



Merchant Shipping Act 1894

1894 CHAPTER 60

PART I

REGISTRY.

Certificates of Mortgage and Sale.

39 Powers of mortgage and sale may be conferred by certificate.

A registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country in which the port of registry of the ship is situate, may apply to the registrar, and the registrar shall thereupon enable him to do so by granting a certificate of mortgage or a certificate of sale.

40 Requisites for certificates of mortgage and sale.

Before a certificate of mortgage or sale is granted, the applicant shall state to the registrar, and the registrar shall enter in the register book, the following particulars; (that is to say,)

- (i) the name of the person by whom the power mentioned in the certificate is to be exercised, and, in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum :
- (ii) the place where the power is to be exercised, or if no place is specified, a declaration that it may be exercised anywhere, subject to the provisions of this Act:
- (iii) the limit of time within which the power may be exercised.

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41 Restrictions on certificates of mortgage and sale.

A certificate of mortgage or sale shall not be granted so as to authorise any mortgage or sale to be made—

If the port of registry of the ship is situate in the United Kingdom, at any place within the United Kingdom ; or

If the port of registry is situate within a British possession, at any place within the same British possession ; or

If the port of registry is established by Order in Council under this Act, at that port, or within such adjoining area as is specified in the order; or

By any person not named in the certificate.

42 Contents of certificates of mortgage and sale.

A certificate of mortgage and a certificate of sale shall contain a statement of the several particulars by this Act directed to be entered in the register book on the application for the certificate, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage or sale affecting the ship or share in respect of which the certificate is given.

43 Rules as to certificates of mortgage.

The following rules shall be observed as to certificates of mortgage:—

- (1) The power shall be exercised in conformity with the directions contained in the certificate :
- (2) Every mortgage made thereunder shall be registered by the endorsement of a record thereof on the certificate by a registrar or British consular officer :
- (3) A mortgage made in good faith thereunder shall not be impeached by reason of the person by whom the power was given dying before the making of the mortgage :
- (4) Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a mortgage made in good faith to a mortgagee without notice shall not be impeached by reason of the bankruptcy of the person by whom the power was given :
- (5) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and, if there are more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which each mortgage is registered on the certificate, and not according to the date of the mortgage:
- (6) Subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate:
- (7) The discharge of any mortgage so registered on the certificate may be endorsed on the certificate by any registrar or British consular officer, on the production of such evidence as is by this Act required to be produced to the registrar on the entry of the

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discharge of a mortgage in the register book ; and on that endorsement being made, the interest, if any, which passed to the mortgagee shall vest in the same person or persons in whom it would (having regard to intervening acts and circumstances, if any,) have vested, if the mortgage had not been made:

- (8) On the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book, in such manner as to preserve its priority, any unsatisfied mortgage registered thereon, cancel the certificate, and enter the fact of the cancellation in the register book ; and every certificate so cancelled shall be void to all intents.

44 Rules as to certificates of sale.

The following rules shall be observed as to certificates of sale:—

- (1) A certificate of sale shall not be granted except for the sale of an entire ship :
- (2) The power shall be exercised in conformity with the directions contained in the certificate :
- (3) A sale made in good faith thereunder to a purchaser for valuable consideration shall not be impeached by reason of the person by whom the power was given dying before the making of such sale :
- (4) Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, a sale made in good faith to a purchaser for valuable consideration without notice shall not be impeached by reason of the bankruptcy of the person by whom the power was given:
- (5) A transfer made to a person qualified to be the owner of a British ship shall be by a bill of sale in accordance with this Act:
- (6) If the ship is sold to a person qualified to be the owner of a British ship the ship shall be registered as new; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book:
- (7) Before registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship:
- (8) The last-mentioned registrar shall retain the certificates of sale and registry, and after having endorsed on both of those instruments an entry of the fact of a sale having taken place, shall forward them to the registrar of the port appearing thereon to be the former port of registry of the ship, and the last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in that book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein:
- (9) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee:
- (10) If the ship is sold to a person not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to a registrar or British consular officer, and that registrar or

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officer shall retain the certificates of sale and registry, and, having endorsed thereon the fact of that ship having been sold to a person not qualified to be the owner of a British ship, shall forward the certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of that ship ; and that registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in that book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein:

- (11) If, on a sale being made to a person not qualified to be the owner of a British ship, default is made in the production of such certificates as are mentioned in the last rule, that person shall be considered by British law as having acquired no title to or interest in the ship; and further, the person upon whose application the certificate of sale was granted, and the person exercising the power, shall each be liable to a fine not exceeding one hundred pounds :
- (12) If no sale is made in conformity with the certificate of sale, that certificate shall be delivered to the registrar by whom the same was granted; and he shall thereupon cancel it and enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void for all intents and purposes.

45 Power of Commissioners of Customs in case of loss of certificate of mortgage or sale.

On proof at any time to the satisfaction of the Commissioners of Customs that a certificate of mortgage or sale is lost or destroyed, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then on proof of the several matters and things that have been done thereunder, the registrar may, with the sanction of the Commissioners, as circumstances require, either issue a new certificate, or direct such entries to be made in the register books, or such other things to be done, as might have been made or done if the loss, destruction, or obliteration had not taken place.

46 Revocation of certificates of mortgage and sale.

- (1) The registered owner of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the places where the power thereby given is to be exercised, may, by an instrument under his hand, authorise the registrar by whom the certificate was granted to give notice to the registrar or British consular officer at every such place that the certificate is revoked.
- (2) Notice shall thereupon be given accordingly and shall be recorded by the registrar or British consular officer receiving it, and after it is recorded the certificate shall be deemed to be revoked and of no effect so far as respects any mortgage or sale to be thereafter made at that place.
- (3) The notice after it has been recorded shall be exhibited to every person applying for the purpose of effecting or obtaining a mortgage or transfer under the certificate.
- (4) A registrar or British consular officer on recording any such notice shall state to the registrar by whom the certificate was granted whether any previous exercise of the power to which such certificate refers has taken place.