

Merchant Shipping Act 1894

1894 CHAPTER 60

PART IV

FISHING BOATS.

I

PROVISIONS APPLYING TO ALL FISHING BOATS AND TO THE WHOLE FISHING SERVICE.

Discipline.

376 Offences by seamen and apprentices.

- (1) If a seaman lawfully engaged to serve in any fishing boat, or an apprentice in the seafishing service, commits any of the following offences, that seaman or apprentice shall be liable to be punished snmmarily as follows:—
 - (a) For the offence of desertion,—he shall be liable to forfeit all or any part of the effects he leaves on board, and all or any part of the wages which he has then earned, and to satisfy any excess of wages paid by the skipper or owner of the fishing boat from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him:
 - (b) For the offence of absence without leave, that is to say for neglecting or refusing without reasonable cause to join or to proceed to sea in his fishing boat, or for being absent without leave at any time within twenty-four hours of his boat's sailing from any port, either at the commencement or during the progress of the engagement, or for being absent at any time without leave and without sufficient reason from his boat,—if the offence does not amount to desertion, or is not treated as such by the skipper, he shall be liable to forfeit a sum not exceeding two days wages, and in addition for every twenty-four hours of absence, either a sum not exceeding four days wages, or any expenses properly incurred in respect of a substitute:

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- (c) For the offence of wrongfully quitting the boat, that is to say for quitting the boat without leave after her arrival in port, and before she is placed in security, —he shall be liable to forfeit a sum not exceeding two weeks wages:
- (d) For the offence of wilful disobedience, that is to say for wilfully disobeying any lawful command during the engagement,—he shall be liable to imprisonment for any period not exceeding four weeks, and also to forfeit a sum not exceeding two days wages:
- (e) For the offence of continued breach of duty, that is to say for continued wilful disobedience to lawful commands during the engagement, or continued wilful omission to do his duty during the engagement,—he shall be liable to imprisonment for any period not exceeding twelve weeks, and also to forfeit for every twenty-four hours continuance of the offence either a sum not exceeding six days wages or any expenses properly incurred in respect of a substitute:
- (f) For the offence of assault, that is to say for assaulting any skipper or second hand,—he shall be liable to imprisonment for a period not exceeding twelve weeks:
- (g) For the offence of unlawful combination, that is to say for combining with any one or more of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the boat, or the progress of the trip,—he shall be liable to imprisonment for a period not exceeding twelve weeks:
- (h) For the offence of wilful damage, that is to say for wilfully damaging the boat or embezzling or wilfully damaging any of her stores or cargo,—he shall be liable to forfeit a sum equal in amount to the loss thereby sustained, and also to imprisonment for a period not exceeding twelve weeks:
- (i) For the offence of smuggling, that is to say for any act of smuggling of which he is convicted and which caused loss or damage to the skipper or owner,—he shall be liable to forfeit a sum sufficient to reimburse that loss or damage.
- (2) A skipper shall be liable to punishment for the said offences of desertion, absence without leave, wrongfully quitting the boat, wilful damage, and smuggling, as if he were a seaman.
- (3) The court before whom any skipper, seaman, or apprentice is convicted of an offence under this section may order any money forfeited for that offence to be deducted from his wages, and (if they think fit J may order the forfeiture to be applied for the benefit of the person by whom the wages are payable, or of the person injured by the commission of the offence.
- (4) The provisions of this section relating to the offences of wilful disobedience, continued breach of duty, assault, and unlawful combination shall extend to apprentices in the sea fishing service, and to sea-fishing boys as herein-after defined, whether on shore or on board.
- (5) A seaman or apprentice shall not be relieved by his refusal or neglect to go to sea or by his desertion from being liable to punishment under this section for an offence of wilful disobedience, continued breach of duty, or unlawful combination, and in addition to any such punishment shall also be liable to be punished for the offence of desertion or absence without leave.
- (6) Any imprisonment under this section may be with or without hard labour.

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377 Civil right unaffected by criminal provisions.

- (1) Nothing in the last preceding section shall takeaway or limit any remedy by action or before a court of summary jurisdiction which an owner or skipper would otherwise have for any breach of contract in respect of the matters constituting an offence under that section, but no owner or skipper shall be compensated more than once in respect of the same damage.
- (2) Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice in the sea-fishing service 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.

378 Application of forfeitures.

All effects and wages which are, under this Part of this Act, forfeited for desertion shall be applied first in reimbursing the expenses occasioned by such desertion to the skipper or owner of the boat, and, subject to that reimbursement, shall be paid into the Exchequer, and carried to the Consolidated Fund; and any court having cognizance of any proceedings in relation thereto may order the same to be applied accordingly, and where the effects forfeited do not consist of money, may order the same to be sold, and the proceeds of the sale to be applied in manner aforesaid.

379 Deserters and others may be sent back to their boats.

Whenever any seaman or apprentice is brought before any court charged with the offence (under this Part of this Act) of desertion or of absence without leave, or with otherwise absenting himself from his boat without leave, the court may at the request of the owner or skipper or his agent, in addition to, or in lieu of, imposing any punishment to which he may be liable, cause him to be conveyed on board for the purpose of fulfilling his engagement, or deliver him to the skipper to be so conveyed by him, and may order any costs or expenses properly incurred to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which he may thereafter earn under his engagement.

380 Apprehension of seamen guilty of certain offences.

- (1) Any of the following officers; namely,
 - a superindendent; or
 - the principal Board of Trade officer at a port or district, or his deputy;

may, on the information (made, if the officer so require, on oath) of the owner, skipper, second hand, or agent of a fishing boat, issue a warrant under his hand in the form approved by the Board of Trade for the apprehension of any seaman or apprentice charged with the offence (under this Part of this Act) of desertion, absence without leave, wilful disobedience, continued breach of duty, or unlawful combination.

- (2) Such warrant shall be executed by any constable of the county, borough, or place, where the offender may be, and shall continue in force for ninety-six hours from the time endorsed on the warrant by the officer issuing the same.
- (3) The seaman or apprentice when apprehended shall be brought by the constable without delay before some officer by whom a warrant may be issued under this section, and

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that officer shall then and there inquire into the case, and if the explanation of the seaman or apprentice is, in his opinion, sufficient, shall discharge him, but, if not, shall order him to join his boat and resume his duty.

- (4) If the seaman or apprentice refuses to obey that order, the officer shall order him to be detained and to be brought with convenient speed before a court of summary jurisdiction, and that court shall hear and determine in due course of law the charge made against him by the information on which he has been apprehended.
- (5) An information laid before an officer under this section need not be reduced to writing.
- (6) An officer acting under this section may take the evidence (if he thinks fit, on oath) of any person other than the seaman or apprentice charged who is able and willing to give information as to the matters in question, and for that purpose shall have the powers of a Board of Trade inspector under this Act.
- (7) A warrant issued under this section shall be valid if it is in the form approved by the Board of Trade and filled in reasonably in accordance with the directions contained in the form, and is duly signed, and shall not be invalidated by the officer who issued it dying or ceasing to hold office.

Dealing with seaman who refuses to proceed to sea, &c.

If a seaman or apprentice engaged or liable to serve on board any fishing boat neglects, or refuses to join, or deserts from, or refuses to proceed to sea in, or absents himself without leave from that fishing boat, the skipper owner or agent of the boat may, with or without the assistance of the local constables (who shall give their assistance in these cases when required by the skipper, owner, or agent) take the seaman or apprentice before some officer by whom a warrant can be issued for his apprehension under this Part of this Act, who shall deal with him as if apprehended under such a warrant.

Notice by seaman that he intends to absent himself.

- (1) If a seaman (not being a sea-fishing boy as defined by this Act) or a skipper intends to absent himself from his fishing boat or his duty, he may, when not at sea, give notice of his intention, if a skipper to the owner of the boat or the owner's agent, and if a seaman either to the owner or to the skipper, not less than forty-eight hours before the time at which he ought to be on board.
- (2) When such notice is duly given the skipper or seaman shall not be compelled to go or be brought on board for the purpose of proceeding with the voyage or engagement.

383 Calculation of wages.

- (1) The wages of a skipper seaman or apprentice of a fishing boat shall accrue from day to day.
- (2) When wages are contracted for by the voyage or trip or the season or b)' the share, and not by a stated period of time, the amount accruing from day to day shall be an amount equal to the wages for the whole voyage or trip or season, or the whole share, (as the case may be) divided by the number of days occupied in the voyage or trip or season, but a skipper seaman or apprentice shall not be entitled to more than what his share of the profits or catch made during the period he has actually served may or would have amounted to.

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(3) Where the whole time spent in the voyage or trip does not exceed the period for which the wages are to be forfeited, the forfeiture shall extend to the whole wages or share.

Facilities for proving desertion so far as concerns forfeiture of wages.

- (1) Whenever a question arises before a court whether the wages of any skipper seaman or apprentice of a fishing boat are forfeited for desertion, it shall be sufficient for the person insisting on the forfeiture to show that the skipper seaman or apprentice was duly engaged and belonged to the boat, and left the boat before the completion of the voyage or engagement.
- (2) The desertion shall thereupon, so far as relates to any forfeiture of wages, be deemed to be proved, unless the skipper seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he was not guilty of desertion.