

**THE MERCHANT SHIPPING ACT,
1854, 17 & 18 VICT. CAP. 104.,
AND
THE MERCHANT SHIPPING REPEAL
ACT, 1854, 17 & 18 VICT. CAP. 120**

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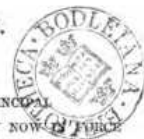
THE
MERCHANT SHIPPING ACT,
1854,

17 & 18 VICT. CAP. 104.,

AND THE
MERCHANT SHIPPING REPEAL ACT,
1854,

17 & 18 VICT. CAP. 120.

WITH A NOTICE EXPLANATORY OF THE PRINCIPAL
ALTERATIONS MADE BY THEM IN THE STATUTE LAW NOW IN FORCE
RELATING TO MERCHANT SHIPPING:



BEING

A SUPPLEMENT TO THE NINTH EDITION
OF
"Abbott on the Law of Merchant Ships and
Seamen."

BY WILLIAM SHEE,

SERJEANT-AT-LAW.

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1854.

NOTICE.

"The Merchant Shipping Act, 1854," which (except the Ninth Part, "Liability of Shipowners," already in force) will come into operation on the 1st of May, 1855, is, in the main, a consolidation of the provisions of numerous Acts of Parliament, many of which have been very recently passed, and to the exact wording of which frequent reference will for some years be necessary, in order to ascertain the rights, liabilities, and remedies of persons who have been engaged in transactions connected with Merchant Shipping.

For this reason, and because the Act contains few alterations of principle, but many of an extending character in language and detail, it has been thought better, for all the purposes of practical and professional use, to place in the hands of the readers of the last edition (1854) of Lord Tenterden's Treatise, the ready means of collating the old with the new law, than wholly to withdraw the former from their notice.

The gentlemen by whom, under the direction of the President of the Board of Trade, the Act has been drawn, have rendered this, comparatively, an easy task. It were much to be desired that in the progress through Parliament of Bills affecting important interests, the judicious course (*a*) which he has taken, of intimating, by a short notice to the members of the Legislature, the alterations contemplated by him in the existing law, were generally adopted.

On reference to the fourth section, and to the schedule, of the Merchant Shipping Repeal Act (*post*), it will be seen, that the repealed Acts for some purposes remain in force.

The Act is divided into eleven Parts:—

The First Part relates to the Board of Trade and its Functions.

The Second to the Ownership, Measurement, and Registry of British Ships.

The Third Part to Masters and Seamen.

The Fourth Part to Safety and the Prevention of Accidents.

The Fifth Part to Pilotage.

The Sixth Part to Lighthouses.

The Seventh Part to the Mercantile Marine Fund.

The Eighth Part to Wrecks, Casualties, and Salvage.

The Ninth Part to Liability of Shipowners.

The Tenth Part to Legal Procedure.

The Eleventh Part to Miscellaneous Matters.

It does not profess, as will be observed from this statement of its contents, like the Ordinance of Lewis XIV., or the chapters corresponding to it of the *Code de Commerce*, to be a Code of Maritime Law, but a Digest of Regulations for the Government and Direction of the Mercantile Marine of the United Kingdom. The general principles of the English Marine Law, as modified by former Acts of Parliament, and expounded in the Treatise of Lord Tenterden, are not affected by it in more than a few particulars; but many alterations, which may appear at first sight to be verbal, or made for the purpose of abbreviation, have been suggested by doubts and inconveniences arising on the construction of the statutes now in force, and carefully noted, as they occurred, by the officers of the Board of Trade,

(a) See a Memorandum on the Merchant Shipping Laws Consolidation Bill, by Henry Thring, Barrister-at-law, and Thomas Henry Farrer, assistant Secretary to the Board of Trade.

and the intelligent merchants and shipowners of whose advice and assistance its President has wisely availed himself.

Those who have experienced the uncertainty occasioned by the entanglement of the mutually qualifying and restraining acts relating to merchant ships and seamen, will best appreciate the great service rendered to the mercantile community, and to the legal profession, by the framers of the new Law. A multitude of confused enactments, extending over more than 1000 sections, have been condensed by them into 548. On reference to the schedule of the Merchant Shipping Repeal Act, 1854, it will be seen that nearly the whole of forty-seven statutes, beginning with the 8 Elizabeth, c. 13., "Touching Sea Marks and Mariners," and ending with the 17 & 18 Vict. c. 5., "An Act to admit Foreign Ships to the Coasting Trade," has been repealed. The substance of them, as adapted, from time to time, to the altered condition of our home and foreign trade, and the changes of our commercial policy, is now presented to us in one comprehensive and well-considered law, to understand which nothing more than attentive reading is required, and which displays in every "Part" a degree of practical and legal knowledge highly creditable to the department by which it was submitted to the Legislature.

"He shall not go to sea without this book," will be found among the rules for the master's guidance in some of the old sea-laws. A suggestion for its incorporation with this Digest of British Maritime Regulations was made and favourably received during the progress of the Bill through Parliament. Perhaps it may not be too late to give effect to it, at least as respects foreign-going vessels, by way of recommendation from the Board of Trade, before the Act comes into operation. Consular agents in foreign states, magistrates in British possessions, naval officers, and masters of ships, cannot properly discharge their duties without frequent reference to its provisions; but it ought also to be accessible, as the ship's agreement is required to be (s. 166.), to the mariners; and when a seaman claims the liberty, which this Act secures to him (s. 23.), of going ashore to make complaint to a justice of the peace, consular or naval officer, he ought to have the means of learning what his rights are, and of appealing to the written laws of his country for their protection. There is no better security for obedience to Acts of Parliament than a knowledge of their contents by all whose conduct they are intended to regulate.

References to the corresponding provisions of the repealed statutes will be found in the margin of the sections. The more important alterations of the Law will form the subject of this notice.

PART I.

THE BOARD OF TRADE, ITS GENERAL FUNCTIONS.

THE general superintendence of matters relating to the British Mercantile Marine was first committed to the Board of Trade by the Mercantile Marine Act (1850). Its powers and duties were extended and varied by the Mercantile Marine Act Amendment Act (1851), and the Merchant Shipping Law Amendment Act (1853). The new Act makes no important change in the conjoint effect of these enactments, with the exception of a provision in the seventh section, by which *all documents whatsoever*, purporting to be issued or written by or under the direction of the Board of Trade, and purporting to be either sealed with the seal of such Board, or signed by one of its secretaries or assistant-secretaries, and all documents purporting to be certificates issued by the Board, and to be sealed with its seal, or signed by one of the officers of its Marine Department, shall be received as such in evidence, without further proof, unless the contrary be shown.

PART II.

THE MEASUREMENT, OWNERSHIP, AND REGISTRY OF BRITISH SHIPS.

(1). For information respecting the new mode of measurement which could be useful for any practical purpose, the reader must, of necessity, be referred to the Act itself. The object of all rules for measuring ships is to ascertain, with the utmost possible accuracy, the space applicable in them to the carriage of cargo and passengers. After much complaint of the errors and imperfections of the existing law, a Commission appointed by Government, in 1849, recommended the adoption of a system of external instead of internal measurement. But that plan was found open to serious objections; and the one now adopted—the result of the study and scientific knowledge of Mr. Moorsom, a member of the Commission—was submitted to a large number of intelligent shipowners and others interested in and acquainted with the subject, and by them approved of. As regards the space below the tonnage-deck, the principal differences between the new plan and the one prescribed by 8 & 9 Vict. c. 89., consist in these particulars:—The number of measurements taken is greater; it increases with the size of the ship, and they are combined, according to a well-known mathematical law, commonly known as Stirling's Rule for determining the cubical contents of bodies (*a*).

The Act also contains provisions for measuring the space between decks—ships with cargo on board, steam and open vessels. The owners of existing ships are allowed, but not compelled, to adopt the new measurement.

(2). Ownership and Registry.

By the present Ship Registry Act, 8 & 9 Vict. c. 89., no persons are recognised as interested in British ships but owners and mortgagees. Ignoring equitable interests, except those of minors, heirs, legatees, and creditors holding from, or represented by, registered owners (*b*), it enacts that when ships are sold *after registry*, to any of her Majesty's subjects, they shall ("otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or equity") be transferred by bill of sale, containing a recital of the certificate of registry, or principal contents thereof (*c*); that no unregistered bill of sale shall be valid, to pass the property in any ship, or any share thereof, or for any other purpose (*d*); and that as soon as the particulars of the bill of sale are entered in the book of registry, the bill of sale shall be valid to pass the property *against all persons and to all intents and purposes*, except against subsequent purchasers and mortgagees, who shall first procure, as directed by the thirty-ninth section, the endorsement of their bills of sale or mortgages upon the certificate (*e*). However formal the contract for the sale of a ship may be, it is a nullity in a Court of Law or Equity unless it recites the certificate of registry; however fraudulent or incautious, as respects the person beneficially interested, a transfer by the registered owner may be, the title derived from him, and completed in due form upon the register, is unassailable (*f*). By the new Act, the recital of the certificate of registry in a bill of sale, or executory contract for the sale of a ship, is not required, and instead of enacting that the bill of sale when registered shall be effectual (s. 55.) to pass the property as against all persons whatsoever, and to all intents and purposes, it provides that no notice of any trust, express, implied, or constructive, shall be entered on the register, or receivable by the registrar; and that, subject to any rights and powers appearing by the register-book to be vested in any other party, the registered owner of any ship, or share therein, shall have power absolutely to dispose, in manner hereinafter mentioned, of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration (s. 43.).

(*a*) See the Memorandum before cited, p. 1. (*b*) 8 & 9 Vict. c. 89. s. 36. (*c*) Sect. 34. (*d*) Sect. 37. (*e*) Sect. 38. (*f*) Abbott, on Merchant Ships and Seamen, 9th ed. pp. 61, 62, 66, 72.

The effect of this will be to recognise the existence of unregistered interests in British ships and registered ownerships in trust, for persons not named on the register, thus making the registered owner personally responsible for breach of trust to a Court of Equity, but without prejudice, as respects *bond fide* purchasers not implicated in the fraud or breach of trust, to any title derived by them from him. The Act also empowers the Court of Chancery in England or Ireland, the Court of Session in Scotland, and any Court possessing the principal civil jurisdiction in any British possession, upon the summary application of any interested person, *ex parte*, or upon service of notice on any other person, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share, to annex thereto any terms or conditions it may think fit, to discharge such order without costs, and generally to act in the premises as the justice of the case may require (s. 65.).

This power is very large, and will enable a Court of Equity to restrain the registered owner from exercising any act of ownership inconsistent with the equitable rights of persons interested, by sale or contract, in the ship.

(3.) As the law now stands, the sale of a British registered ship can only be completed at her port of registry; her owner has no legal means of empowering the master or an agent to give, at the time and place of a contract for her sale abroad, a complete title to a purchaser. This inconvenience is remedied in the new Act by provisions which enable the owner of a ship to obtain from the registrar, at the ship's port of registry, certificates or powers of attorney, authorising within such limits as to time, place, and as to maximum amount of charge or maximum price of sale, as he may think proper, the person or persons named therein, to sell or mortgage his ship (s. 76. to 83.). When the power is executed by such mortgage, a record thereof is to be endorsed thereon by the registrar or British consular officer of the place at which the mortgage takes place (s. 79.), and the owner may at any time revoke the certificate, if limited as to place or places, by authorising the registrar by whom such certificate was granted to give notice to the registrar or consular officer at such place or places that such certificate is revoked (s. 83.). The Act contains provisions for the due record of such transactions by the registrar granting or revoking the certificate, and by the registrar or consular officer before whom the power conferred by it is exercised, and who receives notice of its revocation (s. 83.).

No certificate can be granted for the sale of less than an entire ship (s. 81.); no sale to a purchaser for valuable consideration, and no mortgage *bond fide* made shall be impeached by reason of the death of the person by whom the power was given before its exercise or of his bankruptcy or insolvency in certain cases. (ss. 80. 81.).

(4.) By the 8 & 9 Vict., c. 89. s. 12., no natural born subject who had taken the oath of allegiance to any foreign State, except under the terms of some capitulation, unless he afterwards became denizen or naturalised, and no natural born subject resident abroad, unless filling the character of member of some British factory, or agent for, or partner in, a house carrying on trade in Great Britain, could be the owner of a British registered ship. This provision was repealed by the 12 & 13 Vict., c. 29. s. 17. It is restored by the new Act to this extent:—
 "That no natural born subject who has taken the oath of allegiance to any foreign Sovereign or State, shall be entitled to be such owner as aforesaid, unless he has, subsequently to taking such oath, taken the oath of allegiance to her Majesty, and is, and continues to be, during the whole period of his so being an owner resident in some place within her Majesty's dominions, or a member of a British factory or partner in a house actually carrying on business in the United Kingdom, or in some other place within her Majesty's dominions." (s. 18.)

(5.) By the new Act the declaration of ownership and qualification for ownership, place of the ship's build, &c., required by the 8 & 9 Vict., c. 89., and 12 & 13 Vict., c. 29., to be made by the owner if only one, by both owners

if there are two, and by three owners if more than two, in order to obtain the registration and certificate of registration, must be made by *all* the owners (s. 38.). But if the declarant resides more than five miles from the port of registry, his declaration may be made before any registrar or Justice of the Peace (*ib.*), and a ship may be registered at any port, although her owners may not reside at or near to it. The port or place at which she is registered for the time being is to be considered her port of registry, or the port to which she belongs (s. 33.); and her registry may be transferred from one port to another upon the application of all parties appearing on the register to be interested in the ship (s. 89.).

(6.) Under the 8 & 9 Vict., c. 89. ss. 34, 35, 36, 37., an entry on the certificate of registry, as well as in the book of registry, was necessary to complete the title of a purchaser, and the security of a mortgagee, the date of such entry determining the priority between rival claimants. The new Act makes the register-book the sole evidence of title, and restricts the certificate of registry to the purpose of a document accompanying the ship, and identifying it as the ship of which it certifies the registry, by the particulars of its name, tonnage, build, description of its surveyor, and the names of its master and owners (s. 44.). The bond required by the 8 & 9 Vict., c. 89., to be given by the owners and masters, conditioned to the effect that the certificate of registry should be used solely for the service of the vessel, and should be given up or cancelled in certain events, is no longer required. But severe penalties are enacted for effecting the same objects, and for ensuring an indorsement on the certificate of any change of owners or master (ss. 45, 46.). And if any ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident at such port may, upon the application of the master, grant him a provisional certificate, which shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar (s. 54.).

(7.) The new Act contains provisions relative to the transfers of ships and shares therein (s. 55.), and to transmissions or devolutions of title in consequence of death, bankruptcy or insolvency, which latter (ss. 58 to 64.) are borrowed from the Companies' Clauses Consolidation Act. And if by death or marriage of a female owner the property in any ship, or share therein, becomes vested in a person not qualified to be the owner of a British registered ship, such person may on application obtain from the Court of Chancery in England or Ireland, the Court of Session in Scotland, or a Court possessing the principal civil jurisdiction in any British possession, an order for the sale of the ship and the appropriation of its proceeds (s. 62.). The Court may add such terms or conditions to the order as it thinks fit (*ib.*), and vest the right to transfer the ship in its nominee, as if he were the registered owner (s. 63.).

(8.) As respects mortgages of ships, there is one important alteration the policy of which may be matter of question. Under the provisions of the Act now in force, and of the Acts which it superseded, a mortgagee whose mortgage is "expressed and stated" in the book of registry, and on the certificate of registry, is not to be deemed the owner, nor is the mortgagor to be deemed to have ceased to be the owner, except so far as may be necessary for the purpose of rendering the ship, or shares therein, available, by sale or otherwise, for payment of the mortgage debt (a). And the Act having provided that a transfer by way of mortgage or security for debt shall be indorsed as such upon the certificate which accompanies the ship, and which may always be inspected by any person with whom the master who has charge of it may have occasion to deal, proceeds to exempt the interest of the mortgagee, in the event of the bankruptcy of the mortgagor, from the operation of the clause in the Bankrupt Laws relating to the possession, order, and disposition, as reputed owner, by a bankrupt, of property belonging to another (b). By reference

(a) 8 & 9 Vict. c. 89. s. 45.

(b) Sect. 46.

to the register at the ship's home, and by insisting on a sight of the certificate of registry elsewhere, a tradesman or lender has thus the means of learning what amount of beneficial property the apparent owner has in the ship. The certificate of registry under the new Act will afford no such information.

Mortgages are to be recorded in the order of their production (s. 67.) to the registrar, and have priority according to their dates (s. 69.). The Act also contains provisions for the sale of the ship by its mortgagees (s. 71.), the transfer (s. 73.), discharge, and transmission of mortgage interests (s. 74.), and the entry of them in the register-book (ss. 68. 73. 75.).

(9.) Registry *de novo* is now required upon every change of owners. By the new Act the registrar, at the desire of the owners, is empowered, on any change of ownership in the ship, to make registry anew (s. 88.), but such registry is not required to be made in any case but that of an alteration in the ship itself (ss. 84, 85.). With the object, it is presumed, of facilitating the sale of ships, their registers may be transferred from one port to another upon the application of all parties, whether owners or mortgagees, appearing on the register to be interested in them (s. 89.).

(10.) The remaining sections of this part (ss. 92 to 108.) contain a variety of regulations respecting the inspection of registry-books (s. 92.), the fees (s. 95.) indemnities (s. 93.), and duties of registrars in exceptional cases (s. 97.), provision for cases of infancy and incapacity (s. 99.), the grant of passes for un-registered ships in special circumstances (s. 98.), the liability to penalties of persons interested otherwise than as mortgagees in ships, though not registered as owners (s. 100.), the forgery, and admission in evidence, of documents and certified copies of them (s. 101.), and the national character of ships (ss. 102 to 106.), most of which are now for the first time enacted. Among these the more noticeable are the following:—

Any declaration or thing required by the Act to be made or done by a person interested in a ship, which he is incapable, by reason of infancy, lunacy, or other inability, from making or doing, may be made or done by his guardian or committee; or, if there be no guardian or committee, by any person appointed by any Court having jurisdiction in respect of the property of incapable persons (s. 99.).

Persons beneficially interested in ships otherwise than as mortgagees, although not registered as owners, are declared liable, separately or jointly with the registered owners, to all pecuniary penalties enforced by this Act, or any other Act, on the owners of ships or shares therein (s. 100.).

No officer of Customs shall grant a clearance or *transire* for any ship until the master has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or *transire* (s. 102.).

The doing or permitting of anything, or the carrying or permitting to be carried any papers or documents, with intent to conceal the British character of a ship from persons entitled by British law to inquire into the same, or the fraudulent assumption of a foreign character, with intent to deceive any such person, will subject the ship to forfeiture, and render the master, if privy to the commission of such an offence, guilty of a misdemeanour (s. 103.).

The like forfeiture attaches to the acquisition, by any unqualified person (except in the case of transmitted interests), of any interest, legal or beneficial, in a ship using a British flag and assuming the British character (*ib.*).

Whenever it is declared by this Act that a ship belonging to any person or body corporate, qualified, according to this Act, to be the owner of British ships, shall not be recognised as a British ship, such ship shall not be entitled to any benefits, privileges, advantages, or protection, usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character;