



Merchant Shipping Act 1894

1894 CHAPTER 60

PART XIII

LEGAL PROCEEDINGS.

Prosecution of Offences.

680 Prosecution of offences.

- (1) Subject to any special provisions of this Act and to the provisions herein-after contained with respect to Scotland,—
 - (a) an offence under this Act declared to be a misdemeanor, shall be punishable by fine or by imprisonment not exceeding two years, with or without hard labour, but may, instead of being prosecuted as a misdemeanor, be prosecuted summarily in manner provided by the Summary Jurisdiction Acts, and if so prosecuted shall be punishable only with imprisonment for a term not exceeding six months, with or without hard labour, or with a fine not exceeding one hundred pounds ;
 - (b) an offence under this Act made punishable with imprisonment for any term not exceeding six months, with or without hard labour, or by a fine not exceeding one hundred pounds, shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts.
- (2) Any offence committed or fine recoverable under a byelaw made in pursuance of this Act may be prosecuted or recovered in the same manner as an offence or fine under this Act.

681 Application of Summary Jurisdiction Acts in certain cases.

- (1) The Summary Jurisdiction Acts shall, so far as applicable, apply—
 - (a) to any proceeding under this Act before a court of summary jurisdiction, whether connected with an offence punishable on summary conviction or not; and

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- (b) to the trial of any case before one justice of the peace, where, under this Act, such a justice may try the case.
- (2) Where under this Act any sum may be recovered as a fine under this Act, that sum, if recoverable before a court of summary jurisdiction, shall, in England, be recovered as a civil debt in manner provided by the Summary Jurisdiction Acts.

682 Appeal on summary conviction.

Where a person is convicted summarily in England of an offence under this Act, and the fine inflicted or the sum ordered to be paid exceeds five pounds in amount, that person may appeal to quarter sessions against the conviction in manner provided by the Summary Jurisdiction Acts.

683 Limitation of time for summary proceedings.

- (1) Subject to any special provisions of this Act neither a conviction for an offence nor an order for payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless that proceeding is commenced within six months after the commission of the offence or after the cause of complaint arises as the case may be; or, if both or either of the parties to the proceeding happen during that time to be out of the United Kingdom, unless the same is commenced, 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 the United Kingdom.
- (2) Subject to any special provisions of this Act neither a conviction for an offence nor an order for payment of money shall be made under this Act in any summary proceeding instituted in any British possession, unless that proceeding is commenced within six months after the commission of the offence or after the cause of complaint arises as the case may be; or if both or either of the parties to the proceeding happen during that time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced 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 that jurisdiction.
- (3) No law for the time being in force under any Act, ordinance, or otherwise, which limits the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.
- (4) Nothing in this section shall affect any proceeding to which the Public Authorities Protection Act, 1893, applies.

Jurisdiction.

684 Provision as to jurisdiction in case of offences.

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 in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

685 Jurisdiction over ships lying off the coasts.

- (1) Where any district within which any court, justice of the peace, or other magistrate, has jurisdiction either under this Act or under any other Act or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice, or magistrate, shall have jurisdiction over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, lake, river, or navigable water, and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court, justice, or magistrate.
- (2) The jurisdiction under this section shall be in addition to and not in derogation of any jurisdiction or power of a court under the Summary Jurisdiction Acts.

686 Jurisdiction in case of offences on board ship.

- (1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, 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.
- (2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849.

687 Offences committed by British seamen at foreign ports to be within Admiralty jurisdiction.

All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any 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 offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Damage occasioned by Foreign Ship.

688 Power to arrest foreign ship that has occasioned damage.

- (1) Whenever any injury has in any part of the world been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, and at any time thereafter that ship is found in any port or river of the United Kingdom on within three miles of the coast thereof, a judge of any court of record in the United Kingdom (and in Scotland the Court of Session and also the sheriff of the county within whose jurisdiction the ship may be) may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct

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or want of skill of the master or mariners of the ship, issue an order directed to any officer of customs or other officer named by the judge, court, or sheriff, requiring him to detain the ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of the injury, or has given security, to be approved by the judge, court, or sheriff, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injury, and to pay all costs and damages that may be awarded thereon ; and any officer of customs or other officer 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 in respect of which the application is to be made will have departed from the limits of the United Kingdom or three miles from the coast thereof, the ship may be detained for such time as will allow the application to be made, and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.
- (3) In any legal proceeding in relation to any such injury aforesaid, the person giving security shall be made defendant, or defender, 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, court, or sheriff made in relation to the security shall be conclusive evidence of the liability of the defendant or defender to the proceeding.

Provisions in case of Offences Abroad.

689 Conveyance of offenders and witnesses to United Kingdom or British possession.

- (1) Whenever any complaint is made to any British consular officer—
 - (a) that any offence against property or person has been committed at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence was committed, or within three months before that time, was employed in any British ship ; or
 - (b) that any offence on the high seas has been committed by any master, seaman, or apprentice belonging to any British ship,
 that consular officer may inquire into the case upon oath, and may, if the case so requires, take any steps in his power for the purpose of placing the offender under the necessary restraint and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognizance of the offence, in any ship belonging to Her Majesty or to any of Her subjects, to be there proceeded against according to law.
- (2) The consular officer may order the master of any ship belonging to any subject of Her Majesty bound to the United Kingdom or to such British possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that the master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of that tonnage ; and the consular officer shall endorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade require.
- (3) Any master of a ship to whose charge an offender has been so committed shall, on his ship's arrival in the United Kingdom or in such British possession as aforesaid, give the offender into the custody of some police officer or constable, and that officer or

constable shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter, and the justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas.

- (4) If any master of a ship, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford a passage and subsistence to him, or does not deliver any offender committed to his charge into the custody of some police officer or constable as herein-before directed, he shall for each offence be liable to a fine not exceeding fifty pounds.
- (5) The expense of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such British possession as aforesaid in any manner other than in the ship to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid out of moneys provided by Parliament.

690 Inquiry into cause of death on board ship.

- (1) Where a case of death happens on board any foreign-going British ship, the superintendent at the port where the crew of the ship is discharged, shall, on the arrival of the ship at that port, inquire into the cause of the death, and shall make in the official log an endorsement to the effect, either that the statement of the cause of death in the log is in his opinion true, or the contrary, according to the result of the inquiry.
- (2) A superintendent shall for the purpose of an inquiry under this section have the powers of a Board of Trade inspector under this Act; and if in the course of any such inquiry it appears to a superintendent that any such death has been caused on board the ship by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.
- (3) This section shall not apply—
 - (a) except in Scotland, to fishing boats, nor
 - (b) to ships registered in a British possession when those ships are within the jurisdiction of the government of that possession ; nor
 - (c) to pleasure yachts, or ships belonging to any of the three general lighthouse authorities.

691 Depositions to be received in evidence when witness cannot be produced.

- (1) Whenever in the course of any legal proceeding instituted in any part of Her Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of that proceeding, then upon due proof, if the proceeding is instituted in the United Kingdom that the witness cannot be found in that kingdom, or if in any British possession that he cannot be found in that possession, any deposition that the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in Her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence, provided that—
 - (a) if the deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom ; and
 - (b) if the deposition was made in any British possession, it shall not be admissible in any proceeding instituted in that British possession; and

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- (c) if the proceeding is criminal it 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 consular officer before whom it is made ; and the judge, magistrate or consular officer 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 herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or ordinance of the legislature of any colony, so far as regards that colony, or interfere with the power of any colonial legislature to make those depositions admissible in evidence, or to interfere with the practice of any court in which depositions not authenticated as herein-before mentioned are admissible.

Detention of Ship and Distress on Ship.

692 Enforcing detention of ship.

- (1) Where under this Act a ship is to be or may be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade, or any officer of customs, or any British consular officer may detain the ship, and if the ship after detention or after service on the master of any notice of or order for detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable for each offence to a fine not exceeding one hundred pounds.
- (2) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or any officer of customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also to a fine not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and the expenses ordered to be paid may be recovered in like manner as the fine.
- (3) Where under this Act a ship is to be detained an officer of customs shall, and where under this Act a ship may be detained an officer of customs may, refuse to clear that ship outwards or to grant a transire to that ship.
- (4) Where any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of customs, the proper officer shall mean, unless the context otherwise requires, the officer able to grant a clearance or transire to such ship.

693 Sums ordered to be paid leviable by distress on ship.

Where any court, justice of the peace, or other magistrate, has power to make an order directing payment to be made of any seaman's wages, fines, or other sums of money, then, if the party so directed to pay the same is the master, or owner of a ship, and the same is not paid at the time and in, manner prescribed, in the, order, the court, justice of the peace, or magistrate who made the order may, in addition to any other powers they may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture, and apparel.

Evidence, Service of Documents, owl Declarations.

694 Proof of attestation not required.

Where any document is required by this Act to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or the attesting witnesses or any of them.

695 Admissibility of documents in evidence.

- (1) Where a document is by this Act declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any court or before any person having bylaw 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 by any officer in pursuance of his duties as such officer.
- (2) A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be an examined copy or extract, or if 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 furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence for every folio of ninety words, but a person shall be entitled to have—
 - (a) a certified copy of the particulars entered by the registrar in the register book on the registry of the ship, together with a certified statement showing the ownership of the ship at the time being; and
 - (b) a certified copy of any declaration, or document, a copy of which is made evidence by this Act,on payment of one shilling for each copy.
- (3) If any such officer wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract, he shall for each offence be guilty of a misdemeanor, and be liable on conviction to imprisonment for any term not exceeding eighteen months.
- (4) If any person forges the seal, stamp, or signature of any document to which this section applies, or tenders in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall for each offence be guilty of felony, and be liable to penal servitude for a term not exceeding seven years, or to imprisonment for a term not exceeding two years, with or without hard labour, and whenever any such document has been admitted in evidence,;

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the court or the person who admitted the same may on request direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period or subject to such conditions as the court or person thinks fit.

696 Service of documents.

- (1) Where for the purposes of this Act any document is to be served on any person, that document may be served—
 - (a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode; and,
 - (b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being or appearing to be in command or charge of the ship; and,
 - (c) if the document is to be served on the master of a ship, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.
- (2) If any person obstructs the service on the master of a ship of any document under the provisions of this Act relating to the detention of ships as unseaworthy, that person shall for each offence be liable to a fine not exceeding ten pounds, and, if the owner or master of the ship is party or privy to the obstruction, he shall in respect of each offence be guilty of a misdemeanor.

697 Proof, &c. of exemption.

Any exception, exemption, proviso, excuse, or qualification, in relation to any offence under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in any information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

698 Declarations.

Any declaration required by this Act to be taken before a justice of the peace or any particular officer may be taken before a commissioner for oaths.

Application of Penalties and Costs of Prosecutions.

699 Application of penalties.

- (1) Where any court, justice of the peace, or other magistrate, imposes a fine under this Act for which no specific application is herein provided, that court, justice of the peace, or magistrate, may if they think fit direct the whole or any part of the fine to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which the fine is imposed, or to be applied in or towards payment of the expenses of the proceedings.

- (2) Subject to any directions under this section or to any specific application provided under this Act, all fines under this Act shall, notwithstanding anything in any other Act—
- (a) if recovered in the United Kingdom, be paid into the Exchequer in such manner as the Treasury may direct, and be carried to and form part of the Consolidated Fund; and
 - (b) if recovered in any British possession, be paid over into the public treasury of that possession, and form part of the public revenue thereof.

700 Expenses of prosecution of misdemeanor.

Where an offence under this Act is prosecuted as a misdemeanor, the court before whom the offence is prosecuted may in England make the same allowances and order payment of the same costs and expenses as if the offence were a felony, and in any other part of Her Majesty's dominions may make such allowances and order payment of such costs and expenses as are payable or allowable upon the trial of any misdemeanor or under any law for the time being in force therein.

701 Payment of costs of prosecution of offences committed in Admiralty jurisdiction.

Such costs and expenses of and incidental to any prosecution for a felony or misdemeanor as are by law payable out of any county or other local rate shall, where the felony or misdemeanor has been committed within the jurisdiction of the Admiralty of England be paid in the same manner and subject to the same regulations as if the felony or misdemeanor had been committed in the county in which the same is heard and determined, or, where the same is heard and determined at the Central Criminal Court, as if the same had been committed in the county of London, and all sums properly paid out of any county or other local rate in respect of those costs and expenses shall be repaid out of money provided by Parliament.

Procedure in Scotland.

702 Offences punishable as misdemeanors.

In Scotland every offence which by this Act is described as a felony or misdemeanor may be prosecuted by indictment or criminal letters at the instance of Her Majesty's Advocate before the High Court of Justiciary, or by criminal libel at the instance of the procurator fiscal of the county before the sheriff, and shall be punishable with fine and with imprisonment with or without hard labour in default of payment, or with imprisonment with or without hard labour, or with both, as the court may think fit, or in the case of felony with penal servitude where the court is competent thereto; and such court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

703 Summary proceedings.

In Scotland, all prosecutions, complaints, actions, or proceedings under this Act, other than prosecutions for felonies or misdemeanors, may be brought in a summary form before the sheriff of the county, or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature or for fines or penalties, at

the instance of the procurator fiscal of court, or at the instance of any party aggrieved, with concurrence of the procurator fiscal of court; and the court may, if it think fit, order payment by the offender or defender of the costs of the prosecution or action.

704 Form of complaint.

Where in any summary proceedings under this Act in Scotland any complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand, the complaint may contain a prayer for warrant to arrest upon the dependence.

705 Warrants on summary proceedings.

On any summary proceedings in Scotland the deliverance of the sheriff clerk or clerk of the peace shall contain warrant to arrest upon the dependence in common form, where that warrant has been prayed for in the complaint or other proceeding: Provided always, that where the apprehension of any party, with or without a warrant, is authorised by this Act, such party maybe detained in custody until he can be brought at the earliest opportunity before any two justices or the sheriff who may have jurisdiction in the place, to be dealt with as this Act directs, and no citation or induciae shall in such case be necessary.

706 Backing arrestments.

When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within Scotland, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being endorsed by the sheriff clerk, or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed.

707 Form of decree for payment of money.

Where on any summary proceedings in Scotland there is a decree for payment of any sum of money against a defender, the decree shall contain warrant for arrestment, poiding, and imprisonment in default of payment.

708 Sentence and penalties in default of defender's appearance.

In all summary complaints and proceedings for recovery of any penalty or sum of money in Scotland, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the complaint, with such costs and expenses as to the court shall seem fit: Provided that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the court, and on the same day delivering or transmitting through the post to the pursuer or his agent a copy of such reponing note ; and a certificate by the clerk of court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the court, or on any day to which the court shall then adjourn it.

709 Orders not to be quashed for want of form and to be final.

No order, decree, or sentence pronounced by any sheriff or justice of the peace in Scotland under the authority of this Act shall be quashed or vacated for any misnomer, informality, or defect of form; and all orders, decrees, and sentences so pronounced shall be final and conclusive, and not subject to suspension, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, or reduction must be brought within fourteen days of the date of the order, decree, or sentence complained of: Provided that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree, or sentence.

710 General rules, so far as applicable, to extend to penalties and proceedings in Scotland.

Nothing in this Act shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offences at the instance or by the direction of the Lord Advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the High Court in England any jurisdiction in respect of salvage in Scotland which it has not heretofore had or exercised.

Prosecution of Offences in Colonies.

711 Prosecution of offences in British possession.

Any offence under this Act shall, in any British possession, be punishable by any court or magistrate by whom an offence of a like character is ordinarily punishable, or in such other manner as may be determined by any Act or ordinance having the force of law in that possession.

Application of Part XIII.

712 Application of Part XIII.

This Part of this Act shall, except where otherwise provided, apply to the whole of Her Majesty's dominions.