



Merchant Shipping Act 1894

1894 CHAPTER 60

PART II

MASTERS AND SEAMEN.

Provisions as to Discipline.

220 Misconduct endangering life or ship.

If a master, seaman, or apprentice belonging to a British ship, 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 tending immediately to endanger the life or limb of a person belonging to or on board the ship ; or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship 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,

he shall in respect of each offence be guilty of a misdemeanor.

221 Desertion and absence without leave.

If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows :—

- (a) If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has then earned, and also, if the desertion takes place abroad, of the wages he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him ; and also, except in the United Kingdom, he shall be liable to imprisonment for any period not exceeding twelve weeks with or without hard labour;

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- (b) If he neglects, or refuses without reasonable cause, to join his ship, or to proceed to sea in his ship, or is absent without leave at any time within twenty-four hours of the ship's sailing from a port, either at the commencement or during the progress of a voyage, or is absent at any time without leave and without sufficient reason from his ship or from his duty, he shall, if the offence does not amount to desertion, or is not treated as such by the master, be guilty of the offence of absence without leave, and be liable to forfeit out of his wages a sum not exceeding two days pay, and in addition for every twenty-four hours of absence, either a sum not exceeding six days pay, or any expenses properly incurred in hiring a substitute ; and also, except in the United Kingdom, he shall be liable to imprisonment for any period not exceeding ten weeks with or without hard labour.

222 Conveyance of deserter on board ship.

- (1) If in the United Kingdom a seaman or apprentice is guilty of the offence of desertion or of absence without leave, or otherwise absents himself from his ship without leave, the master, any mate, the owner, ship's husband, or consignee of the ship, may, with or without the assistance of the local police officers or constables, convey him on board his ship, and those officers and constables are hereby directed to give assistance if required:
- (2) Provided that if the seaman or apprentice so requires he shall first be taken before some court capable of taking cognizance of the matter to be dealt with according to law.
- (3) If it appears to the court before whom the case is brought that the seaman or apprentice has been conveyed on board or taken before the court on improper or insufficient grounds, that court may inflict on the master, mate, owner, ship's husband, or consignee, as the case may be, a fine not exceeding twenty pounds; but the infliction of that fine shall be a bar to any action for false imprisonment in respect of the arrest.

223 Provisions as to arrest and imprisonment applying out of the United Kingdom.

- (1) If out of the United Kingdom, either at the commencement or during the progress of any voyage, a seaman or apprentice is guilty of the offence of desertion or of absence without leave, or otherwise absents himself from his ship without leave, the master, any mate, the owner, ship's husband, or consignee, may in any place in Her Majesty's dominions out of the United Kingdom, with or without the assistance of the local police officers or constables (and those officers and constables are hereby directed to give assistance if required), and also at any place out of Her Majesty's dominions, if and so far as the laws in force at that place will permit, arrest him without first procuring a warrant.
- (2) A person so arresting a seaman or apprentice may in any case, and shall in case the seaman or apprentice so requires and it is practicable, convey him before some court capable of taking cognizance of the matter, to be dealt with according to law, and for that purpose may detain him in custody for a period not exceeding twenty-four hours, or such shorter time as may be necessary ; but if the seaman or apprentice does not require to be so taken before a court, or if there is no such court at or near the place, the person arresting him may at once convey him on board his ship.
- (3) If it appears to the court before whom the case is brought that an arrest under this section has been made on improper or on insufficient grounds, the master, mate, owner, ship's husband, or consignee who made the arrest, or caused it to be made, shall be

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liable to a fine not exceeding twenty pounds ; but the infliction of that fine shall be a bar to any action for false imprisonment in respect of the arrest.

- (4) If out of the United Kingdom, a seaman or apprentice is imprisoned for having been guilty of the offence of desertion or of absence without leave, or for having committed any other breach of discipline, and during his imprisonment and before his engagement is at an end, his services are required on board his ship, a justice of the peace may, on the application of the master or of the owner or his agent, notwithstanding that the period of imprisonment is not at an end, cause the seaman or apprentice to be conveyed on board his ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship, or to the owner or his agent, to be by them so conveyed.

224 Power of court to order offender to be taken on board ship.

- (1) Where a seaman or apprentice is brought before a court on the ground of the offence of desertion, or of absence without leave, or of otherwise absenting himself without leave, the court, if the master or the owner or his agent so require, may (and if out of the United Kingdom in lieu of committing him to prison), cause him to be conveyed on board his ship for the purpose of proceeding on the voyage or deliver him to the master, or any mate of the ship, or the owner, or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or by virtue of his then existing engagement may afterwards earn.
- (2) If in the United Kingdom a seaman or apprentice to the sea service intends to absent himself from his ship or his duty, he may give notice of his intention, either to the owner or to the master of the ship, not less than forty-eight hours before the time at which he ought to be on board his ship : and in the event of that notice being given, the court shall not exercise any of the powers conferred by this section for causing the offender to be conveyed on board his ship.

225 General offences against discipline.

- (1) If a seaman lawfully engaged or an apprentice to the sea service commits any of the following offences, in this Act referred to as offences against discipline, he shall be liable to be punished summarily as follows ; (that is to say,)
- (a) If he quits the ship without leave after her arrival at her port of delivery, and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay:
 - (b) If he is guilty of wilful disobedience to any lawful command, he shall be liable to imprisonment for a period not exceeding four weeks, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days pay:
 - (c) If he is guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty, he shall be liable to imprisonment for a period not exceeding twelve weeks, and also, at the discretion of the court, to forfeit for every twenty-four hours continuance of disobedience or neglect, either a sum not exceeding six days pay, or any expenses properly incurred in hiring a substitute:
 - (d) If he assaults the master or any mate or certificated engineer of the ship, he shall be liable to imprisonment for a period not exceeding twelve weeks:

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- (e) If he combines with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for a period not exceeding twelve weeks :
- (f) If he wilfully damages his ship, or embezzles or wilfully damages any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal to the loss thereby sustained, and also, at the discretion of the court, to imprisonment for a period not exceeding twelve weeks :
- (g) If he is convicted of any act of smuggling, whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to that master or owner a sum sufficient to reimburse the loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of that liability, without prejudice to any further remedy.

(2) Any imprisonment under this section may be with or without hard labour.

226 Summary remedies not to affect other remedies.

Nothing in the last preceding section or in the sections relating to the offences of desertion or absence without leave shall take away or limit any remedy by action or by summary procedure before justices which an owner or master would but for those provisions have for any breach of contract in respect of the matters constituting an offence under those sections, but an owner or master shall not be compensated more than once in respect of the same damage.

227 Penalty for false statement as to last ship or name.

- (1) If a seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or alleged last ship, or wilfully and fraudulently makes a false statement of his own name, he shall for each offence be liable to a fine not exceeding five pounds.
- (2) The fine may be deducted from any wages the seaman may earn by virtue of his engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any desertion previous to the engagement, be paid and applied in the same manner as other fines under this Act.

228 Entry of offences in official log.

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 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 subsequent arrival of the ship at any port, or if she is at the time in port before her departure therefrom, either be furnished with a copy of the entry or have the same read over distinctly and audibly to him, and 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, in either case, the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid ; and

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- (d) in any subsequent legal proceeding the entries by this section required shall, if practicable, be produced or proved, and in default of that production or proof the court hearing the case may, in their discretion, refuse to receive evidence of the offence or act of misconduct.

229 Entries and certificates of desertion abroad.

- (1) In every case of desertion from a ship in any port abroad the master shall produce the entry of the desertion in the official log-book to the person by this Act authorised to grant certificates for leaving seamen behind abroad; and that person shall thereupon make and certify a copy of the entry.
- (2) The copy shall be forthwith transmitted to the Registrar-General of Shipping and Seamen in England by the person by whom the copy is made and certified, if he is a public functionary, and if he is not, by the master, and shall be admissible in evidence in manner provided by this Act.

230 Register of deserters.

A superintendent shall keep at his office a list of the seaman who, to the best of his knowledge and belief, have deserted or failed to join their ships after signing an agreement to proceed to sea in them, and shall on request show the list to a master of a ship, and shall not be liable in respect of any entry made in good faith in the list.

231 Facilities for proving desertion in proceedings for forfeiture of wages.

- (1) Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion from a ship, it shall be sufficient for the person insisting on the forfeiture to show that the seaman or apprentice was duly engaged in or belonged to the ship, and either that he left the ship before the completion of the voyage or engagement, or, if the voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of his desertion has been duly made in the official log-book.
- (2) The desertion shall thereupon, so far as relates to any forfeiture of wages under this Part of this Act, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

232 Application of forfeitures.

- (1) Where any wages or effects are under this Act forfeited for desertion from a ship, those effects may be converted into money, and those wages and effects, or the money arising from the conversion of the effects, shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and subject to that reimbursement shall be paid into the Exchequer, and carried to the Consolidated Fund.
- (2) For the purpose of such reimbursement, the master or the owner, or his agent may, if the wages are earned subsequently to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the court in any legal proceeding relating to such wages may order them to be paid accordingly.

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- (3) Where wages are forfeited under the foregoing provisions of this Act in any case other than for desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be for the benefit of the master or owner by whom the wages are payable.

233 Decision of questions of forfeiture and deductions in suits for wages.

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.

234 Ascertainment of amount of forfeiture out of wages.

If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period herein-before mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run ; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

235 Deduction from wages, and payments to superintendents, &c of fines.

- (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 ; (that is to say,)
- (a) If the offender is discharged in the United Kingdom, and the offence, and the entry in the log-book required by this Act in respect thereof, are proved to the satisfaction, in the case of a foreign-going ship, of the superintendent before whom the offender is discharged, and in the case of a home trade ship 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;
 - (b) If the offender enters Her Majesty's naval service or is discharged abroad before the final discharge of the crew in the United Kingdom, and the offence and the entry as aforesaid are proved to the satisfaction of the officer in command of the ship he so enters, or of the consular officer or other person by whose sanction he is discharged, as the case may be, the fine shall be deducted as aforesaid and an entry made in the official log-book of the ship and signed by the officer or other person to whose satisfaction the offence is proved ; and
 - (c) On the return of the ship to the United Kingdom the master or owner shall pay the fine to the superintendent before whom the crew is discharged or in the case of a home trade ship to the superintendent at or nearest the port at which the crew are discharged.
- (2) If a master or owner fails without reasonable cause so to pay the fine, he shall for each offence be liable to a fine not exceeding six times the amount of the fine not so paid.
- (3) An act of misconduct for which any fine has been inflicted and paid by, or deducted from the wages of, the seaman shall not be otherwise punished under this Act.

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236 Penalty for enticing to desert and harbouring deserters.

- (1) If a person by any means whatever persuades or attempts to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, he shall for each offence in respect of each seaman or apprentice be liable to a fine not exceeding ten pounds.
- (2) If a person wilfully harbours or secretes a seaman or apprentice who has wilfully neglected or refused to join, or has deserted, from his ship, knowing or having reason to believe the seaman or apprentice to have so done, he shall for every seaman or apprentice so harboured or secreted be liable to a fine not exceeding twenty pounds.

237 Penalty on stowaways, and discipline of stowaways and seamen carried under compulsion.

- (1) If a person secretes himself and goes to sea in a ship without the consent of either the owner, consignee, or master, or of a mate, or of the person in charge of the ship, or of any other person entitled to give that consent, he shall be liable to a fine not exceeding twenty pounds, or, in the discretion of the court, to imprisonment, with or without hard labour, for a period not exceeding four weeks.
- (2) Every seafaring person whom the master of a ship is, under the authority of this or any other Act compelled to take on board and 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 deemed to belong to the ship, and be subject to the same laws and regulations for preserving discipline, and to the same fines and punishments for offences constituting or tending to a breach of discipline, as if he were a member of, and had signed the agreement with, the crew.

238 Deserters from foreign ships.

- (1) Where it appears to Her Majesty that due facilities are or will be given by the government of any foreign country for recovering and apprehending seamen who desert from British merchant ships in that country, Her Majesty may, by Order in Council stating that such facilities are or will be given, declare that this section shall apply in the case of such foreign country, subject to any limitations, conditions, and qualifications contained in the Order.
- (2) Where this section applies in the case of any foreign country, and a seaman or apprentice, not being a slave, deserts when within any of Her Majesty's dominions from a merchant ship belonging to a subject of that country, any court, justice, or officer that would have had cognizance of the matter if the seaman or apprentice had deserted from a British ship shall, on the application of a consular officer of the foreign country, aid in apprehending the deserter, and for that purpose may, on information given on oath, issue a warrant for his apprehension, and, on proof of the desertion, order him to be conveyed on board his ship or delivered to the master or mate of his ship, or to the owner of the ship or his agent, to be so conveyed; and any such warrant or order may be executed accordingly.
- (3) If any person harbours or secretes any deserter liable to be apprehended under this section, knowing or having reason to believe that he has deserted, that person shall for each offence be liable to a fine not exceeding ten pounds.