

(c) The master of a vessel may, with the consent of a consul of the USSR in a case where no suitably-qualified citizens of the USSR are available, complete his crew, except for radio observers, with foreign nationals; but the number of these shall not exceed one-quarter of the number of the crew, and their employment may not continue after the end of the voyage;

(d) While a vessel is navigating in tropical waters, the master may supplement the engine-room crew with a number of aliens not exceeding one-half its regular establishment.

In the cases to which paragraphs (c) and (d) of this article apply, former Russian citizens not admitted to citizenship of the USSR may be engaged as members of the crews of vessels only with the special permission in each case of a consul of the USSR.

*Article 55.* Where a contract is rescinded, the shipowner shall convey discharged persons who are citizens of the USSR to the port specified in the collective contract or, if no port is mentioned therein, then to the port where they were engaged, and provide them with full maintenance in cash and in kind until their return to the proper port. If the port where a discharged person was engaged is a foreign port, the shipowner shall convey him, at his request, either to the nearest port in the USSR or to the port where he was engaged and provide him with full maintenance until his arrival there.

Where a contract with an alien is rescinded the shipowner shall, in the absence of any provision to the contrary in the contract or in a special agreement, convey him to the port where he was engaged and provide him with full maintenance until his arrival there.

## 59. United Kingdom of Great Britain and Northern Ireland

MERCHANT SHIPPING ACT OF 25 AUGUST 1894<sup>1</sup> (57 & 58 VICT. c. 60).

An Act to consolidate Enactments relating to Merchant Shipping.

### PART I. REGISTRY

#### *Qualification for owning British ships*

1. A ship shall not be deemed to be a British ship<sup>2</sup> unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships); namely,

<sup>1</sup> *Temperley's Merchant Shipping Acts*, Fifth Ed., London, 1954, p. 3.

<sup>2</sup> . . . The term "*British ship*" is not defined in the Act. It would seem, however, that, unless she is employed by a government under letters of marque, the nationality of the owners is generally the criterion of the nationality of a vessel, at any rate so far as regards the duties and liabilities of her owners and persons belonging to her. Hence, a British-owned ship is a British ship for such purposes, even if she is not registered in this country, or if she is registered in, and carries the flag of, a foreign country. . .

Where a vessel is registered as a British ship, she cannot divest herself of her national character and the liabilities attached to it, except by ceasing to be owned wholly by persons qualified to be owners of British ships and thereupon closing her British register. . .

(a) . . . British subjects: <sup>1</sup>

(d) Bodies corporate <sup>2</sup> established under and subject to the laws of some part of Her Majesty's dominions, and having their principal place of business in those dominions: <sup>3</sup>

*Obligation to register British ships*

2. (1) Every British <sup>4</sup> ship shall, unless exempted from registry, be registered under this Act.

(2) If a ship required by this Act to be registered is not registered under this Act she shall not be recognised as a British ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces the certificate of the registry of the ship.

3. The following ships are exempted from registry under this Act—

<sup>1</sup> "*British subjects*". Before the amendment introduced by the British Nationality Act, 1948, the words used were "*natural-born British subjects*". This term was previously defined by s. 1 of the British Nationality and Status of Aliens Act, 1914 (as amended by Acts of 1918, 1922, 1933 and 1943); but these enactments have now, with immaterial exceptions, been repealed by the British Nationality Act, 1948, which does not recognise the term "*natural-born British subjects*". The term "*British subject*", which is now used in this section, includes those who have become British subjects by naturalisation. The present definition, if definition it can properly be called, of "*British subject*" will be found in s. 1 of the British Nationality Act, 1948. The status of British subject (or, in the elegant alternative phrase offered by the Act, "*Commonwealth citizen*") is dependent on citizenship either of the United Kingdom and Colonies (regarded for this purpose as a single unit) or of Canada, Australia, New Zealand, the Union of South Africa, Newfoundland (now part of Canada), India, Pakistan, Southern Rhodesia or Ceylon. The assumption is that each of these territories within the British Commonwealth will enact (if it has not already enacted) legislation defining its own "*citizenship*", and that anyone who is a local citizen *qua* any part of the British Commonwealth will be a British subject (or, if the title be preferred a "*Commonwealth citizen*") *qua* the whole of the Commonwealth. For the conditions of qualification for citizenship of the United Kingdom and colonies, reference should be made to ss. 4 to 18 of the Act. It may also be mentioned that there are special provisions in s. 2 of the Act to enable citizens of Eire (now Republic of Ireland) who desire to do so to continue their status as British subjects, provided they satisfy certain conditions. There are also provisions in the Act (see s. 3(2)) and in the Ireland Act, 1949 (see s. 3(2) and s. 4), the general effect of which is to place citizens of the Republic of Ireland (formerly Eire) and Irish ships in the same position under the M. S. Acts as British subjects and British ships respectively.

<sup>2</sup> . . . In deciding whether a British registered company is qualified to own a British ship, the nationality of the individual shareholders is for the purpose of this Act immaterial . . . The real criterion for the purpose of this Act is where "*the principal place of business*" is. This is in each case a question of fact which generally falls to be determined by an inquiry into the *locality of the control of the business of the company*. . . .

<sup>3</sup> The rest of the section was repealed by the British Nationality Act, 1948, with effect from January 1, 1949.

<sup>4</sup> . . . A ship built in England to be delivered to a foreign purchaser at a foreign port, was held not to be a British ship so as to require to be registered, although being undelivered it was still the property of a British subject. . . .

(1) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom,<sup>1</sup> or on the rivers or coasts of some British possession<sup>2</sup> within which the managing owners of the ships are resident;

(2) Ships not exceeding thirty tons burden and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

3. The following ships are exempted from registry under this Act—

(1) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of the ships are resident:

(2) Ships not exceeding thirty tons burden and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of Saint Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

*Procedure for registration*

4. (1) The following persons shall be registrars of British ships—

(a) At any port in the United Kingdom, or Isle of Man, approved by the Commissioners of Customs for the registry of ships, the chief officer of customs:

(b) In Guernsey and Jersey, the chief officers of customs together with the governor;

(c) In Malta and Gibraltar, the governor;

(d) At Calcutta, Madras, and Bombay, the port officer;

(e) At any other port in any British possession approved by the governor of the possession for the registry of ships, the chief officer of customs; or, if there is no such officer there resident, the governor of the possession in which the port is situate, or any officer appointed for the purpose by the governor;

(f) At a port of registry established by Order in Council under this Act, persons of the description in that behalf declared by the Order.

(2) Notwithstanding anything in this section Her Majesty may by Order in Council declare, with respect to any British possession named in the Order, not being the Channel Islands or the Isle of Man, the description of persons who are to be registrars of British ships in that possession.

(3) A registrar shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act.

5. Every registrar of British ships shall keep a book to be called the register book, and entries in that book shall be made in accordance with the following provisions—

<sup>1</sup> "United Kingdom" here includes the Republic of Ireland.

<sup>2</sup> "British possession". This expression is defined by the Interpretation Act, 1889, s. 18(2) as "any part of Her Majesty's dominions exclusive of the United Kingdom".

As to powers of colonial legislatures to alter provisions of this Act and to regulate coasting trade and for special position of dominions. . . .

- (i) The property in a ship shall be divided into sixty-four shares;
- (ii) Subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner;
- (iii) A person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein:

12. On the registry of a ship the registrar shall retain in his possession the following documents: namely, the surveyor's certificate, the builder's certificate, any bill of sale of the ship previously made, the copy of the condemnation (if any), and all declarations of ownership.

13. The port at which a British ship is registered for the time being shall be deemed her port of registry and the port to which she belongs.

#### *Certificate of registry*

14. On completion of the registry of a ship, the registrar shall grant a certificate of registry comprising the particulars respecting her entered in the register book, with the name of her master.

16. If the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall, in respect of each offence, be guilty of, a misdemeanour, and the ship shall be subject to forfeiture under this Act.

17. The registrar of the port of registry of a ship may, with the approval of the Commissioners of Customs, and on the delivery up to him of the certificate of registry of a ship, grant a new certificate in lieu thereof.

22. (1) If at a port not within her Majesty's dominions and not being a port of registry established by Order in Council under this Act, a ship becomes the property of persons qualified to own a British ship, the British consular officer there may grant to her master, on his application, a provisional certificate, stating—

- (a) The name of the ship;
  - (b) The time and place of her purchase, and the names of her purchasers;
  - (c) The name of her master; and
  - (d) The best particulars respecting her tonnage, build, and description which he is able to obtain;
- and shall forward a copy of the certificate at the first convenient opportunity to the Registrar-General of Shipping and Seamen.

(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date, or until the ship's arrival at a port where there is a registrar (whichever first happens), and on either of those events happening shall cease to have effect.

23. Where it appears to the Commissioners of Customs, or to the governor of a British possession, that by reason of special circumstances it

would be desirable that permission should be granted to any British ship to pass, without being previously registered, from any port in Her Majesty's dominions to any other port within Her Majesty's dominions, the Commissioners or the governor may grant a pass accordingly, and that pass shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry.

*Transfers and transmissions*

28. (1) Where the property in a registered ship or share therein is transmitted on marriage, death, bankruptcy, or otherwise to a person not qualified to own a British ship, then—

If the ship is registered in England or Ireland, the High Court; or

If the ship is registered in Scotland, the Court of Session; or

If the ship is registered in any British possession, the court having the principal civil jurisdiction in that possession; or

If the ship is registered in a port of registry established by Order in Council under this Act, the British court having the principal civil jurisdiction there;

may on application by or on behalf of the unqualified person, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise as the court direct.

*National character and flag*

68. (1) An officer of customs shall not grant a clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without such clearance or transire, she may be detained until the declaration is made.

69. (1) If a person uses the British flag and assumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship, for the purpose of making the ship appear to be a British ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same.

70. If the master or owner of a British ship does anything or permits anything to be done, or carries or permits to be carried any papers or documents, with intent to conceal the British character of the ship from any person entitled by British law to inquire into the same, or with intent to assume a foreign character, or with intent to deceive any person so entitled as aforesaid, the ship shall be subject to forfeiture under this Act; and the master, if he commits or is privy to the commission of the offence, shall in respect of each offence be guilty of a misdemeanour.

71. If an unqualified person acquires as owner, otherwise than by such transmission as herein-before provided for, any interest, either legal or

beneficial, in a ship using a British flag and assuming the British character, that interest shall be subject to forfeiture under this Act.

72. Where it is declared by this Act that a British ship shall not be recognised as a British ship, that ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships nor to use the British flag or assume the British national character, but so far as regards the payment of dues, the liability to fines and forfeiture, and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship.

#### APPLICATION OF PART I

91. This Part of this Act shall apply to the whole of Her Majesty's dominions, and to all places where Her Majesty has jurisdiction.

#### *Powers of Colonial Legislature*

735. (1) The Legislature of any British possession may by any Act or Ordinance, confirmed by Her Majesty in Council, repeal, wholly or in part, any provisions of this Act (other than those of the Third Part thereof which relate to emigrant ships), relating to ships registered in that possession; but any such Act or Ordinance shall not take effect until the approval of Her Majesty has been proclaimed in the possession, or until such time thereafter as may be fixed by the Act or Ordinance for the purpose.

(2) Where any Act or Ordinance of the Legislature of a British possession has repealed in whole or in part as respects that possession any provision of the Acts repealed by this Act, that Act or Ordinance shall have the same effect in relation to the corresponding provisions of this Act as it had in relation to the provision repealed by this Act.

736. The Legislature of a British possession may, by any Act or Ordinance, regulate the coasting trade of that British possession, subject in every case to the following conditions:

(a) The Act or Ordinance shall contain a suspending clause providing that the Act or Ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed;

(b) The Act or Ordinance shall treat all British ships (including the ships of any other British possession) in exactly the same manner as ships of the British possession in which it is made;

(c) Where by treaty made before the passing of the Merchant Shipping (Colonial) Act, 1869 (that is to say, before the thirteenth day of May, eighteen hundred and sixty-nine), Her Majesty has agreed to grant to any ships of any foreign State any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding.

#### *Exemption of Her Majesty's ships*

741. This Act shall not, except where specially provided, apply to ships belonging to Her Majesty.

*Definitions and provisions as to application of Act*

742. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say—

“Vessel” includes any ship or boat, or any other description of vessel used in navigation;

“Ship” includes every description of vessel used in navigation not propelled by oars;

“Master” includes every person (except a pilot) having command or charge of any ship;

“Seaman” includes every person (except masters, pilots, and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship;

“Name” includes a surname;

“Port” includes place.

## 60. United States of America

### (a) UNITED STATES CODE. <sup>1</sup>

#### TITLE 46. SHIPPING

##### CHAPTER 2. REGISTRY AND RECORDING

##### *General provisions as to registry and documents*

##### § 11. *Vessels entitled to registry; coastwise trade; ocean mail service contracts*

Vessels built within the United States and belonging wholly to citizens thereof; and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States; and sea-going vessels, whether steam or sail, which have been certified by the Coast Guard as safe to carry dry and perishable cargo, wherever built, which are to engage only in trade with foreign countries, with the Islands of Guam, Tutuila, Wake, Midway, and Kingman Reef, being wholly owned by citizens of the United States or corporations organized and chartered under the laws of the United States, or of any State thereof, the president and managing directors of which shall be citizens of the United States, and no others, may be registered as directed in this chapter and chapters 3, 4, 5, 6, 7, 8, and 9 of this title. Foreign-built vessels registered pursuant to this section shall not engage in the coastwise trade: *Provided*, That such vessels so admitted under the provisions of this section may contract with the Postmaster General under act March 3, 1891, ch. 519, 26. Stat. 830, so long as such vessels shall in all respects comply with the provisions and requirements of said sections.

<sup>1</sup> *United States Code*, 1952 Edition, Title 46, United States Government Printing Office, Washington, 1953, pp. 6559-6740.