

CHAPTER 144.**UNSEAWORTHY SHIPS.****ARRANGEMENT OF SECTIONS.****SECTION.**

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CHAPTER 144.**UNSEAWORTHY SHIPS.**

17 of 1906.
30 of 1930.

**An Ordinance to Repeal the Unseaworthy Ships Ordinance, 1874,
and to make other provisions in lieu thereof.**

[10TH OCTOBER, 1906.]

Short title.

1. This Ordinance may be cited as the Unseaworthy Ships Ordinance.

Sending un-
seaworthy
ship to sea a
mis-
demeanour.

2. (1) If any person sends, or attempts to send, or is party to sending, or attempting to send, a British ship to sea, in such an unseaworthy state that the life of any person is likely to be thereby endangered, he shall, in respect of each offence, be guilty of a misdemeanour, unless he proves, either that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such an unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving that proof, he may give evidence in the same manner as any other witness.

(2) If the master of a British ship knowingly takes the same to sea in such an unseaworthy state that the life of any person

is likely to be thereby endangered, he shall, in respect of each offence, be guilty of a misdemeanour, unless he proves that her going to sea in such an unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

(3) A prosecution under this section shall not be instituted otherwise than by, or with, the consent of the Governor.

(4) A person found guilty of a misdemeanour under this section shall be liable to a fine, or to imprisonment, with or without hard labour, for a period not exceeding two years.

3. (1) In every contract of service, express or implied, between the owner of a ship and the master, or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound, to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing of the ship for sea, or the sending of the ship to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the voyage.

Obligation of shipowner to use reasonable efforts to secure seaworthy ships.

(2) Nothing in this section—

(a) shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable; or

(b) shall apply to any ship employed exclusively in trading or going from place to place in any river or inland water of which the whole or part is in the Colony.

4. (1) Where a British ship, being in any port in the Colony, is an unsafe ship, that is to say, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of undermanning, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed, or for ascertaining the sufficiency of the crew, and either finally detained or released as follows—

Power to detain unsafe ships and procedure for detention.

(a) The Comptroller of Customs, if he has reason to believe, on complaint or otherwise, that a British ship is unsafe, may order the ship to be provisionally detained as an unsafe ship, for the purpose of being surveyed, or for ascertaining the sufficiency of her crew.

(b) When a ship has been provisionally detained, there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Comptroller of Customs may, if he think fit, survey the ship or muster the crew and draw up a report thereon, or appoint some competent person to perform these duties on his behalf.

(c) The Comptroller of Customs, after drawing up or receiving the report aforesaid, may either order the ship to be released, or, if in his opinion the ship is unsafe, may order her to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the ship, as he thinks fit, and may vary, or add to, any such order.

(d) Before the order for final detention is made, a copy of the report shall be served upon the master of the ship, and, within seven days after that service, the owner or master of the ship may appeal to the Supreme Court.

(e) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the Comptroller of Customs, or the person appointed under this section to survey the ship, or to muster the crew, makes that survey or musters the crew, may require that he shall be accompanied by such person as the owner or master may appoint as assessor on his behalf, and in that case, if the Comptroller of Customs and person appointed as aforesaid assessor agree, the Comptroller of Customs shall cause the ship to be detained or released accordingly, but if they differ, the Comptroller of Customs may act as if the requisition had not been made, and the owner and master shall have the like appeal, touching the report above mentioned, as is hereinbefore provided by this section.

(f) Where a ship has been provisionally detained, the Comptroller of Customs may, at any time, if he think it expedient, refer the matter to the Supreme Court.

(g) The Comptroller of Customs may, at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

(2) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served, as soon as may be, on the master of the ship.

(3) A ship detained under this section shall not be released by reason of her British register being subsequently closed.

(4) The Comptroller of Customs, or other person acting on his behalf, in pursuance of this Ordinance, shall be paid such remuneration (if any), out of the revenue of the Colony, as the Governor directs.

5. A Judge of the Supreme Court, sitting under the provisions of this Ordinance, may survey the ship, or muster the crew, or appoint some competent person to perform these duties on his behalf, and shall have the same power as the Comptroller of Customs has to order the ship to be released or finally detained.

Powers of
Judge of
Supreme
Court.

6. (1) The Chief Justice may make rules for the hearing and deciding of appeals under the provisions of this Ordinance, and such rules or any alteration or rescission thereof shall be laid before the House of Representatives for its approval, and shall come into force on publication in the *Gazette*, or on such date as may be specified on such publication, subject to disallowance by Her Majesty.

Power of
Chief Justice
to make rules.

(2) Until rules are made under the provisions of this section, the Supreme Court, when hearing and deciding appeals under this Ordinance, shall be guided, as far as local circumstances permit, by any provisions relating to Courts of Survey contained in any Statute for the time being in force in England.

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7. (1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship, or the act or default of the owner, for the provisional detention of a ship under this Ordinance, as an unsafe ship, the Colonial Government 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.

Liability for
costs and
damages.

(2) If a ship is finally detained under this Ordinance, or if it appears that a ship provisionally detained was, at the time of that detention, an unsafe ship, within the meaning of this Ordinance, the owner of the ship shall be liable to pay to the Colonial Government the costs of, and incidental to, the detention and survey of the ship, and those costs shall, without

* No rules have been made yet.

prejudice to any other remedy, be recoverable as salvage is recoverable.

(3) For the purposes of this section, the cost of, and incidental to, any proceeding before the Supreme Court, and a reasonable amount in respect of the remuneration of the Comptroller of Customs, or person acting on his behalf, shall be part of the costs of the detention and survey of the ship, and any dispute as to the amount of those costs shall be referred to a Judge of the Supreme Court, and the Judge shall, on request by the Comptroller of Customs, ascertain and certify the proper amount of those costs.

(4) An action for any costs or compensation payable by the Colonial Government, under this section, may be brought against the Comptroller of Customs, by his official title, as if he were a corporation sole.

Power to require from complainant security for costs.

8. (1) Where a complaint is made to the Comptroller of Customs that a British ship is unsafe, the Comptroller of Customs may, if he think fit, require the complainant to give security to the satisfaction of the Comptroller of Customs for the costs and compensation which he may become liable to pay, as hereinafter mentioned:

Provided that such security shall not be required where the complaint is made by one-fourth (being not less than three) of the seamen belonging to the ship, and is not, in the opinion of the Comptroller of Customs, frivolous or vexatious, and the Comptroller of Customs 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.

(2) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Colonial Government is liable, under this Ordinance, to pay the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Colonial Government all such costs and compensation as it incurs or is liable to pay in respect of the detention and survey of the ship.

Application to foreign ships of provisions as to detention.

9. Where a foreign ship, being in any port in the Colony, is an unsafe ship by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, or by reason of undermanning, the provisions of this Ordinance, with respect to the detention of ships, shall apply to that foreign ship as if she were a British ship, with the following modifications—

(i) A copy of the order for the provisional detention of the ship shall be forthwith served on the Consular Officer for the country to which the ship belongs, at or nearest to the said port;

(ii) Where a ship has been provisionally detained, the Consular Officer, on the request of the owner or master of the ship, may require that the Comptroller of Customs, or person appointed to survey the ship, shall be accompanied by such person as the Consular Officer may select, and in that case, if the Comptroller of Customs or person appointed and that other person agree, the Comptroller of Customs shall cause the ship to be detained or released accordingly; but if they differ, the Comptroller of Customs may act as if the requisition had not been made, and the owner and master shall have the like appeal to the Supreme Court, touching the report of the Comptroller of Customs, as hereinbefore provided in the case of a British ship; and

(iii) Where the owner or master of the ship appeals to the Supreme Court, the Consular Officer, on his request may appoint a competent person to be assessor in the case in lieu of the assessor, who, if the ship were a British ship, would be appointed otherwise than by the Comptroller of Customs:

Provided always that nothing in this section shall affect any foreign ship not bound to a port in the Colony which comes into any port in the Colony for any purpose other than the purpose of embarking or landing passengers, or taking in or discharging cargo, or taking in bunker coal, oil, fuel or any material for the purpose of refuelling, or taking in water or stores.

10. (1) Whenever, in any proceeding against any seaman or apprentice belonging to any ship for the offence of desertion, or absence without leave, or for otherwise being absent from his ship without leave, it is alleged by one-fourth, or if their number exceeds twenty, by not less than five, of the seamen belonging to the ship, that the ship is, by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in the ship is insufficient, the Court having cognisance of the case shall take such means as may be in its power to satisfy itself concerning the truth, or untruth, of the allegation, and shall, for that purpose, receive the evidence of the persons making the same, and may summon any other witness whose evidence it may think desirable to hear, and shall, if satisfied that the allegation is groundless, adjudicate

Survey of ships alleged by seaman to be unseaworthy.

in the case, but if not so satisfied, shall, before adjudication, cause the ship to be surveyed.

(2) A seaman or apprentice charged with desertion, or with quitting his ship without leave, shall not have any right to apply for a survey under this section, unless he has, before quitting his ship, complained to the master of the circumstances so alleged in justification.

(3) For the purposes of this section, the Court shall appoint some competent person, having no interest in the ship, her freight, or cargo, to survey the ship, and to answer any question concerning her, which the Court thinks fit to put.

(4) Such person shall survey the ship, and make his written report to the Court, including an answer to every question put to him by the Court, and the Court shall cause the report to be communicated to the parties, and, unless the opinions expressed in the report are proved to the satisfaction of the Court to be erroneous, shall determine the questions before them, in accordance with those opinions.

(5) Any person making a survey under this section, shall, for the purposes thereof, have all the powers of a person empowered by this Ordinance, to survey a ship, or muster the crew.

(6) The costs (if any) of the survey shall be determined by the Comptroller of Customs, according to a scale of fees to be fixed by him, with the approval of the Governor, and shall be paid in the first instance out of the general revenue.

(7) If it is proved that the ship is in a fit condition to proceed to sea, or that the accommodation is sufficient, as the case may be, the costs of the survey shall be paid by the person upon whose demand, or in consequence of whose allegation, the survey was made, and may be deducted by the master or owner out of the wages due, or to become due, to that person, and shall be paid over to the Comptroller, to be paid into the general revenue.

(8) If it is proved that the ship is not in a fit condition to proceed to sea, or the accommodation is insufficient, as the case may be, the master or owner of the ship shall pay the costs of the survey to the Colonial Government, and shall be liable to pay to the seaman or apprentice, who has been detained in consequence of the said proceeding before the Court, under this section, such compensation for his detention as the Court may award.

Powers of
person who
may survey
a ship.

11. (1) Any person who is empowered by this Ordinance to survey a ship, or muster the crew—

(a) may go on board any ship and inspect the same, or any part thereof, or any of the machinery, boats, equipment or articles on board thereof;

(b) may require the attendance of all such persons as he thinks fit to call before him and examine, for the purpose of his report, and may require answers or returns to any enquiries which he thinks fit to make.

(c) may require and enforce the production of all books, papers, and documents, which he considers important for the purposes of his report.

(2) Any person wilfully impeding any person lawfully exercising the powers conferred by this section, whether on board ship or elsewhere, shall be liable, on summary conviction thereof, to a fine, not exceeding ten pounds, and may be seized and detained by such person or such other person whom he may call to his assistance, until he can be conveniently brought before a Magistrate.

Penalty for
obstruction.

(3) Any person failing or refusing to attend, after being summoned in pursuance of this section, or refusing or neglecting to make any answer, or to give any return, or to produce any document in his possession, shall be liable, on summary conviction thereof, to a fine, not exceeding ten pounds.

Failure to
answer
summons.