for resurvey, every steam-ship shall be surveyed once at least in every twelve months by the prescribed surveyor.

Survey of steam-ships.
Cf. M.S.A. 1894, s. 271.
Cf. N.Z. 1908, s. 171.
Report of survey.
M.S.A. 1894, s. 272.

194.—(1.) A surveyor, after making a survey of a steam-ship, shall furnish a report thereof, in the prescribed form, to the Minister.

(2.) The Minister may, if the surveyor's report justifies him in doing so, issue to the owner of the steam-ship a certificate of survey in the prescribed form.

195.—(1.) A certificate of survey of a steam-ship shall be in duplicate, and one part shall be handed to the owner, master, or agent of the steam-ship, who shall give a receipt therefor on the other part.

Certificate of survey.
Ib. s. 274.

(2.) The certificate of survey shall not remain in force for longer than the prescribed time from the date of its issue, or such shorter time as is specified in the certificate.

196. The owner, master, or agent of the steam-ship shall, forthwith on the delivery of the certificate of survey, cause it to be conspicuously exhibited in some part of the steam-ship so as to be easily visible to all persons on board, and to be kept so exhibited as long as it remains in force.

Posting up of certificate.
Ib. s. 281.

Penalty: Ten pounds.

197. The master of a steam-ship shall not take her to sea, and the owner of a steam-ship shall not knowingly or unknowingly suffer or permit her to go to sea, unless a certificate of survey has been granted in respect of her, and is in force.

Uncertificated steam-ships not to proceed to sea.
Ib. s. 271.
Vict. No. 1165, s. 150.

Penalty: One hundred pounds.

198. When the Minister has reason to believe—

- (a) that a surveyor's report of the survey of a steam-ship has been fraudulently or erroneously made or obtained; or
- (b) that a certificate of survey of a steam-ship has been issued upon false or erroneous information; or
- (c) that, since the report, the hull or machinery of the steam-ship has been materially altered, or has been injured, or is otherwise insufficient,

he may cancel any certificate of survey already issued and require a resurvey of the steam-ship.

Cancellation of certificates.
M.S.A. 1894, s. 279.

199.—(1.) A surveyor or any person authorized by the Minister to inspect or survey a ship may, in the execution of his duties, go on board any ship at all reasonable times and inspect the same or any part thereof, including her boilers, machinery, and equipment, and the certificates of the master and officers of the ship, but shall not in such inspection unnecessarily detain or delay the ship from proceeding on her voyage.

Powers of surveyors.
Cf. M.S.A. 1894, s. 725.
Cf. N.Z. 1908, s. 16.

(2.) The Minister may, on the report of the surveyor or person inspecting the ship, if he considers it necessary so to do, require the ship to be taken into dock or to be so dealt with that he may be able to inspect her hull, boilers, machinery, or equipment.

(3.) No person shall obstruct or hinder any surveyor or authorized person from going on board any ship or shall otherwise impede him in the execution of his duties under this Act.

Penalty : One hundred pounds.

Invalid
certificates to be
given up.

N.Z. 1908, s.
180.

200. Any cancelled or expired certificate of survey shall on demand be forthwith delivered up to the Minister by the owner or master of the ship to which it relates.

Penalty : Ten pounds.

Extension of
time for
resurvey.

201. The Minister may, if he is satisfied that the immediate resurvey of a steam-ship would occasion unreasonable or unnecessary expense or inconvenience, and that no danger to the ship or her crew passengers or cargo will arise from the extension, extend the time for her next resurvey, and the currency of her certificate of survey, for any period not exceeding one month.

Provided that no extension of the currency of the certificate shall be granted to enable the vessel to proceed to another port for the purpose of docking or repairs if proper facilities are available for such docking or repairs at any of the ports to which the vessel is usually trading.

Overcrowding
steam-ships.
M.S.A. 1894,
s. 283.

202.—(1.) The owner or master of a steam-ship shall not receive or have on board thereof any number of passengers greater than that allowed by the certificate.

(2.) The owner, master, or agent of a steam-ship shall not take payment of the passage-money of any persons intending to become passengers in excess of the number allowed by the certificate.

Penalty : One hundred pounds, and also an additional penalty not exceeding Five shillings for every person on board above the number allowed by the certificate.

(3.) Any penalty under this section may be sued for and recovered by any person and retained by him for his own use.

Alteration of
certificate of
survey.

203.—(1.) The owner of any steam-ship may at any time apply for an alteration of the certificate of survey of the ship in regard to the number of passengers she may carry.

(2.) The Minister may, on receipt of the application, and after further survey, permit the certificate of survey to be amended.

Recognition
of other
certificates.
N.Z. 1908,
s. 185 (1.).
Vict. No. 1165,
s. 154.
Cf. N.S.W. 1901,
No. 60, s. 33 (1.).

204.—(1.) A steam-ship in respect of which—

(a) a certificate of survey granted by the Board of Trade of the United Kingdom, or

- (b) in the case of steam-ships carrying not more than twelve passengers a prescribed classification certificate granted by any corporation or association for the survey and registry of ships approved by the Governor-General,

has been issued, shall, whilst that certificate remains in force, but subject to the provisions of sub-sections (3.) to (5.) of this section, be exempt from survey under this Act.

(2.) In cases where the Minister is satisfied, in regard to any British steam-ship not registered in Australia or any foreign steam-ship, that the requirements of this Act have been substantially complied with, he may—

- (a) dispense with any further survey of the steam-ship; and
 (b) give a certificate which shall have the same effect as if given upon survey under this Act:

Provided that the Governor-General may direct that this sub-section shall not apply in cases where it appears to him that reciprocal treatment is not given to steam-ships registered in Australia.

(3.) Any person authorized in writing by the Minister may at any time inspect any British or foreign steam-ship, which is exempt from survey under this Act, or a survey of which has been dispensed with under this section, and shall report to the Minister the result of his inspection.

Inspection of
ships exempt
from survey.
Vict. No. 1165
s. 155.

(4.) The Minister may, upon such report, cancel the exemption of the steam-ship, or suspend the operation of any certificate issued or given in respect of the steam-ship.

(5.) Upon such cancellation or suspension the ship shall become liable to survey.

205. No person shall place on the safety-valve of any boiler of a steam-ship an undue weight, or any weight greater than the prescribed weight.

Weight on
safety-valve.
lb. s. 137.

Penalty: One hundred pounds.

206.—(1.) All steam-ships registered in Australia or engaged in the coasting trade shall, if required by the regulations, be divided by water-tight partitions in the prescribed manner, and have water-tight false bottoms as prescribed.

Water-tight
partitions.
N.S.W. 1901,
No. 60, s. 47.
N.Z. 1908,
s. 170.

(2.) The master and owner of any such ship which goes to sea without compliance with this section shall be guilty of an offence.

Penalty: One hundred pounds.

DIVISION 3.—UNSEAWORTHY SHIPS.

207. A ship shall not be deemed seaworthy under this Act unless—

- (a) she is in a fit state as to condition of hull and equipment, boilers and machinery, stowage of ballast or cargo, number and qualifications of crew including officers, and in every other respect, to encounter the ordinary perils of the voyage then entered upon; and

- (b) she is not overloaded.

Definition of
seaworthy.
M.S.A. 1894,
s. 459.
M.S.A. 1897,
s. 1.

Sending
unseaworthy
ship to sea.
M.S.A. 1894,
s. 457.
N.Z. 1908, s.
224.

208.—(1.) Every person who sends any ship to sea in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure the seaworthiness of the ship, be guilty of an indictable offence.

(2.) Every master who knowingly takes a ship to sea in an unseaworthy state, so that the life of any person is likely to be thereby endangered, shall be guilty of an indictable offence.

(3.) A prosecution under this section shall not be instituted except by the consent of the Attorney-General.

(4.) Nothing in this section shall subject the owner or master of a ship to any liability, by reason of the ship being sent or taken to sea in an unseaworthy state, where, owing to special circumstances, the sending of the ship to sea in that state was reasonable and justifiable.

If ship
unseaworthy
seaman may
claim discharge.

209. If a British ship is unseaworthy a seaman or apprentice belonging to her shall not be deemed to have committed a breach of his agreement by reason of his having refused to sail in her while she is unseaworthy; and any seaman or apprentice so refusing may claim his discharge unless the ship is made seaworthy within a reasonable time.

Unseaworthy
ships may be
detained.
M.S.A. 1894,
ss. 459, 462.
Procedure as to
detention.

210.—(1.) The Minister may order any ship, which appears to him to be unseaworthy, to be provisionally detained.

(2.) The order shall be served on the master, and thereupon the following consequences shall ensue:—

- (a) A statement of the grounds of detention shall be immediately served on the master;
- (b) The Minister may direct some competent person to survey the ship and report to him;
- (c) On receipt of the report, the Minister may either finally detain the ship, or order her release unconditionally or on such conditions as he deems fit;
- (d) Before the order for final detention is issued, the master of the ship shall be furnished with a copy of the report, and he may within seven days after receipt of the copy appeal to a Court of Marine Inquiry in manner prescribed;
- (e) The Minister may at any time refer the matter to the Court of Marine Inquiry;
- (f) A ship detained under this section shall not be released by reason of her British register having been closed since detention.

Foreign ships.
Cf ib. s. 482.

(3.) Where an order is made for the provisional detention of a foreign ship, a copy of the order shall be served on the nearest consul of the country to which the ship belongs; and the consul may require that the person directed to survey the ship shall be accompanied by such person as he directs.

(4.) A Court of Marine Inquiry shall, upon any appeal or reference under this section, have power to order the final detention of the ship, or her release either conditionally or unconditionally.

(5.) When any order for the final detention of a ship has been made, she shall not be released until the Minister or the Court of Marine Inquiry is satisfied that her further detention is no longer necessary, and orders her release.

211.—(1.) If it appears that there was no reasonable and probable cause for the provisional detention of the ship, the Minister shall be liable to pay to 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.

Compensation for unnecessary detention.
M.S.A. 1894,
s. 460.

(2.) If a ship is finally detained under this Division or if it appears that a ship provisionally detained under this Division was at the time of the detention unseaworthy, the owner of the ship shall be liable to pay to the Minister, or to such person as the Minister directs, the costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable by the Minister, or by any person authorized by him to sue for them, in any Court of summary jurisdiction.

Costs against owner.
Ib. s. 460 (2.).

(3.) For the purposes of this Division, the costs of and incidental to any proceeding before a Court of Marine Inquiry shall be deemed to be part of the costs of the detention and survey of the ship.

Costs of Court.

212. If the master of any ship legally detained under this Division takes the ship to sea before she is duly released, he shall be guilty of an indictable offence.

Taking detained ship to sea.
Cf. ib. s. 457.

213.—(1.) Where a complaint is made to the Minister that a ship is unseaworthy, the Minister may, if he thinks fit, require the complainant to give security to his satisfaction for any costs and compensation which he may become liable to pay in consequence of the detention and survey of the ship.

Security for costs.
Ib. s. 461.

(2.) Provided that where the complaint is made by three or more of the seamen belonging to the ship, and is not in the opinion of the Minister frivolous or vexatious, such security shall not be required, and the Minister 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.

214. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Minister or the Commonwealth would be liable to pay compensation or costs to the owner of the ship, the complainant shall pay to the Minister all costs incurred and compensation paid by him on account of the detention and survey of the ship.

Costs of detention.
Ib. s. 461 (3.).

DIVISION 4.—LIFE-SAVING APPLIANCES.

215.—(1.) The prescribed life-saving appliances shall be carried by ships, and shall be used and kept available for use as prescribed.

Appliances to be prescribed.
N.S.W., 1901,
No. 60, s. 107.

(2.) In the case of a British ship not registered in Australia, it shall be deemed compliance with this section if she carries life-saving appliances in compliance with the Regulations of the Board of Trade of the United Kingdom.

Power to
exempt.

216. The Minister may, if he thinks fit, exempt from the operation of the last preceding section any ship not registered in Australia which carries appliances in substantial compliance with that section.

Offences as to
appliances.

N.S.W., 1901,
No. 60, s. 108.

217. No owner or master shall—

- (a) send, or take his ship to sea, or permit his ship to go to sea, unless she is furnished with life-saving appliances as prescribed; or
- (b) permit, through neglect, the loss or damage of any life-saving appliances carried by his ship; or
- (c) fail at the first opportunity to replace any life-saving appliances lost from his ship, or to repair any damaged life-saving appliances on his ship; or
- (d) fail to keep all life-saving appliances carried by his ship fit and ready for use at all times.

Penalty: One hundred pounds.

DIVISION 5.—DECK AND LOAD LINES.

Vessels to be
marked with
lines.

M.S.A. 1894,
s. 437.

218.—(1.) Every ship shall be permanently and conspicuously marked with lines, in this Act called deck-lines and load-lines.

(2.) This provision shall not apply to—

- (a) limited coast-trade ships under fifty tons gross registered tonnage;
- (b) ships employed solely in fishing;
- (c) pleasure yachts; or
- (d) river and bay ships.

Deck-lines.

Id s. 437.

M.S.A. 1906,
s. 1.

N.Z. 1908, s. 207.

219.—(1.) Deck lines shall be not less than twelve inches in length and one inch in breadth, and shall be painted longitudinally on each side amidships, or as near thereto as is practicable, and shall indicate the position of each deck which is above water.

(2.) The upper edge of each of the deck-lines must be level with the upper side of the deck plank next the water-way at the place of marking, and the deck-lines must be white or yellow on a dark ground, or black on a light ground.

(3.) In this Division “amidships” means the middle of the length of the load water-line, as measured from the fore side of the stem to the aft side of the stern-post.

Load-lines.

M.S.A. 1894,
s. 438.

220.—(1.) The owner of every ship shall, before going to sea, mark upon each of her sides, amidships or as near thereto as is practicable, in white or yellow on a dark ground, 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.

(2.) The centre of the disc shall be placed at such level as is approved by the Minister below the deck-line marked under or in accordance with this Act, and specified in the certificate given thereunder, and shall indicate the maximum load-line in salt water to which it shall be lawful to load the ship.

(3.) The position of the disc shall be fixed in accordance with the provisions of the Merchant Shipping Acts :

Provided that, in ships laden with dead-weight cargo other than coal, a line or mark shall be marked or affixed on the ship in the mode and position required by the Merchant Shipping Act for the Winter load-line, or in the case of sailing ships, the Winter North Atlantic load-line, and in the case of ships so laden the provisions of this Act shall have effect as to that line or mark as if it were drawn through the centre of the disc.

Dead-weight cargo.

221. 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 unseaworthy.

Vessels overloaded
unseaworthy.
M.S.A. 1894,
s. 439.

222.—(1.) Where a ship proceeds from a port on any voyage for which the master or owner is required to enter the ship outwards at the Customs, the disc indicating the load-line shall be marked before so entering her, or, if that is not practicable, as soon afterwards as may be.

Time &c. for
marking of
load-line.
Ib. s. 440.
M.S.A. 1906,
s. 8.

(2.) The owner of the ship shall, upon entering her outwards, insert in the form of entry 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.

(3.) The master, in the case of a British ship, shall enter a copy of that statement in the agreement with the crew before it is signed by any member of the crew, and a superintendent shall not proceed with the engagement of the crew until that entry is made.

(4.) The master, in the case of a British ship, shall also enter a copy of that statement in the official log-book.

(5.) When a ship to which this section applies has been marked with a disc indicating the load-line, she shall be kept so marked, or, if the mark has been altered outside Australia in accordance with regulations made by the Board of Trade for the purpose, marked with the mark so altered, until her next return to a port of discharge in Australia.

Ships to be kept
marked.

223.—(1.) In the case of a ship which the owner or master is not required to enter outwards at the Customs, and which is required to be marked with the disc indicating the load-line—

State-trade
ship to be
marked.
M.S.A. 1894,
s. 441.

(a) she shall be so marked before she goes to sea from any port ; and

- (b) the owner shall also once in twelve months, immediately before the ship goes to sea, transmit or deliver to the Collector of her port of registry (or, if she is not registered in Australia, to the Collector at the port where she is) 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.

Alteration of
load-lines.

(2.) The owner, before the ship goes to sea after any renewal or alteration of the disc, shall transmit or deliver to such Collector notice in writing of that renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

Ships to be kept
marked.

(3.) When a ship to which this section applies has been marked with a disc indicating the load-line, she shall be kept so marked until notice is given of an alteration.

Penalty : One hundred pounds.

Offences as to
deck or load
lines.

M.S.A. 1894,
s. 442.

224. No owner or master of any ship shall (without reasonable cause)—

- (a) fail to cause his ship to be marked as required by this Act or to keep her so marked ; or
- (b) allow a ship to be so loaded as to submerge in salt water the centre of the disc indicating the load-line ;

and no person shall conceal remove alter deface or obliterate any of the said marks, except in accordance with this Act, or except for the purpose of escaping capture by an enemy.

Penalty : One hundred pounds.

Penalty for
improper
marking.

Ib. s 442 (?).

225. No owner of a ship shall permit her to go to sea if any mark thereon required by this Act is in any respect inaccurate so as to be likely to mislead.

Penalty : One hundred pounds.

Regulations as
to lines and
marks.

Ib. s. 443.

226.—(1.) The regulations may make provision—

- (a) for determining the lines or marks to be used in connexion with the disc, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that the provisions of this Act as to load-lines shall have effect as if any such line were drawn through the centre of the disc ;
- (b) as to the mode in which the disc and the lines or marks to be used in connexion therewith are to be marked or affixed on the ship, whether by painting, cutting, or otherwise ; and
- (c) as to the issue of certificates approving and certifying the position of the disc ; and

- (d) for requiring the entry of those certificates, and other particulars as to the draught of water and freeboard of the ship, in the official log-book of the ship, or other publication thereof on board the ship, and requiring the delivery of copies of those entries.

(2.) Every person who without reasonable cause fails to comply with any regulation made with respect to the entry, publication, or delivery of copies of certificates or other particulars as to the draught of water and freeboard of a ship shall be guilty of an offence.

Penalty: One hundred pounds.

227.—(1.) Any load-line fixed and marked, and any certificate given, in accordance with the Merchant Shipping Act, shall have the same effect as if it had been fixed marked or given in accordance with this Act.

Lines marked under Imperial Acts.

N.S.W. 1901, No. 60, s. 128.

N.Z. 1908, s. 208 (4.).

Or British possessions. M.S.A. 1894, s. 444

(2.) When a load-line has been marked, on any ship registered in a British possession, in accordance with the law of that possession, the Minister may order that such load-line shall have the same effect as if fixed and marked in accordance with this Act.

DIVISION 6.—SIGNALS OF DISTRESS.

228. The master of a ship shall not take her to sea and the owner of a ship shall not permit her to go to sea unless she is duly furnished with the prescribed signals of distress.

Ships to be furnished with distress signals.

Penalty: One hundred pounds.

229. No person shall, without reasonable excuse, use or exhibit any signal of distress.

Improper exhibition of distress signals.

Penalty: Fifty pounds.

230. Any person using any prescribed signal of distress without sufficient reason shall (without prejudice to any other liability) be liable to pay compensation for any labour undertaken or risk or expense incurred in consequence of a signal having been improperly exhibited, and such compensation may be recovered in any Federal or State court of competent jurisdiction.

Compensation for loss occasioned by improper use. Ib. s. 434 (2.).

231.—(1.) Except as prescribed, every foreign-going ship, Australian-trade ship, or ship engaged in the coasting trade, carrying fifty or more persons, including passengers and crew, shall, before going to sea from any port in Australia, be equipped with an efficient apparatus for wireless communication in good working order in charge of one or more persons holding prescribed certificates of skill in the use of such apparatus.

Wireless telegraphy apparatus.

Wireless Ship Act, U.S.A., 1910.

Imperial Wireless Telegraphy Bill 1910.

(2.) For the purposes of this section apparatus for wireless communication shall not be deemed to be efficient unless:—

- (a) it is capable of transmitting and receiving messages over a distance of at least one hundred miles, day or night;

- (b) the person controlling the operator undertakes in writing to the Minister to exchange, and does, in fact, exchange, as far as may be physically practicable (of which the master shall be the judge), messages with shore or ship stations using similar or other systems of wireless communication ; and
 - (c) there is provided, in connexion with the apparatus, and ready for use whenever from any cause the ordinary supply of electrical power is not available, a battery of accumulators of such capacity as to insure for a period of at least six hours communication of the efficiency prescribed in paragraph (a) of this sub-section.
- (3.) The equipment shall, if so prescribed, include a silent chamber for the receipt of messages.
- (4.) The master of a ship required by this section or the regulations to be equipped with wireless telegraphy apparatus shall not take her to sea, and the owner of a ship required to be so equipped shall not permit her to go to sea, unless the requirements of this section or the regulations have been complied with.
- Penalty : One thousand pounds.
- (5.) The regulations may prescribe the times and hours during which an operator shall be in attendance on the apparatus, ready to receive or transmit messages.
- (6.) Except as otherwise prescribed, the provisions of this section shall not apply to ships plying exclusively between ports in Australia less than two hundred miles apart.
- (7.) The Governor-General may make regulations in accordance with the provisions of any International Convention to which the United Kingdom is a party, relating to the use of wireless telegraphy on ships, and such regulations may be in addition to, or in substitution either wholly or in part for, the provisions of this section.

DIVISION 7.—ADJUSTMENT OF COMPASSES.

232.—(1.) The compasses of every sea-going ship must, except as prescribed, be properly adjusted as prescribed by an adjuster of compasses licensed in the prescribed manner.

(2.) The last preceding sub-section shall not apply to a British ship, not registered in Australia, in respect of which a compass certificate has been issued by the Board of Trade of the United Kingdom and still in force.

Provided that any person thereto authorized by the Minister may inspect the compasses of the ship, and shall report to the Minister the result of his inspection ; and the Minister may, upon such report, direct that the compasses of the ship shall be adjusted in pursuance of the last preceding sub-section.

(3.) Deviation tables shall be transmitted and compass-error register-books shall be kept as prescribed.

Penalty : One hundred pounds.

233. The master of a ship shall not take her to sea, and the owner of a ship shall not permit her to go to sea, unless the compasses on the ship have been adjusted as prescribed.

Taking ship to sea with unadjusted compasses.

Penalty: Two hundred and fifty pounds.

234. Any ship, the compasses of which have not been adjusted as prescribed, shall be deemed unseaworthy.

Ship unseaworthy if compasses not adjusted.

DIVISION 8.—BOAT DRILL.

235. The master of every ship registered in Australia or engaged in the coasting trade shall—

Boat drill. N.Z. 1908, s. 202.

(a) exercise his crew in boat drill in such manner, and at such intervals, as are prescribed;

(b) enter full particulars of each drill in his official log-book.

Penalty: Fifty pounds.

DIVISION 9.—ANCHORS, CHAIN CABLES, AND GEAR.

236. All anchors and chain cables, exceeding in weight one hundred and sixty-eight pounds, for use on British ships, and all gear used for loading or discharging cargo into or from any British ship registered in Australia or engaged in the coasting trade (whether so used on the ship or not), shall be tested, proved, and marked in the manner prescribed.

Anchors, chain cables, and gear to be tested before use.

237.—(1.) A maker of or a dealer in anchors or chain cables who sells or contracts to sell, and any person who purchases or contracts to purchase, for use on any ship, any chain cable or any anchor exceeding in weight one hundred and sixty-eight pounds, which has not been previously tested proved and marked in accordance with this Act, shall be guilty of an indictable offence.

Indictable offence to sell or purchase untested cable or anchor. 62-3 Vic., c. 23, s. 13.

(2.) Every contract for the sale of such cable or anchor shall, in the absence of any express stipulation to the contrary (proof whereof shall lie on the seller), be deemed to imply a warranty that the anchor or cable before delivery has been or will be tested proved and marked in accordance with this Act.

Warranty implied in contract of sale. Ib. s. 2.

238. The Minister may grant a licence, subject to the prescribed conditions, to any person for the testing proving and marking of anchors and chain cables and gear for working cargo, and may revoke or suspend any licence so granted.

Licences to test. Ib. s. 5.

239.—(1.) No licensed tester of anchors and chain cables shall—

(a) stamp any anchor or chain cable, or any other chain or cable, with the distinctive mark denoting that an anchor or chain cable has been proved in accordance with this Act, or with any mark resembling that distinctive mark, or otherwise likely to lead persons to suppose that the anchor chain or cable has been proved in accordance with this Act, unless it has been proved at his establishment in accordance with this Act; or

Offences by licensed testers. Ib. s. 13.

(b) deliver to any person a certificate of proof in respect of any anchor or chain cable which has not been proved by him at his establishment in accordance with this Act; or

(c) make any false statement in a certificate of proof of any anchor or chain cable.

(2.) Any person contravening this section shall be guilty of an indictable offence.

Offences by
other than
licensed
testers.

62-3 Vic., c. 23,
s. 14.

240.—(1.) No person other than a licensed tester of anchors and chain cables shall—

(a) place on any anchor or chain cable, or any other chain or cable, any distinctive mark denoting that an anchor or chain cable has been proved in accordance with this Act, or any mark resembling that distinctive mark, or otherwise likely to lead persons to suppose that the anchor chain or cable has been proved in accordance with this Act; or

(b) deliver to any person any certificate, or other document of a like character relating to the proof or testing of any anchor or chain cable, or other chain or cable, which resembles a certificate of proof delivered by a licensed tester of anchors and chain cables, or is otherwise likely to lead persons to suppose that the anchor chain or cable has been proved in accordance with this Act.

(2.) Any person contravening this section shall be guilty of an indictable offence.

Private testing.
Ib. s. 15.

241.—(1.) Any person delivering a certificate, or other document of a like character, relating to the proof or testing of any anchor or chain cable, or other chain or cable, shall, unless it is an anchor or chain cable which has been proved in accordance with this Act, or a chain or cable (not being a chain cable) which has been proved at a testing establishment, in respect of which a licence granted under this Act was in force at the time of proof, place in some conspicuous part of the certificate or document, in such a manner as to be clearly legible, the words “privately tested.”

Penalty for
misleading as to
testing.

(2.) A person shall not place on any anchor or chain cable, or other chain or cable, any marks, or deliver in relation thereto any certificate or other document of a similar character, which would be likely to lead persons to suppose that the anchor chain or cable has been tested, unless it has been actually so tested

(3.) Any person contravening this section shall be guilty of an indictable offence.

Misdemeanour
to sell falsely
marked anchor
or chain.

Ib. s. 16.

242. Whoever, knowing that any anchor or chain cable, or other chain or cable, has been stamped or marked in contravention of this Act, sells it to any other person, or delivers it for use by any other person, shall be guilty of an indictable offence.

Act not to apply
to Government
property.

Ib. s. 18.

243. Nothing in this Division of this Act shall affect any contracts made for the supply of any chain cables or anchors for the use of the King's Navy.

244. The expressions "anchor" and "chain cable" include any shackle attached to or intended to be used in connexion with the anchor or chain cable.

Definition.
62-3 Vic., c. 23,
s. 19.

245. All anchors and chain cables which have been tested proved and marked in accordance with the law of the United Kingdom shall be deemed to have been tested proved and marked in accordance with this Act.

Anchors and
chain cables
tested in the
United
Kingdom.

246.—(1.) Any person who uses, for loading or discharging cargo on a British ship registered in Australia or engaged in the coasting trade, any gear which has not been tested proved and marked in the manner prescribed, shall be guilty of an indictable offence.

Using gear not
tested, &c., as
prescribed, or
unsafe.

(2.) Any person who uses, for loading or discharging cargo on a British ship, any gear which is unsafe, so as to endanger human life or limb, shall be guilty of an indictable offence.

247. The regulations shall provide that ships of such class or classes as may be prescribed registered in Australia or engaged in the coasting trade shall be provided with an independent chain connexion to the rudder body ready for immediate adjustment in case of emergency.

Independent
chain connexion
to rudder body.

DIVISION 10.—DANGEROUS GOODS.

248. In this Division "dangerous goods" means goods which have been declared by proclamation to be dangerous.

Definition of
dangerous
goods.

249. No person shall send by or carry in any ship any dangerous goods, unless—

Shipping of
dangerous
goods.

- (a) the description of the goods, and the name and address of the sender and consignee, are distinctly marked on the outside of the package containing them; and
- (b) notice in writing (in addition to ordinary shipping documents) of the description of the goods has been given to the owner or master of the ship, at or before the time of carrying or sending the goods to be shipped.

M.S.A. 1894,
s. 446.

Penalty: One hundred pounds.

250. The owner or master of any ship may—

- (a) refuse to carry any dangerous goods;
- (b) open and inspect any package suspected of containing dangerous goods; and
- (c) throw overboard any dangerous goods shipped without his knowledge,

Powers of
owner or
master as to
dangerous
goods.
Ib. s. 448.

and shall not be subject to any liability of any kind for so doing.

251. Any seaman or apprentice may decline to go to sea in a British ship carrying dangerous goods, and any seaman or apprentice who so declines, shall, if he so requests, be granted a discharge from the ship:

Right to decline
to sail in ships
carrying
dangerous
goods.

Provided that this section shall not apply where the carriage of the dangerous goods is in accordance with the regulations or express stipulations in the agreement.

Forfeiture of dangerous goods.
M.S.A. 1894, s. 440.

252. Any dangerous goods carried or shipped in contravention of this Act may be ordered by any Court having Admiralty jurisdiction to be forfeited to the King, and they shall be forfeited accordingly, notwithstanding that no offence has been committed by the owner of the goods, and that he has had no notice of the proceedings or is not before the Court, or that there is no evidence of ownership of the goods.

False description.
Ib. s. 447.

253. No person shall knowingly—

- (a) send by or carry in any ship any dangerous goods under a false description, or
- (b) falsely describe the sender of any dangerous goods.

Penalty : Five hundred pounds.

Minister may prohibit carriage of any cargo.
N.S.W. 1901, No. 60, s. 111.

254.—(1.) If, in the opinion of the Minister, the carriage of any particular cargo or goods in any ship would endanger her safety or interfere with the comfort of her passengers or crew, he may notify the master or owner accordingly, and the carriage in the ship of the cargo or goods specified in the notice shall be prohibited, and, after receiving such 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 therein or thereon.

Penalty : One hundred pounds.

(2.) The ship may be detained by any officer of Customs, or person authorized by the Minister, until the prohibited cargo or goods have been removed from the ship.

Notice of intention to ship.

255. Before any dangerous goods are shipped in any ship, the shipper thereof shall give notice of intention to ship the goods in the manner and to the person prescribed.

Penalty : One hundred pounds.

Live stock.
Cf. ib. s. 111.

256. The number of live stock which may be conveyed in ships, and the conditions under which they may be carried, shall be as prescribed, and no owner or master shall—

- (a) suffer or permit any number of live stock in excess of the prescribed number to be carried in his ship; or
- (b) suffer or permit in or on his ship any contravention of the prescribed conditions relating to the carriage of live stock.

Penalty : One hundred pounds.

Carriage of grain or coal.
M.S.A. 1894, s. 452.

257. No ballast or cargo, being grain rice paddy pulse seed nuts or nut kernels or any mixture or combination thereof or coal, shall be shipped or carried in any ship unless secured from shifting in the prescribed manner, and, in the case of coal, unless adequate provision is made for ventilation.

Penalty : Three hundred pounds.

DIVISION 11.—LIGHTS, SIGNALS, AND SAILING RULES.

258.—(1.) The Governor-General may make rules for the prevention of collisions at sea, and for prescribing what lights and signals are to be used by ships.

Rules for collisions, lights, and signals.
M.S.A. 1894, s. 418.

(2.) No owner or master of a ship shall—

(a) in any way contravene the rules for the prevention of collisions at sea; or

(b) exhibit any lights or fog signals other than those prescribed by the rules.

Penalties.
Ib. s. 419.

Penalty: One hundred pounds.

(3.) The imposition of a penalty under this section shall not relieve any person from any civil liability for any damage occasioned by any default.

(4.) If any contravention of the rules is caused by the wilful default of the master or owner of the ship, he shall be guilty of an indictable offence.

259.—(1.) Where, by fault of two or more vessels, damage or loss is caused to one or more vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Rule as to division of loss.
1 & 2 Geo. V., c. 57, s. 1.

Provided that, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(2.) Nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed.

(3.) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law or as affecting the right of any person to limit his liability in manner provided by law.

(4.) For the purposes of this section, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

260.—(1.) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

Damages for personal injuries.
Ib. s. 2.

(2.) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of
contribution.
1 & 2 Geo. V.,
c. 57, s. 3.

261.—(1.) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which she was in fault, he may recover by way of contribution the amount of the excess from the owners of the other vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2.) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by sub-section (1.) of this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Jurisdiction in
cases of loss of
life or personal
injury.
Ib. s. 5.

262. Any enactment which confers on any Court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*.

Abolition of
statutory
presumption of
fault.
Ib. s. 4.

263. Notwithstanding anything contained in sub-section (4.) of section four hundred and nineteen of the Merchant Shipping Act, in case of a collision a vessel shall not be deemed to be in fault solely by reason of the fact that the vessel has infringed any of the regulations for the prevention of collisions at sea.

Master to render
assistance.
M.S.A. 1894,
s. 422.

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

(a) to render to the other vessel, her master, crew, and passengers (if any) such assistance as is practicable and necessary in order to save them from danger caused by the collision; and

(b) to stay by the other vessel until he has ascertained that she has no need of further assistance.

(2.) If the master of any vessel fails without reasonable cause to comply with this section, he shall be guilty of an indictable offence.

Abolition of
statutory
presumption of
fault.
1 & 2 Geo. V.,
c. 57, s. 4.

(3.) Notwithstanding anything contained in sub-section (2.) of section four hundred and twenty-two of the Merchant Shipping Act, in case of a collision between two vessels, the collision shall not be deemed to have been caused by the wrongful act, neglect, or default of the master or person in charge of the vessel, who failed to comply with the provisions of that section, solely by reason of the fact that he has not complied with the provisions of that section.

265.—(1.) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own ship, her crew and passengers (if any), render assistance to every person, even if such person be a subject of a foreign State at war with the King, who is found at sea in danger of being lost.

General duty to render assistance to persons in danger at sea.
1 & 2 Geo. V., c. 57, s. 6.

(2.) The master or person in charge of a vessel, who fails to comply with the provisions of this section, shall be guilty of an indictable offence.

(3.) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

DIVISION 12.—PRIVATE SIGNALS.

266.—(1.) If a ship-owner desires to use any signals for the purpose of a private code, he may register them with the Minister, who shall give public notice of such registration.

Owner may register private signals.
M.S.A. 1894, s. 733.

(2.) The Minister may refuse to register any signal which in his opinion cannot easily be distinguished from other signals.

(3.) Where a signal has been so registered, its display by the authority of the ship-owner in whose name it is registered shall not subject any person to any penalty under this Act.

(4.) The Minister may if he think fit cancel the registration of any such signal at any time.

267. No person shall—

(a) use any signal so registered, except by the authority of the person in whose name it is registered ; or

(b) use any signal the registration of which has been cancelled by the Minister.

Offences as to private signals

Penalty : Fifty pounds.

DIVISION 13.—REPORT OF ACCIDENTS.

268. The owner or master of any ship which, during her voyage to any port in Australia, or when within the limits of Australia or the territorial waters thereof—

Accidents to be reported.
N.S.W. 1901, No. 60, s. 50.
M.S.A. 1894, s. 425.

(a) has sustained or caused any accident occasioning loss of life or any serious injury to any person ; or

(b) has received any damage likely to render her unseaworthy, or her boilers or machinery inefficient ; or

(c) has been in any position of great peril either from the action of some other ship or from danger of wreck or collision ; or

(d) has been stranded or wrecked ; or

(e) having left any port in Australia has put back to that port ; or

(f) has fouled or done any damage to any light-ship, buoy, beacon, or sea mark,

shall report the same within twenty-four hours after the happening of the event, or after her next arrival at any port in Australia, to the person and in the form prescribed.

Penalty : Fifty pounds.

Owner to notify
loss.
N.S.W. 1901,
No. 60, s. 51.
M.S.A 1894,
s. 42a.

269. If the owner or agent of any ship registered in Australia, or of any British ship whose last known port of departure is in Australia, has reason, owing to any circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as conveniently may be, send to the Minister notice in writing of the loss and of the probable occasion thereof.

Penalty : Fifty pounds.

PART V.—PASSENGERS.

Regulations as
to passenger
trade.

270. The Regulations may, in regard to ships engaged in the coasting trade, prescribe any matters or things necessary or convenient for regulating the carriage of passengers generally, and in particular in regard to—

- (a) equipment ;
- (b) conveyance of stock ;
- (c) number of passengers to be carried and their accommodation ;
- (d) provisions, water, medical and surgical stores, and medical inspection ;
- (e) medical staff and attendants ;
- (f) sanitary matters ;
- (g) discipline ;
- (h) sale of spirits ;
- (i) passenger lists ;
- (j) cargo to be carried and the method of stowing cargo ;
- (k) the number of crew.

Hospital
accommodation.

271.—(1.) Every—

- (a) Foreign-going ship trading regularly with the Commonwealth ; or
- (b) Australian-trade ship on a voyage between consecutive ports which exceeds a prescribed distance

and having one hundred persons or more on board, shall be provided with hospital accommodation of such a character, and so placed and arranged as to afford proper means of isolation for cases of communicable disease which may arise during the voyage, and for any persons attending to such cases.

(2.) The accommodation shall include the necessary lavatory and sanitary accommodation and such other accommodation as is prescribed.

(3.) The hospital shall, wherever practicable, be placed on the top deck aft or on the boat deck as far aft as practicable.

(4.) The master of a vessel who fails to comply with this section and who suffers his vessel to enter any port or place in Australia shall be guilty of an offence.

Penalty (on master or owner) : One hundred pounds.

272. If—

(a) any ship carrying passengers is wrecked, or is disabled and unable to proceed on her voyage within a reasonable time, whilst on her voyage from one port to another in Australia;
or

(b) any ship carrying passengers coming from any port outside Australia is wrecked on the coast of Australia,

the owner or master shall cause the passengers to be taken on to their destination, and shall defray their maintenance until so taken on :

Provided that, if any passenger is tendered and accepts the return of the passage money paid by him, such liability shall cease.

273. A policy of assurance effected in respect of any passage, or of any passage or compensation money by any person by this Part of this Act made liable, in the events aforesaid, to provide such passage or to pay such money, or in respect of any other risk under this Part of this Act, shall not be invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

Provision for
passengers
wrecked.
Cf. M.S.A. 1894
s. 331.

Assurances in
connexion with
passages.
Ib. s. 335.

274.—(1.) In the absence of any agreement to the contrary, the owner of a ship shall be the person ultimately responsible, as between himself and the other persons by this Part of this Act made liable, in respect of any default in complying with any requirement thereof.

Responsibility
of owner to
other persons.
Ib. s. 359.

(2.) If any person so made liable pays any money by this Part of this Act made payable to or on behalf of a passenger, he shall be entitled, in the absence of any agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs.

275. Except where otherwise expressly provided, or unless from unavoidable necessity, no passenger shall, without his consent, be landed from any ship at any port other than that at which he has contracted to land.

Passenger
landed
elsewhere than
at destination.
Ib. s. 330.

Penalty (on master or owner) : Fifty pounds.

276. Nothing in this Part of this Act shall take away or abridge any right of action which may accrue to a passenger in any ship, or to any other person, in respect of the breach or non-performance of any contract made between or on behalf of the passenger or other person and the master, charterer, or owner of the ship, or his agent.

Right of action
by passenger.
Ib. s. 340

277. No person shall by fraud, or false representation or pretence, induce any person to engage a passage in any ship.

Penalty : Twenty pounds.

Penalty for
using fraud.
Ib. s. 353.

Injuring ship or
machinery.
Cf. M.S.A. 1894,
s. 287.

278.—(1.) No passenger or other person on board any ship shall wilfully do anything to obstruct or injure any part of the machinery or equipment of the ship, or to obstruct or molest the master or crew in the execution of their duty.

(2.) The master or other officer of any ship, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence against this section, and whose name and address are unknown to the master or officer, and convey the offender with all convenient despatch before a Court of summary jurisdiction to be dealt with according to law.

(3.) If any person commits an offence against sub-section (1.) of this section, he shall, on demand by any person in the employ of the owner of the ship, give his true name and address.

Penalty : Twenty pounds.

Power to
exclude
disorderly or
diseased person.
Ib. s. 288.

279.—(1.) The master of any ship may refuse to receive on board thereof any person who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board ; and, if any such person is on board, may put him on shore at any convenient place, and a person so refused admittance or put on shore shall not be entitled to the return of any fare he has paid.

(2.) The master of any ship may refuse to receive on board thereof any person who appears to be suffering from any disease likely to endanger the health or safety of those on board.

Taking passage
for lunatic, or
sending lunatic
on board.

280.—(1.) No person shall engage or pay for a passage, on any ship, for a lunatic, or bring or send a lunatic on board ship as a passenger, without informing the owner, master, or agent of the ship that the person is a lunatic.

Penalty : Fifty pounds.

(2.) For the purposes of this section, " lunatic " includes any person of unsound mind, and any person who, to the knowledge of the person charged with a contravention of this section, is liable to become a lunatic or person of unsound mind.

Offences on
ships by
disorderly
persons.
M.S.A. 1894,
s. 287.
N.Z. 1903,
s. 168.

281. No person shall—

- (a) enter a ship after being refused admission thereto by the owner, or any person in his employ, on account of such person being drunk or disorderly, and after the amount of his fare (if he has paid it) has been tendered to him, or
- (b) fail to quit a ship forthwith or at the first convenient place after he has been ordered by the master or any officer to quit it on account of his being drunk or disorderly, or
- (c) molest any passenger on a ship.

Penalty : Five pounds.

282.—(1.) No person shall—

- (a) enter a ship after having been refused admission thereto by the owner, or any person in his employ, on account of the ship being full, and after the amount of his fare (if he has paid it) has been tendered to him ; or
- (b) fail to quit a ship forthwith, after he has been ordered to do so by master or any officer, on account of the ship being full, before she has left the place at which he went on board and after having the amount of his fare (if he has paid it) returned or tendered to him ; or
- (c) travel in a ship without first paying his fare, and with intent to avoid payment thereof ; or
- (d) having paid his fare for a certain distance, knowingly proceed in the ship beyond that distance without first paying the additional fare for the additional distance, and with intent to avoid payment thereof ; or
- (e) knowingly and wilfully fail to quit the ship at the place to which he has paid his fare ; or
- (f) fail, when requested by an officer of the ship to do so, either to pay his fare or exhibit his ticket or receipt, if any, showing the payment of his fare ; or
- (g) not being a passenger or a member of the crew, fail to quit any ship when requested by any officer thereof.

Offences by
passengers.
M.S.A. 1894,
s. 287.
N.Z. 1908,
s. 168.

Penalty : Five pounds.

(2.) The penalty under this section shall not prejudice the recovery of any fare payable by the offender.

283.—(1.) The master of every ship, whether British or foreign, carrying any passenger from any place in Australia to any place out of Australia or from any place out of Australia to any place in Australia, shall furnish, to such person and in such manner as is prescribed, a true return in the prescribed form and giving the prescribed particulars in regard to each passenger.

Returns by
masters.
Cf. M.S.A. 1906,
s. 76.

Penalty : Twenty pounds.

(2.) A passenger shall not refuse to furnish the master of the ship with the information required by him to make the return, or make to the master any false statement in connexion with the return.

Penalty : Twenty pounds.

PART VI.—THE COASTING TRADE.

284. This Part of this Act shall, except where otherwise expressed, apply to all ships (whether British or foreign).

Application
of Part.

285. This Part of this Act shall come into operation on a date to be fixed by proclamation, but shall not come into operation on the date fixed for the commencement of this Act unless the proclamation fixing that date expressly declares that this Part is to come into operation on that date.

Commencement
of Part.

Carriage of
passengers by
British ships.

286. The Governor-General may by order declare that the carrying of passengers between specified ports in Australia by British ships shall not be deemed engaging in the coasting trade.

Ships in receipt
of foreign
subsidies.

287.—(1.) A ship shall not engage in the coasting trade which is receiving, or which under any arrangement is to receive, or which in the immediately preceding twelve months has been receiving, directly or indirectly, any subsidy or bonus from any Government other than that of a part of the British Dominions.

Penalty (on master, owner, or agent): Five hundred pounds.

(2.) Any payment for services *bonâ fide* rendered in the carriage of mails, passengers, or goods, at rates based solely on the actual commercial value of these services, shall not be taken to be a subsidy within the meaning of this section.

Licensing of
ships to engage
in coasting
trade.

Cf. U.S.A.,
R.S., 4311.

Cf. Canada,
1906, ss. 953,
960.

288.—(1.) No ship shall engage in the coasting trade unless licensed to do so.

Penalty (on master, owner, or agent): Five hundred pounds.

(2.) Licences to ships to engage in the coasting trade shall be for such period, not exceeding three years, as is prescribed, and may be granted as prescribed.

(3.) Every licence shall be issued subject to compliance on the part of the ship, her master, owner, and agent, during such time as she is engaged in the coasting trade, with the following conditions:—

(a) That the seamen employed on the ship shall be paid wages in accordance with this Part of this Act; and

(b) That, in the case of a foreign ship, she shall be provided with the same number of officers and seamen, and with the same accommodation for them, as would be required if she were a British ship registered in Australia or engaged in the coasting trade;

(c) That in every ship registered in Australia or engaged in the coasting trade where a library is provided for the use of passengers, every seaman and apprentice shall—where no library for their special use is provided—be entitled to obtain books therefrom under the same conditions as may regulate the issue of such books to the passengers.

Penalty (on owner): Ten pounds.

(4.) Any breach of the above conditions shall be a contravention of this Act.

(5.) Before granting any licence, the Minister may require security to be given to his satisfaction by the master, owner, or agent for compliance with the conditions of the licence and the requirements of this Part of this Act.

(6.) In addition to, or in lieu of, any penalty otherwise provided, the Governor-General may cancel any licence if he is satisfied that a breach of any of the above conditions has been committed.

(7.) No licence shall be cancelled unless an opportunity has been given to the master, owner, or agent of the ship to show cause against cancellation.

289.—(1.) Every seaman employed on a ship engaged in any part of the coasting trade shall, subject to any lawful deductions, be entitled to and shall be paid, for the period during which the ship is so engaged, wages at the current rates ruling in Australia for seamen employed in that part of the coasting trade, and may sue for and recover those wages.

Payment of
Australian
rates of wages.
Cf. N.Z. 1908,
s. 75 (1.).
N.Z. 1910, s. 2.

(2.) In the case of ships trading to places beyond Australia, the wages to which a seaman is entitled under this section shall be paid before the departure of the ship from Australia, and the master shall produce to the satisfaction of the Collector at the last port of departure in Australia evidence of their payment.

290.—(1.) If the seamen employed on any British ship were not engaged in Australia, the master shall, before the ship engages in the coasting trade, make and sign, before a superintendent, an indorsement or memorandum on the agreement specifying the wages to be paid to the seamen whilst the ship engages in the coasting trade, and that indorsement or memorandum, when countersigned by a superintendent, shall have effect as an agreement between the master and those seamen.

Indorsement of
rate of wages
on agreement.

(2.) Where under the original agreement a seaman is entitled to be paid at a higher rate of wages than the rate ruling in Australia for seamen in a corresponding rating, nothing in this section shall affect his right to such higher rate during the engagement of the ship in the coasting trade.

291.—(1.) No provision in any agreement, whether made in or out of Australia, shall be taken to limit or prejudice the rights of any seaman under this Part of this Act.

Seamen's rights
not affected by
agreement.

(2.) Where, by reason of a seaman's being entitled to a higher rate of wages while the ship on which he serves is engaged in the coasting trade—

(a) any deduction is made from his wages earned out of Australia; or

(b) he is paid a lesser rate of wages outside Australia than is usual in voyages of a similar nature,

it shall be deemed that the seaman is not paid wages in accordance with this Part of this Act while the ship is so engaged in the coasting trade.

292. An award of the Commonwealth Court of Conciliation and Arbitration which is binding on or applicable to seamen employed in the coasting trade, or a certificate of a Registrar or Deputy Registrar of that Court, certifying what are the rates of wages ruling in Australia for seamen employed in any part of the coasting trade, shall be *prima facie* evidence of those rates of wages.

Evidence of
rates of wages.

293. The master, owners, and agents of any ship engaging in the coasting trade, shall be jointly and severally responsible for compliance with this Part of this Act by or in respect of the ship, and shall be liable to any pecuniary penalty provided by this Act for any breach or contravention of this Part of this Act, by or in respect of the ship,

Responsibility
of master,
owner, and
agent for
compliance with
Act.

and where no penalty is provided shall be liable in respect of any such breach or contravention to a penalty of not more than One hundred pounds, and the ship in respect of which the offence is committed may be disqualified by the Governor-General, from engaging in the coasting trade.

PART VII.—WRECKS AND SALVAGE.

Division 1.—Interpretation, ss. 294–295.

Division 2.—Wreck, ss. 296–314.

Division 3.—Salvage, ss. 315–317.

Division 4.—Procedure in Salvage, ss. 318–327.

Division 5.—Jurisdiction in Salvage, s. 328.

Division 6.—Removal of Wreck, s. 329.

DIVISION 1.—INTERPRETATION.

Interpretation.
M.S.A. 1894,
s. 510.

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

“Wreck” includes jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water, and any articles or goods of whatever kind which belonged to or came from any ship wrecked, stranded, or in distress, or any portion of the hull machinery or equipment of any such ship :

“Salvage” includes all expenses properly incurred by the salvor in the performance of salvage services :

“Receiver” means a receiver of wreck duly appointed by the Minister as such in any assigned district.

Powers of
Customs
reserved.
Ib. s. 534.

295. The operation of this Part of this Act shall in no way derogate from or interfere with the powers of the Customs conferred by any Act.

DIVISION 2.—WRECK.

Ships in Distress.

Receiver where
ship in distress.
Ib. s. 511.

296.—(1.) Where any ship is wrecked, stranded, or in distress at any place on or near the coasts of Australia or any tidal water within Australia, the receiver for the district shall proceed thither, and upon arrival shall take the command of all persons present, and give such directions to each person as he thinks fit for the preservation of the ship, and of the lives of the persons belonging to the ship (in this Part of this Act referred to as shipwrecked persons), and of the wreck :

Provided that the receiver shall not interfere between the master and the crew of the ship in reference to the management thereof, unless requested to do so by the master.

(2.) No person shall wilfully disobey the directions of the receiver.
Penalty : Fifty pounds.

Powers of
receiver to
require
assistance.
Ib. s. 512.

297.—(1.) The receiver may, with a view to the preservation of shipwrecked persons or of the wreck—

(a) require such persons as he thinks necessary to assist him ;

(b) require the master of any ship near at hand to give such aid with his men or ship as is in his power ;

(c) require the use of any vehicle or draught animal that is near at hand.

(2.) No person shall refuse without reasonable cause to comply with any such requisition.

Penalty : One hundred pounds.

298.—(1.) Whenever a ship is wrecked, stranded, or in distress, all persons may, for the purpose of rendering assistance to the ship, or of saving the lives of the shipwrecked persons, or of saving the wreck, unless there is some public road equally convenient, freely pass and repass, either with or without vehicles or draught animals, over any lands, but doing as little damage as possible, and may also, on the like condition, deposit any wreck on any lands.

Power to pass over private land to assist at wreck.
M.S.A. 1894, s. 513.

(2.) Any damage occasioned by the exercise of the rights given by this section shall be a charge on the wreck in respect of or by which the damage is occasioned, and the amount of compensation payable for such damage shall be determined and be recoverable in the same manner as if it were salvage.

Compensation for damage.

(3.) No person shall—

(a) impede any person in the exercise of the rights given by this section ;

(b) impede the deposit of any wreck on the land ; or

(c) prevent any wreck from remaining so deposited until it can be removed to a safe place.

Offences in regard to salvaged goods.

Penalty : One hundred pounds.

299.—(1.) Whenever a ship is wrecked, stranded, or in distress and any person plunders, creates disorder, or obstructs the preservation of the ship, or of the shipwrecked persons or of the wreck, the receiver may cause that person to be apprehended.

Power of receiver to suppress plunder and disorder by force.

1b. s. 514.

(2.) The receiver may use force for the suppression of any such plundering, disorder, or obstruction, and may command all persons present to assist him in so doing.

(3.) If any person is killed, maimed, or hurt, by reason of his resisting the receiver or any person acting under his orders in the execution of his duty, neither of the latter shall be liable to any punishment or to pay any damages by reason of the person being so killed, maimed, or hurt.

300.—(1.) Where a receiver is not present, the following persons in succession (each in the absence of the other, in the order in which they are named) namely, any collector, officer of police, justice, or commissioned officer in the naval or military service of the King or the Commonwealth, may do anything authorized to be done by the receiver.

Exercise of powers when receiver absent.
1b. s. 516.

(2.) Any person so acting for a receiver shall with respect to any wreck be considered as the agent of the receiver, and shall place the wreck in his custody, but shall not be deprived, by reason of his so acting, of any right to salvage to which he would otherwise be entitled.

Examination on
oath as to
wrecks.
M.S.A. 1894,
s. 517.

301.—(1.) Where any ship is or has been wrecked, stranded, or in distress within the limits of Australia, a receiver, or in the absence of the receiver a collector or a justice, shall examine on oath any person who is able to give any account thereof as to the following matters (that is to say):—

- (a) The name and description of the ship;
- (b) The name of the master and of the owners;
- (c) The names of the owners of the cargo;
- (d) The ports from and to which the ship was bound;
- (e) The occasion of the wrecking, stranding, or distress of the ship;
- (f) The services rendered; and
- (g) Such other matters or circumstances relating to the ship, or to the cargo on board, as the person holding the examination thinks necessary.

(2.) The person holding the examination shall take the evidence down in writing, and shall send one copy thereof to the Minister and another to the State Collector of Customs, who shall place it in some conspicuous place for inspection.

(3.) The person holding the examination shall, for the purposes thereof, have all the powers of the Minister under this Act.

Dealing with Wreck.

Finding or
taking
possession of
wreck.
Ib. s. 518;
M.S.A. 1906,
s. 72.

302. Where any person—

- (a) finds or takes possession of any wreck within the limits of Australia, or
- (b) having found or taken into possession any wreck outside Australia, subsequently brings it within the limits of Australia,

he shall give notice to the receiver, stating that he has found or taken possession of the wreck, and describing the marks by which it may be recognised.

Penalty: One hundred pounds.

Penalty for
retaining
possession of
wreck.
M.S.A. 1894,
s. 519.

303.—(1.) No person, other than the owner thereof, shall keep possession of any wreck, or fail on demand to deliver it to the receiver or to any person authorized by him to demand it.

Penalty: One hundred pounds.

(2.) The receiver, or any person authorized by him, may take any such wreck by force from any person refusing to deliver it.

Notice to be
posted in
Customs-house.
Ib. s. 520.

304. Where a receiver takes possession of any wreck, he shall within forty-eight hours cause to be posted in the nearest Customs-house a description thereof, and of any distinguishing marks.

Claim of owner
to wreck.
Ib. s. 521.

305.—(1.) The owner of any wreck in the possession of the receiver, upon establishing his claim thereto to the satisfaction of the receiver within one year from the time at which the wreck came into his possession, shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

(2.) Where any wreck from a foreign ship, which has been wrecked on or near the coasts of Australia, is found on or near those coasts, or is brought into any port in Australia, the consul of the country to which the ship or in the case of cargo to which the owner thereof belongs, shall, in the absence of the owner and of any agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the goods.

Wreck from
foreign ship.

306.—(1.) A receiver may at any time sell any wreck in his custody, if in his opinion it is—

Sale of wreck
by receiver.
M.S.A. 1894,
s. 522.

- (a) under the value of Five pounds ; or
- (b) of such condition or nature that it should not be kept ; or
- (c) not of sufficient value to pay for keeping.

(2.) The proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold.

307. In regard to expenses connected with any wreck, the following provisions shall apply :—

Expenses
connected with
wreck.

- (a) All expenses properly incurred by any receiver in the execution of his duty shall be recoverable in a summary manner from the owner of the ship or wreck in respect of which any services were performed ;
- (b) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses, have the same rights and remedies in respect thereof as a salvor has in respect of salvage ;
- (c) If any dispute arises in regard to any such expenses, it shall be determined by the Minister, whose decision shall be final ;
- (d) All moneys received by any receiver in respect of his services as such shall be paid into the Consolidated Revenue Fund.

Ib. s. 527.

Unclaimed Wreck.

308. The Commonwealth shall be entitled to all unclaimed wreck found in Australia.

Right of
Commonwealth.
Ib. s. 523.

309. Where no owner establishes a claim to any wreck, found in or brought into Australia and in the possession of a receiver, within one year after it came into his possession, the receiver shall sell it and shall pay the proceeds of the sale (after deducting therefrom the expenses of the sale and any other expenses incurred by him, and paying thereout to the salvors such amount of salvage as the Minister directs or as is prescribed) to the Consolidated Revenue Fund.

Sale of
unclaimed
wreck by
receiver.
Ib. s. 523.

310. Upon compliance with the provisions of this Part of this Act the receiver shall be discharged from all liability, but such discharge shall not prejudice or affect any question which may be raised by third parties concerning the right or title to any wreck.

Discharge of
receiver from
liability.
Ib. s. 527.

Disputes as to
title to wreck.
M.S.A. 1894,
s. 526.

311.—(1.) Where a dispute arises as to the title to any wreck, it may be determined in the same manner as if it were a dispute as to salvage.

(2.) If any party to the dispute is unwilling to have it so determined, he may proceed, in any Court of competent jurisdiction, to establish his title.

Offences in respect of Wreck.

Taking wreck
out of
Australia.
Ib. s. 535.
N.Z. 1908,
s. 266.

312. Every person who takes into any place out of Australia any ship stranded, derelict, or otherwise in distress, or any wreck found on or near the coasts of Australia, and there sells it, shall be guilty of an indictable offence.

Boarding ship
in distress
without
authority.
M.S.A. 1894,
s. 536 (1.).
N.Z. 1908,
s. 267.

313.—(1.) No person shall, without the leave of the master or the authority of this or any Act, board any ship which is wrecked, stranded, or in distress.

Penalty: Fifty pounds.

(2.) The master of the ship may repel by force any person acting in contravention of this section.

Offences as to
wreck.
M.S.A. 1894,
s. 536.
N.Z. 1908,
s. 268.

314. No person shall—

(a) impede the saving of any ship stranded or in distress, or of any wreck;

(b) secrete any wreck, or deface or obliterate any marks thereon;

or

(c) wrongfully remove any wreck.

Penalty: One hundred pounds, in addition to any other punishment to which the offender is liable by law.

DIVISION 3.—SALVAGE.

Liability of
owner for
salvage.
M.S.A. 1894,
s. 544.

315.—(1.) Where services are rendered within Australian waters in saving life from any ship, or elsewhere in saving life from any British ship, there shall be payable to the salvor, by the owner of the ship, cargo, or equipment saved, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

Priority of
salvage in
respect to life.

(2.) Salvage in respect of the preservation of life, when payable by the owners of the ship, shall be payable in priority to all other claims for salvage.

Salvage for
saving life
beyond limits of
British
jurisdiction.
Ib. s. 545.

316. When it is made to appear to the Governor-General that the Government of any foreign country is willing that salvage should be awarded by any Courts in Australia for services rendered in saving life from ships belonging to that country when the ship is beyond the limits of British jurisdiction, he may by order direct that the provisions of this Part of this Act with reference to salvage of life shall, subject to any conditions and qualifications, apply, and those provisions shall accordingly apply to those services as if they were rendered in saving life from ships within British jurisdiction.

317. Where any ship is wrecked stranded or in distress at any place on or near the coasts of Australia or any tidal water within Australia, and services are rendered by any person in assisting that ship or saving any wreck, there shall be payable to the salvor, by the owner of the ship or wreck, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

Persons assisting entitled to salvage.
M.S.A. 1894, s. 546.

DIVISION 4.—PROCEDURE IN SALVAGE.

318.—(1.) All disputes as to the amount of salvage, whether of life or property, arising between the salvor and the owners of any ship or wreck, shall, if not settled otherwise, be determined summarily in the following cases, namely :—

Summary determination of dispute as to salvage.
Ib. s. 547

- (a) In any case where the parties to the dispute consent ;
- (b) In any case where the value of the property saved does not exceed One thousand pounds ;
- (c) Where the amount claimed does not exceed Three hundred pounds.

(2.) Subject as aforesaid, disputes as to the salvage may be determined by the Supreme Court of a State, but if the claimant does not recover in any such Court more than Three hundred pounds, he shall only be entitled to recover such costs as the Court allows, such costs not to exceed reasonable costs on the scale usually allowed in any inferior Court in which the case might have been brought, unless the Court certifies that the case is a fit one to be tried otherwise than summarily.

In the Supreme Court.

(3.) Disputes relating to salvage to be determined summarily may be so determined by a County Court, District Court, or Local Court of a State.

(4.) Disputes relating to salvage may be determined on the application of the salvor or of the owner of the property saved, or of their respective agents.

319.—(1.) Disputes as to salvage which are to be determined summarily shall—

Court in which disputes to be determined

- (a) where the dispute relates to the salvage of wreck—be referred to a Court having jurisdiction at or near the place where the wreck is found ;
- (b) where the dispute relates to salvage in the case of services rendered to any ship, or to the cargo or equipment thereof, or in saving life therefrom—be referred to a Court having jurisdiction at or near the place where the ship is lying or at or near the port in Australia into which the ship is first brought, after the occurrence by reason whereof the claim of salvage arises.

Ib. s. 548.

(2.) Any Court to whom a dispute as to salvage is referred for summary determination may, for the purpose of determining the dispute, call in to its assistance any skilled person as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor such sum as the Minister directs.

Power to call in assessors.

Appeal to
Supreme Court.
M.S.A. 1894,
s. 549.

320.—(1.) Where a dispute relating to salvage has been determined summarily in manner provided by this Act, any party aggrieved by the decision may, if the sum in dispute exceeds One hundred pounds, appeal therefrom to the Supreme Court of the State.

(2.) The appellant shall, within thirty days of the decision of the Court which has determined the matter summarily, take such proceedings as according to the practice of the Supreme Court of the State are necessary for the institution of an appeal.

Appointment
of valuer.
b. s. 551.

321.—(1.) Where any dispute as to salvage arises, the receiver of the district may, on the application of either party, appoint a valuer to value the property in respect of which the claim is made. The receiver shall give copies of the valuation to both parties.

(2.) A copy of the valuation, purporting to be signed by the valuer, and to be certified as a true copy by the receiver, shall be admissible in evidence in any proceeding.

(3.) There shall be paid to the valuer such fee as the Minister directs.

Detention of
ship or wreck till
salvage paid.
f b. s. 552.

322.—(1.) Where salvage is due to any person under this Act, the receiver shall—

(a) if the salvage is due in respect of services rendered in assisting any ship, or in saving life therefrom, or in saving the cargo or equipment thereof—detain the ship and cargo or equipment; and

(b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed—detain the wreck.

(2.) The receiver shall detain the ship and the cargo, or the wreck (hereinafter referred to as “detained property”) until payment is made for salvage, or process is issued for the arrest or detention thereof by some competent Court.

(3.) A receiver may release any detained property if security is given to his satisfaction.

(4.) Any security given for salvage in pursuance of this section may be enforced by any Federal or State Court of competent jurisdiction in the same manner as if it had been given in that Court.

Release of detained
property by
receiver.
f b. s. 553.

323.—(1.) The receiver may sell any detained property if the persons liable to pay the salvage, in respect of which the property is detained, are aware of the detention, in the following cases, namely:—

(a) Where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due; or

(b) Where the amount is disputed, but no appeal lies from the first Court to which the dispute is referred, and payment is not made within twenty days after the decision of the first Court; or

- (c) Where the amount is disputed and an appeal lies from the decision of the first Court to some other Court, and within twenty days of the decision of the first Court neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal.

(2.) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees, and salvage, and the balance shall be paid to any persons legally entitled to receive it.

324.—(1.) Where services for which salvage is claimed are rendered either by the master or by any of the crew of a ship, and the salvor voluntarily agrees to abandon his lien upon the wreck alleged to be salvaged, then, upon the master entering into a written agreement, attested by two witnesses, to abide the decision of some Federal or State Court, and thereby giving security in that behalf to an amount agreed on by the parties to the agreement, that agreement shall bind the ship, cargo, and freight, and the owners thereof, and their heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the ship, cargo, and freight respectively to the extent of the security given.

Abandonment
of lien for
salvage by
agreement.
M.S.A. 1894,
s. 554.

(2.) On any such agreement being made, the salvor and the master shall make statements giving as far as possible the prescribed particulars.

(3.) The salvor shall forthwith transmit the statements made to the Court in which the agreement is to be adjudicated upon.

325.—(1.) Where the aggregate amount of salvage payable in any case has been finally determined under this Act, and does not exceed Two hundred pounds, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the receiver for liberty to pay it to him.

Apportionment
of salvage by
receiver.
Ib. s. 555.

(2.) The receiver may, if he thinks fit, receive the amount, and shall grant to the person paying it a certificate of the amount paid and of the services in respect of which it is paid, and that certificate shall be a full discharge and indemnity to the person by whom the money is paid, and to his ship, cargo, equipment, and effects, against the claims of all persons in respect of the services mentioned in the certificate.

(3.) The receiver shall distribute any amount received by him under this section among the persons entitled to it on such evidence and in such proportions as he thinks fit, and may retain the share of any person who is absent.

(4.) Any such distribution shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Apportionment
of salvage by
Courts.
M.S.A. 1894,
s. 556.

326. Where the aggregate amount of salvage payable in any case has been finally ascertained, and exceeds Two hundred pounds, then if any delay or dispute arises as to the apportionment thereof, any Court of competent jurisdiction may cause the amount to be apportioned amongst the persons entitled thereto in such manner as it thinks just.

Apportionment
of salvage
amongst owners,
&c., of foreign
ships.
1 & 2 Geo. V.,
c. 57, s. 7.

327. Where any dispute arises as to the apportionment of any amount of salvage amongst the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

DIVISION 5.—JURISDICTION IN SALVAGE.

Supreme Courts
to have
jurisdiction.
M.S.A. 1894,
s. 565.

328. Subject to this Act, the Supreme Court of every State, and every Court in a State having Admiralty jurisdiction, shall have jurisdiction to decide upon all claims whatsoever relating to salvage, wherever the services in respect of which salvage is claimed were performed, and wherever the wreck forming the subject of the claim is found.

DIVISION 6.—REMOVAL OF WRECK.

Removal of
wrecks on or
near coast.
N.Z. 1908,
s. 283.
M.S.A. 1894,
s. 530.

329.—(1.) If any ship is wrecked, stranded, sunk, or abandoned on or near the coast of Australia, the Minister shall have, in regard thereto, the following powers :—

- (a) To require the owner thereof, by notice in writing, to remove the wreck within a time specified in the notice, or give security for such removal to his satisfaction ;
- (b) In the event of the owner not complying with such notice, to remove or destroy the wreck in any manner he sees fit ;
- (c) To sell any wreck recovered under his orders, and out of the proceeds of the sale to retain a sum to cover the expenses incurred in the recovery and sale of the wreck, paying the surplus (if any) to the owner ;
- (d) To recover from the owner any expenses incurred by him in connexion with such removal or destruction.

Definition of
"owner."

(2.) For the purposes of this section "owner" means the owner immediately prior to the time of the loss or abandonment of the ship.

PART VIII.—PILOTS AND PILOTAGE.

Compulsory
pilotage.
Cf. ib. s. 603.

330.—(1.) The Governor-General may proclaim the ports at which the employment of a pilot shall be compulsory.

(2.) At any such port the pilotage shall be performed by a pilot in the Public Service of the Commonwealth.

Power to refer
charges and
questions of
unfitness to
Court of
Marine Inquiry.

331. Any charge under the *Commonwealth Public Service Act* 1902 or any Act amending it against a pilot in the Public Service of the Commonwealth, or any question of the unfitness or incapacity of any

such pilot to discharge the duties of his office efficiently, may be referred to a Court of Marine Inquiry instead of to a Board of Inquiry appointed under that Act, and in that case the Court of Marine Inquiry shall for the purposes of that Act be deemed to be a Board of Inquiry.

332.—(1.) The Minister may, subject to the regulations, license persons (in this Act called “licensed pilots”) to conduct ships from one port to another port in Australia, or to act as pilots for any port at which pilotage is not compulsory. Licensed pilots.
N.Z. 1908,
s. 190.

(2.) A licensed pilot shall not (except as authorized by his licence) act as a pilot for any port at which pilotage is compulsory.

Penalty : One hundred pounds.

333. The regulations may make provision for—

- (a) determining the qualifications of persons desirous of obtaining licences as licensed pilots ;
- (b) fixing the conditions under which licences to licensed pilots may be issued and held, and the form thereof ;
- (c) the general discipline of licensed pilots ;
- (d) the fees chargeable by licensed pilots.

Regulations as
to licensed
pilots.

334.—(1.) All uncanceled and unexpired licences, issued under any State Act, authorizing any persons to conduct ships from one port to another port in Australia, or to act as pilots for any port at which pilotage is not compulsory under this Act, shall continue as if issued under this Act, but shall, subject to this Act, be valid only for the purposes for which, and to the extent to which, they would have been valid in accordance with the provisions of the State Act under which they were issued ; and for those purposes and to that extent the holder of any such licence shall be deemed to be a licensed pilot ; but no such licence shall entitle the holder to act as pilot at a port at which pilotage is compulsory under this Act.

State licences to
licensed pilots.

(2.) Any such licence may be dealt with as if issued under this Act.

(3.) The holder of any such licence may, subject to the regulations, surrender it for a corresponding licence under this Act.

335.—(1.) There shall be paid upon every ship (not exempt from pilotage dues) pilotage dues according to the prescribed rates. Pilotage dues.

(2.) Pilotage dues shall be paid to the Collector, and shall become due and payable at the prescribed times, whether a pilot is actually employed or not. When dues to
be paid.

336.—(1.) The following persons shall be liable to pay pilotage dues for any ship on account of which such dues are payable, namely :— Persons liable
for pilotage.
M.S.A. 1894,
s. 591.

(a) the owner or master ;

(b) such consignees or agents as have paid or made themselves liable to pay any other charge on account of the ship in any port at which the pilotage dues become due.

(2.) All pilotage dues may be recovered in a Court of summary jurisdiction.

(3.) Any consignee or agent hereby made liable for the payment of pilotage dues may, out of any moneys received by him on account of the ship or belonging to the owner thereof, retain the amount of all pilotage dues paid by him.

Payment of
dues on
demand.

337. The master or owner of any ship, or the person liable for the pilotage dues on any ship, shall on demand by the proper officer immediately pay those dues.

Penalty : Fifty pounds.

Carrying pilot
to sea.
M.S.A. 1894,
s. 594.

338. In the event of a pilot being without his consent or from unavoidable necessity carried beyond pilotage waters, or being placed in quarantine with the ship, the master or owner shall be liable to pay to the collector the sum of Twenty shillings for every day until such time as the pilot can return to his station, and also all the reasonable expenses of the pilot.

Attendance of
pilot on board.

339. If a pilot attends on board to pilot any ship at the request of the master, and the sailing of the ship is deferred, the master shall pay to the collector the sum of Twenty shillings for that day and for each subsequent day upon which the pilot attends and the ship does not sail.

Exemption from
pilotage.
N.S.W. 1901,
No. 60, s. 63
(2.) (a).

340. The following ships shall be exempt from pilotage dues unless a pilot is actually employed :—

- (a) British ships the masters of which hold valid pilotage exemption certificates ; and
- (b) Mission ships.

Exemption
certificates.
M.S.A. 1894,
s. 604.
N.S.W. 1901,
No. 60, s. 68.

341. Certificates having the effect of exempting ships (the masters of which hold pilotage exemption certificates) from compulsory pilotage may be issued in the manner and under the conditions prescribed, and on payment of the prescribed fees.

Such certificates shall be called “ pilotage exemption certificates ” and shall—

- (a) be granted to British subjects only ; and
- (b) have effect only in regard to ships registered in Australia, and to such other classes of British ships as are prescribed ;

but nothing in this section shall affect the renewal of a pilotage exemption certificate granted before the commencement of this Act to a person who is not a British subject.

Persons who
may obtain
certificate.
Ib. No. 60,
s. 67 (4.).

342. Any British subject holding a master's certificate may, subject to the regulations, obtain a pilotage exemption certificate, notwithstanding that he has not at the time the command of a ship.

Renewal of
certificates.
M.S.A. 1894,
s. 599 (4.).

343. A pilotage exemption certificate shall not be in force for more than one year, but may be renewed from year to year by indorsement or otherwise as the Minister directs.

344. The Minister may suspend for such time as he sees fit, or may cancel, any pilotage exemption certificate, if it appears to him that the holder thereof is incompetent to pilot his ship, or has been guilty of misconduct.

Suspension or
cancellation of
certificate.
Cf. M.S.A. 1894,
s. 601.

345. The master of every ship exempt from pilotage shall, so soon as he has come within three leagues of any proclaimed port, hoist and keep hoisted the prescribed flag or signal indicating that the ship is exempt from pilotage.

Flag to be
hoisted on
exempt ship.
Ib. s. 613 (2.).

Penalty: Ten pounds.

346. The master of any ship requiring the services of a pilot shall—

Display of pilot
signal.

(a) display the prescribed signal;

(b) by all practicable means, consistent with the safety of the ship, facilitate the pilot getting on board.

Ib. s. 624 (2.).

Penalty: Twenty-five pounds.

347. No person shall display the prescribed signal referred to in the previous section except for the purpose of summoning a pilot.

Wrongful
display of
pilot signal.

Penalty: Twenty pounds.

Ib. s. 615 (3.).

348.—(1.) The master of any ship requiring the services of a pilot for a port which has been proclaimed as a port at which the employment of a pilot is compulsory shall receive on board the first pilot offering himself, and shall on demand by that pilot give the charge of piloting the ship to that pilot.

Master to take
in pilot.

(2.) The master of any such ship shall not quit his station or anchorage within any port proclaimed as above without first receiving a pilot on board.

Penalty: Twenty pounds.

(3.) The penalty under this section shall be in addition to the amount due for pilotage.

349. The master of every ship having on board a pilot in compulsory charge shall bring to at such place as the pilot directs.

Master to bring
to where
directed.

Penalty: Twenty pounds.

350.—(1.) No pilot shall be personally liable in pecuniary damages for any damage or loss occasioned by his neglect or want of skill.

Immunity of
pilots and of
Commonwealth.

(2.) The Commonwealth shall not be liable for any damage or loss occasioned by the neglect or want of skill of any pilot.

351.—(1.) The duty of a pilot shall be to pilot the ship subject to the authority of the master, but the master shall not be relieved, by reason of the ship being under pilotage, from responsibility for the conduct and navigation of the ship.

Duty of pilot.

(2.) The owner or master of a ship shall not be exempt from liability for any loss or damage occasioned by the fault or want of capacity of a pilot by reason of the fact that the employment of the pilot is compulsory.

Non-immunity
of owner when
pilotage is
compulsory.
Canada, 1906
s. 474.
Cf. M.S.A. 1894,
s. 633.

Unauthorized persons acting as pilots.
Cf. M.S.A. 1894, s. 596.

352.—(1.) An unauthorized person may take charge of a ship as pilot—

- (a) when the master has used all reasonable means to obtain an authorized pilot, but no authorized pilot is available ; or
- (b) when the ship is in such circumstances as to make it necessary for her safety that she should be brought into port at once.

(2.) In any such case, so soon as an authorized pilot presents himself, the master shall cause charge of the ship to be at once given up to him.

Penalty : Fifty pounds.

Ib. s. 598.

(3.) Except as allowed by this section, no unauthorized person shall act as pilot.

Penalty : One hundred pounds.

Offences by pilot.
Ib. s. 607.

353. If a pilot, when in charge of a ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, either—

- (a) does any act tending to the immediate loss destruction or serious damage of the ship, or tending immediately to endanger the life or limb of any person on board the ship ; or
- (b) fails to do any act necessary and proper for preserving the ship from loss destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or limb,

he shall be guilty of an indictable offence.

Obtaining charge of ship by wilful misrepresentation.
Ib. s. 608.

354. No person shall, by wilful misrepresentation of the circumstances upon which the safety of a ship may depend, obtain charge of that ship.

Penalty : One hundred pounds, in addition to any liability for damages.

Property of pilots to vest in Commonwealth.

355.—(1.) Upon the proclamation of any port as a port at which the employment of a pilot shall be compulsory, all steam-ships, boats, buildings, plant, and property belonging to the licensed pilots for that port, and used by them exclusively in their business as pilots, shall become the property of the Commonwealth.

(2.) The Commonwealth shall pay to the persons entitled thereto, as compensation for any property acquired under this section, the value thereof as agreed upon between those persons and the Minister, or, in default of agreement, as settled by arbitration.

(3.) Any dispute or difference which may arise between the pilots and the Minister, as to what property passes under this section, shall be settled by arbitration.

(4.) Any arbitration under this section shall be according to the laws relating to arbitration in force in the State in which the property is situated.

(5.) The reasonable costs of any arbitration under this section shall be paid by the Commonwealth out of moneys to be provided by the Parliament.

PART IX.—COURTS OF MARINE INQUIRY.

356.—(1.) The Governor-General may, by proclamation, establish Courts of Marine Inquiry at such places as he thinks fit.

Establishment
of Courts of
Marine Inquiry.
N.S.W. 1899,
No. 32, s. 6.

(2.) Courts of Marine Inquiry so established shall be Courts of Record and shall have jurisdiction to hear and determine appeals charges complaints inquiries and references under this Act.

(3.) The Governor-General may, by proclamation, revoke the establishment of any Court of Marine Inquiry.

357. The Governor-General may appoint officers of Courts of Marine Inquiry, and such officers shall have such powers and perform such duties as are prescribed.

Appointment
of officers.
Ib. s. 8.

358. A Court of Marine Inquiry shall be constituted by one or more District or County Court Judges or Police or Stipendiary or Special Magistrates of the Commonwealth or part of the Commonwealth or of a State or part of a State, or by one or more Judges or Magistrates specially authorized by the Governor-General to sit as members of a Court of Marine Inquiry.

Constitution of
Courts of
Marine Inquiry.

359. Every Court of Marine Inquiry shall be assisted by not less than two assessors appointed under this Act, who shall advise the Court but shall not adjudicate on the matter before the Court.

Assessors.
Ib. s. 7.

360. The Governor-General may appoint persons of nautical, engineering, or special skill to be assessors to assist Courts of Marine Inquiry.

Appointment
of assessors.
Ib. s. 16 (1.).

361. Where an inquiry involves 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 appointed by the Governor-General as having nautical, engineering, or special experience in the matter to be inquired into.

Assessors with
special
knowledge.
Ib. s. 16 (2.).

362. Every assessor shall, for every day or portion of a day during which he is engaged in, or in attendance on, a Court of Marine Inquiry, and for travelling expenses, be paid such sum as is prescribed.

Payment
of assessors.
Ib. s. 17.

363.—(1.) The Regulations may prescribe the practice and procedure, and the powers and duties of officers, of Courts of Marine Inquiry, and regulate the appointment and summoning of assessors.

Practice, procedure and
powers.
Ib. s. 9.

(2.) Subject to the Regulations, a Court of Marine Inquiry may in any particular case give such directions as to the practice or procedure to be followed as it thinks proper.

Powers of court.
N.S.W. 1899,
s. 10.
See M.S.A.
1894, s. 478.

364.—(1.) A Court of Marine Inquiry shall have jurisdiction to make inquiries as to all casualties affecting ships, or causing loss of life on or from ships, and as to charges of incompetency or misconduct on the part of masters or officers of ships, in the following cases, namely :—

- (a) Where a shipwreck or casualty occurs to a ship on or near the coast of Australia, or in the course of a voyage to a port within Australia ;
- (b) where a shipwreck or casualty occurs in any part of the world to a British ship registered in Australia ;
- (c) where some of the crew of a ship, which has been wrecked or to which a casualty has occurred, who are competent witnesses to the facts, are found in Australia ;
- (d) where the incompetency or misconduct has occurred on board a British ship on or near the coasts of Australia, or on board a British ship in the course of a voyage to a port within Australia ;
- (e) where the incompetency or misconduct has occurred on board a British ship registered in Australia ;
- (f) where the master, mate, or engineer of a British ship who is charged with incompetency or misconduct is found in Australia ; and
- (g) where any ship is lost or supposed to have been lost, and any evidence is obtainable in Australia as to the circumstances under which she went to sea or was last heard of.

Limitation as
to subject of
inquiry.

(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 the King's dominions ; or
- (b) with reference to which an investigation or inquiry has been commenced in the United Kingdom ; or
- (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.

(3.) A Court of Marine Inquiry shall, so far as relates to the summoning of parties, and compelling the attendance of witnesses, have such powers as are prescribed.

Refusal to give
evidence, &c.

(4.) No person who has been lawfully summoned to attend a Court of Marine Inquiry to give evidence or produce documents, and who has been tendered reasonable expenses, shall, without just excuse—

- (a) fail to appear in obedience to the summons ; or
- (b) refuse to be sworn as a witness ; or
- (c) fail to answer any question which he is lawfully required by the Court to answer ; or
- (d) fail to produce any documents which he is lawfully required by the Court to produce.

Penalty : Fifty pounds.

365. A Court of Marine Inquiry shall, when requested by the Minister so to do, and may in any case where it thinks fit so to do, make any inquiry which it has jurisdiction to make.

When court can hold inquiry.
N.S.W. 1899,
No. 32, s. 11.

366. The Minister may, where any such inquiry as aforesaid has been made, order the inquiry to be re-opened and reheard by a Court of Marine Inquiry, either generally or as to any part thereof, and shall do so—

Rehearing.
Ib. s. 12.
M.S.A. 1894,
s. 475.

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

367.—(1.) The senior member of the Court present shall preside at each sitting of a Court of Marine Inquiry.

Senior member of Court to preside.

(2.) Every inquiry under this Act shall, without prejudice to the power of the Court to order witnesses out of Court, be held, and every decision of the Court shall be delivered, in open Court. In the event of an equality of votes, the presiding member shall have a casting as well as a deliberative vote.

N.S.W. No. 32,
s. 13.

(3.) The presiding member shall in every case forward to the Minister 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 forward his written reasons for so dissenting.

368. It shall be the duty of the person who has moved a Court of Marine Inquiry to hold the inquiry to undertake the management of the case, and to assist the Court by all means in his power.

Management of the case.
M.S.A. 1894,
s. 466 (5.).

369. Every inquiry shall be so conducted that, if a charge is made against any person, that person shall have full opportunity of making a defence.

Opportunity of defence.
Ib. s. 466 (11.).

370. Subject to the Regulations, a Court of Marine Inquiry shall have all the powers of a Court of summary jurisdiction in the State in which it sits.

Powers of Court.
Ib. s. 466 (10.).

371. A Court of Marine Inquiry may make such order as it thinks fit respecting the costs of any proceedings, and any costs awarded against any party to the proceedings may be recovered, by the party in whose favour the order is made, in any Federal Court of competent jurisdiction.

Power to award costs.
Ib. s. 466 (8.).

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

Power to cancel or suspend certificate.
Ib. s. 470.

Notice to
person charged.
M.S.A. 1894,
s. 470 (4.).

373. No certificate shall be cancelled or suspended by a Court of Marine Inquiry unless a copy of any charges against the holder of the certificate has been served upon him, in the manner prescribed, at least forty-eight hours before the commencement of the inquiry into those charges.

Delivery up of
certificate.
N.S.W. 1899,
No. 32, s. 14.
M.S.A. 1894,
s. 473.

374. 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 Minister or as the Minister directs.

Penalty: One hundred pounds.

Power to
commit if
certificate not
delivered up.

375. A Court of Marine Inquiry may at any time during the progress of the inquiry order any master or officer, affected by the inquiry, to forthwith deliver up his certificate, and in default of his compliance may commit him to prison until he complies with the order.

Inquiry into
charges against
licensed
pilots and
exempt masters.

376. A Court of Marine Inquiry shall, when required to do so by the Minister, inquire into any charge of incompetency or failure of duty or drunkenness made against any licensed pilot or any person holding a pilotage exemption certificate, and shall in its report to the Minister recommend to the Minister what punishment, if any, shall be inflicted on the pilot or person for any offence of which the Court finds him guilty.

Court to sit as
Court of Survey.
N.S.W. 1899,
No. 32, s. 15.

377.—(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, or any other matter prescribed.

(2.) The Court shall, in relation to the hearing and determination of the appeal or reference, have all the powers of the Minister.

(3.) 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 by the Court or under its direction.

PART X.—LEGAL PROCEEDINGS.

Jurisdiction.

Place where
deemed
to have been
committed.
M.S.A. 1894,
s. 684.

378. 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—

- (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.

Presumption of
jurisdiction.
N.S.W. 1901,
No. 60, s. 161.

379. If, in any legal proceeding under this Act, a question arises whether any ship or person is or is not within the provisions of this Act or of some part thereof, the ship or person shall be taken to be within those provisions unless the contrary is proved.

380.—(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.

Jurisdiction
over ships
lying off coast.
M.S.A. 1894,
s. 685.

(2.) The jurisdiction in this section shall be in addition to, and not in derogation of, any jurisdiction or power of a Court of summary jurisdiction.

381. Where any person—

- (a) being a British subject, is charged with having committed an offence on board a British ship on the high seas or in a foreign port or harbor, or on board a foreign ship to which he does not belong; or
- (b) not being a British subject, is charged with having committed an offence on board a British ship on the high seas,

Jurisdiction of
offences on
board ship.
Ib. s. 686.

and that person is found within the jurisdiction of any Court in Australia which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that Court shall have jurisdiction to try the offence as if it had been so committed.

382. Any offence against property or person committed in or at any place either ashore or afloat, out of the King's dominions, by a master, seaman, or apprentice who at the time when the offence is committed is, or within three months previously has been, employed in any British ship, shall be deemed to be an offence of the same nature, and be liable to the same punishment, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same Court and in the same place, as if the offence had been committed within Australia.

Offences
committed
by British
seamen abroad.
Ib. s. 687.

383.—(1.) Whenever—

- (a) any injury has, in any part of the world, been caused to any property belonging to the King or the Commonwealth or any State, or to any of his Majesty's subjects, by any foreign ship; and
- (b) at any time thereafter that ship is found in any port of Australia or within three miles of the coast thereof,

Power to detain
foreign ship
that has
occasioned
damage.
Ib. s. 688.

a Justice of the High Court or a Judge of the Supreme Court of a State may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or crew of the ship, issue an order

directed to any officer of Customs or other official named in the order, requiring him to detain the ship until such time as the owner, master, or consignee thereof has—

- (i.) made satisfaction in respect of the injury, or
- (ii.) given security, to be approved by the Judge or Court, to abide the event of any legal proceeding that may be instituted in respect of the injury, and to pay all costs or damages that may be awarded thereon,

and the official to whom the order is directed shall detain the ship accordingly.

(2.) Where it appears that, before an application can be made under this section, the ship will depart from Australia, the official may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to him, and he shall not be liable for any costs or damages in respect of the detention unless it is proved to have been made without reasonable grounds.

(3.) In any legal proceeding in relation to any such injury, the person giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the Judge or Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

Action against
official.
N.S.W. 1898,
No. 46, s. 111.

384.—(1.) No action shall lie against any official for any thing 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 nonsuited, or if judgment is given for the defendant, the latter shall have treble costs.

Removal of
master by
Court.
M.S.A. 1894,
s. 472.

385.—(1.) The High 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 authorized 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.

*Offences.***386. No person shall—**General
offences.

- (a) make in any document, produced to any person authorized to receive it under this Act, any statement which is untrue in any particular, or produce or deliver to any such person any document containing any such statement;
- (b) mislead any person on whom any duty is imposed by this Act in any particular likely to affect the discharge thereof;
- (c) refuse to answer any questions lawfully put to him, or to produce documents lawfully demanded of him;
- (d) refuse to give all reasonable assistance to any person who is carrying out any duty or power imposed on him by this Act;
- (e) give any bribe, recompense, or reward to, or make any exclusive agreement with, any official performing any duty under this Act, to induce him in any way to neglect his duty, or by threats, demands, or promises, attempt to influence any such official in the discharge of his duty.

Penalty: One hundred pounds.

Penalty.

387. Whoever resists or wilfully obstructs, assaults, molests, or endeavours to intimidate any person performing any duty imposed on him, or exercising any right or power conferred on him, by this Act, shall be guilty of an indictable offence.

Obstructing an
official.

388.—(1.) No person (other than an official or a person duly authorized 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.
N.S.W. 1898.
No. 46, s. 102.

Penalty: Twenty-five pounds.

(2.) The master or an officer of Customs or police may apprehend and keep in safe custody any person so offending, who shall be brought before a justice on the following morning.

389. Whoever—Offences as to
documents.
M.S.A. 1894,
ss 104, 722.

- (a) forges the seal of the Minister, or any document issued under this Act, or any official copy thereof, or the signature of any official performing any duty under this Act; or
- (b) utters or puts off, knowing it to be forged, any forged document purporting to be a document issued in pursuance of this Act; or
- (c) knowingly makes any false declaration, false statement, false representation, or gives any false evidence on oath in connexion with any application or proceeding under this Act; or
- (d) fraudulently lends any certificate issued to or held by him under or recognised under this Act,

shall be guilty of an indictable offence.

Insubordina-
tion.
N.S.W. 1898.
No. 46, s. 101.

390. Upon complaint on oath by the master of a ship in port that any person, belonging to or employed on or being about or upon the ship—

- (a) is insubordinate ; or
- (b) refuses to work ; or
- (c) is inciting any other person to commit an offence against this Act,

any Police, Stipendiary, or Special Magistrate of the Commonwealth, or of a State, may cause such person to be apprehended by any police officer and brought before him.

Aiding and
abetting
offences.

391. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to the commission of any offence against this Act, shall be deemed to have committed the offence and shall be punished accordingly.

Prosecution and Penalties.

Punishment for
indictable
offences.

392. Any person convicted of an indictable offence under this Act shall (except where some other punishment is expressly provided)—

- (a) be liable to imprisonment for any term not exceeding four years ; or
- (b) be liable to a penalty not exceeding Two hundred pounds ; or
- (c) be liable both to imprisonment and to a pecuniary penalty within the above limits.

General penalty.

393. Any person who is guilty of any contravention or evasion of this Act for which no other penalty is provided shall be liable to a penalty of not more than Ten pounds.

Offences
punishable
summarily.

394. All offences against this Act, other than offences expressed to be indictable, shall be punishable on summary conviction.

Appeals from
court of sum-
mary jurisdic-
tion.

Ib. No. 46,
s. 107.
M.S.A. 1894,
s. 632.

395. Subject to the *Judiciary Act* 1903-1907, or any Act amending it, an appeal shall lie from any conviction, judgment, sentence, or order of a court of summary jurisdiction in any State exercising jurisdiction in relation to any offence under this Act to the Court, and in the manner provided by the law of that State for appeals from the like convictions, judgments, sentences, or orders of courts of summary jurisdiction in that State.

Limitation of
actions.
1 & 2 Geo. V.,
c. 57.

396.—(1.) No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered.

(2.) No action shall be maintainable under this Act to enforce any contribution in respect of an over-paid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.

(3.) Any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court extend any period mentioned in this section to such an extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(4.) For the purposes of this section, the expression "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

397. Subject to any special provisions of this Act, no conviction for an offence and no order for payment of money shall be made in any summary proceeding, unless that proceeding is commenced—

Limitation of
time for
summary
proceedings.
M.S.A. 1894,
s. 683.

- (a) within six months after the commission of the offence or after the cause of complaint arises, as the case may be; or
- (b) if both or either of the parties to the proceeding happen during that time to be out of Australia—in the case of a summary conviction within two months, and in the case of a summary order within six months, after they both first happen to arrive, or to be at one time, within Australia.

398. In cases where a forfeiture of wages is directed by any Court, the Court may direct that the whole or a portion of the forfeiture shall be paid to the master or owner of the ship as a recoup for loss occasioned by the misconduct of the offender.

Payment to
owner of
forfeited wages.

399. In all cases in which any Court directs payment of any sum of money by any party, being the master or owner of a ship, and that party does not pay it in accordance with the order, the Court making the order may, in addition to any other of its powers, direct the amount or the portion thereof remaining unpaid to be levied by distress and sale of the whole or any portion of the ship and her equipment, and they shall be sold accordingly.

Distress and
sale of ships
Ib. s. 693.

Evidence and Service.

400.—(1.) Whenever in the course of any legal proceeding the testimony of any witness is required in relation thereto, then upon due proof that the witness cannot be found in Australia, any deposition that the witness has previously made on oath in relation to the

Production of
depositions.
Ib. s. 691.

same subject-matter before any Judge or magistrate in the King's dominions, or any British consul elsewhere, shall be admissible in evidence, provided that—

- (a) if the deposition was made in Australia, it shall not be admissible in any proceeding instituted in Australia ;
- (b) if the proceeding is criminal, the deposition shall not be admissible unless it was made in the presence of the person accused.

(2.) A deposition so made shall be authenticated by the signature of the Judge, magistrate, or consul before whom it is made, and the Judge or magistrate shall certify, if the fact is so, that the accused was present at the taking thereof.

(3.) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding a certificate under this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

(4.) Nothing in this section shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act, or State Act.

Proof of
signature to
documents.

401.—(1.) All certificates purporting to be issued in pursuance of this Act by any official, and to be signed by him, shall be taken to have been so issued and signed unless the contrary is proved.

(2.) Every document purporting to be an office copy of any such certificate, and to be signed in the manner required, shall be admissible in evidence, and shall be deemed to be a true copy of the original.

Transmission of
documents.

(3.) In proving the transmission of any such certificate to any person required by this Act to possess such a certificate, it shall be sufficient to prove that it—

- (a) was duly received by some officer in the public service, and was by him delivered to or left at the place of abode or business of such person ; or
- (b) was forwarded to him by registered letter.

Evidence as to
execution.
M.S.A. 1894,
s. 694.
N.S.W. 1898,
No. 46, s. 118.

402. 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 without calling any attesting witness.

Admissibility of
documents in
evidence.
M.S.A. 1894,
s. 895.

403.—(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.

(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 entrusted;

and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

404. Service of any summons or process in any legal proceeding under this Act shall be deemed good service if made—

Service of
summons.
M.S.A. 1894,
s. 696.

- (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.

405. 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.

Service of
notice where
there is no
master.
Ib. s. 696 (c).

PART XI.—MISCELLANEOUS.

406. The red ensign usually worn by British merchant ships defaced as follows, namely:—

Australian flag.
Cf. N.Z. 1908,
s. 3.
Cf. M.S.A. 1894,
s. 73 (1.).
Gazette, 15 Aug.,
1903; 19 Dec.,
1908.

In the centre of the lower canton next the staff, and pointing direct to the centre of the St. George's Cross in the Union Jack in the upper canton next the staff, a white seven-pointed star, indicating the six Federated States of Australia and the Territories of the Commonwealth, and in the fly five smaller white stars, representing the Southern Cross,

is hereby declared to be the proper colours for all merchant ships registered in Australia, except in the case of any ship for the time being allowed to wear any other national colours in pursuance of a warrant from the King or from the Admiralty.

407. Unless the contrary intention appears in this Act, all penalties, forfeitures, fees, or moneys recovered or received under this Act shall be paid to the Consolidated Revenue Fund.

Application of
penalties and
moneys.
M.S.A. 1894,
ss. 699 (2.), 716.

408. As to every ship registered at any port in the British dominions, the amount of net tonnage specified in the certificate of registry shall be the tonnage of the ship unless otherwise specified.

Tonnage
register.
N.S.W. 1901,
No. 60, s. 164.

Measurement of
tonnage where
not registered.
N.S.W. 1901,
No. 60, s. 165.

409. In case the tonnage of any ship entering any port within Australia has not been registered, or any dispute arises as to the tonnage thereof, the Collector shall measure the ship in the manner prescribed by the Merchant Shipping Act.

Master to keep
copy of this
Act.
Ib. s. 172.

410. The master of every ship to which this Act applies shall provide himself with a copy thereof, and also of all regulations made by virtue of this Act with respect to the exhibition of lights, and shall at all times keep the same on board his ship.

Penalty : Five pounds.

Unregistered
ships.
M.S.A. 1894,
s. 206.

411. This Act shall apply to any unregistered British ship which ought to have been registered under any Imperial Act, as if the ship had been registered in Australia.

Power to search
vessels.

412. Any person authorized 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.

Powers of
Minister.

Ib. s. 729.

413.—(1.) The Minister, or any person authorized by him, may—

- (a) go on board any ship at any time and inspect the hull, boilers and machinery, equipments, life-saving appliances, boats, compasses, signals, or any article on board or connected with the ship ;
- (b) enter and inspect any premises ;
- (c) summon persons before him and require them to answer questions ;
- (d) require and enforce the production of documents by any person ;
- (e) administer oaths ;
- (f) muster the crew and passengers of any ship.

(2.) No person summoned to appear before the Minister or any person authorized as above shall, without just excuse, fail to attend or to answer questions, or to produce any documents he is lawfully required to produce.

Penalty : Twenty-five pounds.

Detention of
ship.
Ib. s. 692 (1.).

414.—(1.) Where under this Act a ship is to be or may be detained, any official or Customs officer may detain the ship.

(2.) If the ship after detention, or after service of any notice or order of detention upon the master, goes to sea before the ship is released by competent authority, the master shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

Taking official
to sea.

415.—(1.) No official performing any duty under this Act shall be taken to sea without his consent.

Penalty : One hundred pounds.

(2.) The owner or master of any ship in which any official is taken to sea illegally shall, in addition to any penalty for an offence against this section, be liable to pay all expenses incidental to the official's return to duty.

416. Where under this Act any ship is to be detained or may be detained, or where the requirements of this Act with regard to the ship or her officers, crew, or equipment have not been complied with, all officers of Customs may refuse to grant outward clearance to that ship or to grant her any transire or any document in the nature thereof.

Refusal of
clearance.
M.S.A. 1894,
s. 692 (3.).

417.—(1.) Subject to this Act, the Minister may prepare and sanction forms for any document required under this Act.

Forms.
Ib. s. 720.

(2.) The Minister shall cause such forms to be sealed with his seal or marked with some other distinguishing mark, and before finally issuing any document or making any alteration in a form shall cause public notice thereof to be given.

(3.) The Minister shall cause such forms as he directs to be supplied at all Customs-houses and mercantile marine offices in Australia, and he may, as prescribed, license persons to print and sell those forms.

(4.) Every document required under this Act shall be made in the prescribed form (if any), or as near thereto as circumstances permit, and unless so made shall not be admissible in evidence in any civil proceeding on the part of the owner or master of any ship.

(5.) Every such document, if made in a form purporting to be the proper form, and to be sealed or marked in accordance with this section, shall be deemed to be in the form required by this Act, unless the contrary is proved.

418. No person shall without reasonable cause use, print, or sell, any form purporting to have been approved by the Minister which as a matter of fact has not been so approved.

Penalty for
using forms not
approved.
Ib. s. 722 (2.) (b).

Penalty: Ten pounds.

419. The seal of the Minister for the purposes of this Act shall be a seal having the words "Minister for Trade and Customs, Commonwealth of Australia," in a circle surrounding the Commonwealth Coat of Arms.

Minister's seal.

420. The Minister may at any time suspend or cancel the certificate of any master mate or engineer convicted of any indictable offence and in regard to the certificate of a master mate or engineer issued under this Act, or any State Act or Regulations, may suspend or cancel it on his conviction for any offence.

Power of
Minister to
cancel
certificates
of convicted
persons.
Ib. s. 469.

421.—(1.) The owner of every ship registered in Australia or engaged in the coasting trade (not being a fishing boat) shall in each year make a return to the Minister at the prescribed time showing

Returns as
to earnings of
ships.
M.S.A. 1906,
ss. 76, 77.

the aggregate gross earnings during the preceding year of all ships so registered or engaged in the coasting trade of which he is owner, in the prescribed form :

Provided that the returns required to be furnished in regard to ships not registered in Australia shall relate only to the earnings of those ships whilst engaged in the coasting trade.

(2.) The Minister shall not publish or disclose in any way any return made under this section, or any summary of such returns other than figures only showing the percentage variations from year to year in the aggregate gross earnings returned, distinguishing, if he shall think fit, the coasting trade :

Provided that nothing in this section shall prevent the Minister from using the returns to assist him in preparing periodical estimates of the extent to which the relation between imports and exports of Australia as a whole is affected by the freight earnings of shipping which reaches this country.

(3.) No person not employed in the Department of Trade and Customs in connexion with the returns shall be permitted to see any individual return, and any person so employed who knowingly makes any disclosures of any matter which the Minister is prohibited from disclosing under this section shall be guilty of an indictable offence.

(4.) No owner shall fail to make the return required under this section or make any false statement therein.

Penalty : Twenty pounds.

Power to
suspend
provisions
inconsistent
with treaty.
N.Z. 1909, s. 58.

422. Where the Governor-General is satisfied that the enforcement of any provision of this Act, in regard to ships of any country, would be inconsistent with the obligations of the Commonwealth under a treaty made between that country and the United Kingdom, he may by Proclamation suspend the operation of that provision with regard to ships of that country so far as is necessary to enable the obligations of the Commonwealth under the treaty to be fulfilled.

Power to
suspend
application of
Act to fishing
boats, &c.
Cf. N.Z. 1908,
s. 166.

423. The Governor-General may by order declare that, subject to such conditions, limitations, and restrictions as are expressed in the order the provisions of this Act or such of them as are mentioned in the order shall not apply to fishing boats, pleasure yachts, missionary ships, or other vessels not carrying passengers or goods for hire.

Marine
Council and
Committees.
Cf. M.S.A. 1906,
s. 79.

424.—(1.) The Minister shall appoint a Marine Council of such number as may be prescribed which shall include representatives of the following interests, namely : ship-owners, underwriters, certificated navigating officers, certificated engineer officers, and seamen.

(2.) The Minister shall refer to the Marine Council for advice, all proposed Regulations with respect to the scales of officers, crew, and provisions, and also every proposal to specify the crews to be carried by particular ships.

(3.) The Minister may refer to the Marine Council for advice, any questions as to the making or altering of the Regulations, or the administration or amendment of this Act ; or may, for the purpose of advice upon any such questions, appoint Committees, including persons representative of the interests principally affected, or having special knowledge of the subject-matter.

(4.) The members of the Marine Council and of all such Committees shall be paid, out of moneys provided by the Parliament, such fees and travelling or other allowances as are prescribed.

425. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of any business under this Act, and in particular prescribing matters providing for and in relation to— Regulations

- (a) the inspection and testing of machinery and appliances for the loading and unloading of ships ;
- (b) the prevention of the use of defective machinery or appliances for the loading or unloading of ships ;
- (c) the protection of the health and the security from injury of persons engaged in the loading or unloading of ships ;
- (d) matters affecting the stability of ships ;
- (e) the safety of persons going on and coming from ships when alongside wharves or piers ;
- (f) the issue of certificates of competency as ships' cooks to qualified persons ;
- (g) the inspection, management, and control of seamen's homes ;
- (h) the fixing of penalties for breaches of the regulations, but so that no prescribed period of imprisonment shall exceed three months, and no pecuniary penalty shall exceed Fifty pounds ; and
- (i) the fixing of the fees to be paid in respect of any matters under this Act or the regulations.

Section 14.

SCHEDULE I.

(1.) SCALE OF DECK OFFICERS.

Every British ship registered in Australia or engaged in the coasting trade (other than a limited coast trade or river and bay ship of less than fifteen tons gross registered tonnage) shall be provided with a duly certificated master, and in addition with other duly certificated deck officers according to the following scale :—

Net Registered Tonnage of Ship and Length of Voyage.	Minimum number of duly certificated Deck Officers holding Certificates, proper for the Ship and Voyage, not lower than—	
	First Mate.	Second Mate.

(i) FOREIGN-GOING SHIPS AND AUSTRALIAN-TRADE SHIPS.

<i>Sailing—</i>					
Not exceeding 300 tons	..	..	..	1 (a)	..
Over 300 tons	..	..	..	1	1
<i>Steam-ships—</i>					
Not exceeding 150 tons	..	..	..	1 (a)	..
Over 150 tons but not exceeding 1,000 tons	..	..	..	1	1
Over 1,000 tons	..	..	..	1	2

(ii) LIMITED COAST-TRADE SHIPS.

Not exceeding 100 tons, running beyond 50 miles from port of departure	..	..	..	1 (a)	..
Over 100 but not exceeding 300 tons	..	..	..	1 (a) (b)	..
Over 300 tons	..	..	..	1 (b)	1

(iii) RIVER AND BAY SHIPS.

Over 50 tons, running more than 20 miles from place of departure or certificated to carry more than 500 passengers	1 (b)	..
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(a) First or only mate.

(b) Holder of a second mate's foreign-going certificate may ship as first mate of a limited coast-trade ship, or as mate of a river and bay ship (see section 15 (3.)).

SCHEDULE I.—*continued.*

(2.) SCALE OF ENGINE-ROOM OFFICERS AND GREASERS.

Every British steam-ship registered in Australia or engaged in the coasting trade (other than a limited coast-trade or river and bay ship of less than fifteen tons gross registered tonnage) shall be provided with duly certificated engine-room officers and with greasers according to the following scale :—

Nominal Horse-power of Engines.	Minimum number of duly certificated Engineers holding Certificates not lower than—					Minimum number of Engineers (certificated and non-certificated), Single Screw.	Additional Engineers (not necessarily certificated) for Steam-ships having more than one Screw.	Greasers.
	First Class Engineer.	Second Class Engineer.	First Class Coast Engineer.	Second Class Coast Engineer.	Third Class Coast Engineer.			
(i) RIVER AND BAY STEAM-SHIPS UNDER 100 N.H.P.								
Under 85	..	..	..	..	1	1	..	(a)
85 and under 100	..	..	..	..	1	1	..	1
(ii) RIVER AND BAY STEAM-SHIPS 100 N.H.P. AND OVER.								
<i>Running under 20 Miles from Place of Departure.</i>								
100 and under 200	..	..	1	..	..	1	..	1
200 and over	..	1	..	..	..	1	..	1
<i>Running 20 Miles and over from Place of Departure.</i>								
100 and under 200	1	1	..	..	..	2	..	(b)
200 and over	1	1	..	..	..	2	..	2
(iii) LIMITED COAST TRADE STEAM-SHIPS.								
<i>Running under 100 Miles from Place of Departure.</i>								
Under 40	..	..	..	..	1	1	..	..
40 and under 55	55	..	..	1	..	1	..	..
55	85	..	1	..	..	2	..	..
85	100	..	1	..	..	2	..	..
100	200	1	1	..	..	2	..	(b)
200 and over	..	1	1	..	..	3	..	2
<i>Running 100 Miles and over from Place of Departure.</i>								
Under 55	..	..	..	1	..	1	..	..
55 and under 85	..	..	1	..	..	2	..	..
85 and over	..	According to the scale prescribed for Australian-trade and Foreign-going steam-ships.						
(iv) AUSTRALIAN-TRADE AND FOREIGN-GOING STEAM-SHIPS.								
Under 50	..	1	..	..	1	..	1	
50 and under 100	..	1	..	..	2 (c)	..	..
100	170	1	..	..	3	..	1	
170	200	1	..	..	4	..	1	
200	250	1	2	..	4	1	2	
250	300	1	2	..	4	1	3	
300	400	2	2	..	5	2	3 (d)	
400 and over	..	As prescribed.						

(a) If over 55 N.H.P., one greaser.

(b) Passenger steam-ships of this class to carry one greaser in addition to two engineers.

(c) If running over 400 miles, one engineer additional (not necessarily certificated).

(d) If more than one screw, three greasers additional.

N.H.P. (nominal horse-power) to be calculated as follows :—

(a) *Reciprocating Engines.*—The sum of the squares of the diameters in inches of all the engine-room steam cylinders ÷ 30 = N.H.P.

(b) *Rotary Engines.*—Grate area in square feet $\times 1\frac{1}{4}$ = N.H.P.

Section 43.

SCHEDULE II.

SCALE OF CREW.

NOTE.—*This Schedule does not apply to river and bay ships.*

STEAM-SHIPS.

FIREMEN AND TRIMMERS.

The number of firemen and trimmers required for steam-ships fired with coal shall be in the proportion of at least one fireman or trimmer for every three and a half tons of coal consumed per diem. Provided that in the case of any particular ship the Minister may, after reference to the Marine Council, specify a greater or less number of firemen and trimmers to be required. The amount of coal consumed per diem to be ascertained by such means as are prescribed.

Provided that out of the total number of persons carried in any such steam-ship rated as firemen or trimmers, one-half at least of such total number shall be firemen; and that no sea-going steam-ship running more than one hundred miles shall in any case carry less than three firemen and that no other sea-going steam-ship shall in any case carry less than two firemen.

In regard to any class of ships not provided for in the above scale, the number of firemen and trimmers to be employed shall be such as the Minister may require in each case, and the Minister may prescribe in reference to any particular class of ships what hands other than firemen and trimmers (rated as such) shall be carried in lieu of the latter.

GREASERS.

The minimum number of greasers to be carried on steam-ships shall be as provided in Schedule I. in the last column of the Engine-room Manning Scale.

COOKS.

Steam-ships carrying 25 or more persons, including passengers and crew	Not less than one certificated cook and one assistant cook for each galley in use.
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SEAMEN.

(*Passenger Steam-ships carrying not more than Ten Passengers, and Cargo Steam-ships.*)

Under 15 tons net register	...	...	Not less than one able seaman.
15 and under 50 tons net register	...	...	Not less than two able seamen and one apprentice or boy.
50 " 100 " "	...	...	Not less than two able seamen, two ordinary seamen, and one apprentice or boy.
100 " 200 " "	...	...	Not less than four able seamen, one ordinary seaman, and one apprentice or boy.
200 " 400 " "	...	...	Not less than five able seamen, one ordinary seaman, and one apprentice or boy.
400 " 600 " "	...	...	Not less than six able seamen, one ordinary seaman, and one apprentice or boy.
600 " 1,000 " "	...	...	Not less than seven able seamen, one ordinary seaman, and one apprentice or boy.
1,000 " 1,500 " "	...	...	Not less than eight able seamen, one ordinary seaman, and one apprentice or boy.
1,500 " 2,000 " "	...	...	Not less than nine able seamen, one ordinary seaman, and one apprentice or boy.

One able seaman extra for every additional 500 tons or fraction of 500 tons above 2,000 tons net register.

One apprentice or boy extra for every additional 1,000 tons or fraction of 1,000 tons above 2,000 tons net register, but not exceeding two apprentices or boys altogether.

All vessels over 800 tons net register to carry a shipwright in addition to the seamen provided for in the above scale

SCHEDULE II.—*continued.*

SEAMEN.

(Passenger Steam-ships carrying more than Ten passengers.)

Under 15 tons gross register	...	...	Not less than one able seaman.
15 and under 50 tons gross register	...	...	Not less than two able seamen and one apprentice or boy.
50	..	100	Not less than two able seamen, two ordinary seamen, and one apprentice or boy.
100	..	200	Not less than four able seamen, one ordinary seaman, and one apprentice or boy.
200	..	400	Not less than five able seamen, one ordinary seaman, and one apprentice or boy.
400	..	600	Not less than six able seamen, one ordinary seaman, and one apprentice or boy.
600	..	1,000	Not less than seven able seamen, one ordinary seaman, and one apprentice or boy.
1,000	..	1,500	Not less than eight able seamen, one ordinary seaman, and one apprentice or boy.
1,500	..	2,000	Not less than nine able seamen, one ordinary seaman, and one apprentice or boy.

One able seaman extra for every additional 500 tons or fraction of 500 tons above 2,000 tons gross register.

One apprentice or boy extra for every additional 1,000 tons or fraction of 1,000 tons above 3,000 tons gross register, but not exceeding three apprentices or boys altogether.

All vessels over 800 tons gross register to carry a shipwright in addition to the seamen provided for in the above scale.

SAILING SHIPS.

SEAMEN.

15 and under 50 tons net register	...	...	Not less than one able seaman and one ordinary seaman.
50	..	100	Not less than two able seamen, one ordinary seaman, and one apprentice or boy.
100	..	200	Not less than three able seamen, one ordinary seaman, and one apprentice or boy.
200	..	300	Not less than four able seamen, two ordinary seamen, and one apprentice or boy.
300	..	400	Not less than five able seamen, two ordinary seamen, and one apprentice or boy.
400	..	600	Not less than six able seamen, two ordinary seamen, and one apprentice or boy.
600	..	800	Not less than seven able seamen, two ordinary seamen, and two apprentices or boys.
800	..	1,000	Not less than eight able seamen, two ordinary seamen, and three apprentices or boys.
1,000	..	1,500	Not less than ten able seamen, two ordinary seamen, and four apprentices or boys.

Two able seamen extra for every 500 tons or fraction of 500 tons that the vessel is above 1,500 tons net register.

All vessels over 600 tons net register to carry a shipwright in addition to the seamen provided for in the above scale.

SCHEDULE III.—*continued.**Conditions and Exceptions in applying Scale.*

1. The issue of provisions for which a total weekly, and no daily, amount is given in the above scale shall be reasonably distributed throughout the week.

2. The issue of soft bread under the scale shall not be required—

(a) In a ship of less than one thousand tons gross registered tonnage; or

(b) If rough weather renders the making of the bread impracticable;

but where soft bread is not issued, an equivalent amount of biscuit shall be issued instead.

3. An equal quantity of fish, up to an amount not exceeding three-quarters of a pound in any one week, may be substituted for preserved meat under the above scale.

The fish issued, whether under the scale or as a substitute, must be fresh fish, dried fish, or canned salmon or canned herrings.

4. Within the tropics, a pound and a half of preserved meat or three pounds of fresh meat may be substituted for two pounds of salt pork.

5. Fresh potatoes must be issued for at least the first eight weeks of the voyage in the case of every ship leaving a port within the home trade limits at any time between the last day of March and the first day of November, and at any other time when they can be procured at a reasonable cost.

When fresh potatoes are not so issued, an equal amount of yams, or vegetables preserved in tins, or an equivalent amount of dried or compressed potatoes or dried or compressed vegetables in the proportion of one pound to six pounds of fresh potatoes, must be issued in their place.

6. Fresh vegetables, or vegetables preserved in tins, may at any time be substituted for dried or compressed vegetables in the proportion of half a pound of fresh vegetables, or vegetables preserved in tins, to one ounce of dried or compressed vegetables.

7. A mixture of coffee and chicory containing not less than seventy-five per cent. of coffee may at any time be substituted for coffee in the proportion of five ounces of the mixture to four ounces of coffee.

8. The dried fruit issued under the above scale must be raisins, sultanas, currants, figs, or prunes.

9. The onions to be issued under the above scale must be fresh onions when in season; and when fresh onions are not in season, an equal amount of onions or vegetables preserved in tins, or an equivalent amount of dried or compressed onions or vegetables in the proportion of one ounce to half a pound of fresh onions must be issued.

10. In port—

(a) soft bread shall be issued in lieu of biscuit; and

(b) when procurable at a reasonable cost, a pound and a half of fresh meat and half a pound of fresh vegetables shall be issued daily, and when fresh meat and fresh vegetables are so issued salt and preserved meat and dried or compressed vegetables need not be issued.

11. The stokehold hands are to receive sufficient oatmeal and one quart of water extra daily while under steam.

Substitutes and Equivalents—not to be used without reasonable cause.

Fresh meat	1 ½ lb.	} To be considered equal.
Salt meat	..	..	..	1 "
Preserved meat	..	..	..	¾ "
Coffee	½ oz.	} To be considered equal.
Cocoa	..	..	..	½ "
Tea	..	..	..	¼ "
Flour	1 lb.	} To be considered equal.
Biscuit	..	..	..	1 "
Rice	..	..	..	1 "
Split peas	½ pint	} To be considered equal when issued with meat rations.
Flour	..	..	..	¼ lb.
Calavances or Haricot Beans	..	..	..	½ pint
Rice	¾ lb.	} To be considered equal.
Marmalade	..	..	..	1 lb.
Jam	..	..	..	1 lb.
Butter	½ lb.	} To be considered equal.
Mustard	..	..	..	..
Curry powder	