

AMENDED: See Act, 1913 No. 77

New Zealand.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title. Commencement.</p> <p style="text-align: center;"><i>Provisions as to Collisions.</i></p> <p>2. Rule as to division of loss.</p> <p>3. Damages for personal injuries.</p> <p>4. Right of contribution.</p> <p>5. Repeal.</p> <p>6. Section 193 of principal Act amended.</p> <p style="text-align: center;"><i>Provisions as to Salvage.</i></p> <p>7. General duty to render assistance to persons in danger at sea.</p> | <p>8. Apportionment of salvage amongst owners, &c., of foreign ship.</p> <p style="text-align: center;"><i>General Provisions.</i></p> <p>9. Limitation of actions.</p> <p>10. Repeal.</p> <p>11. Application of preceding provisions.</p> <p>12. Act to apply to Government ships.</p> <p style="text-align: center;"><i>Amendments of Principal Act, &c.</i></p> <p>13. Section 21 of principal Act amended.</p> <p>14. Section 4 of Shipping and Seamen Amendment Act, 1911, amended.</p> <p>15. Boat drill. Repeal.</p> |
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1912, No. 53.

Title.

AN ACT to amend the Shipping and Seamen Act, 1908.

[Reserved for the signification of His Majesty's pleasure thereon.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. (1.) This Act may be cited as the Shipping and Seamen Amendment Act, 1912, and shall form part of and be read together with the Shipping and Seamen Act, 1908 (hereinafter referred to as the principal Act).

Commencement.

(2.) This Act shall come into operation on the day on which His Majesty's assent thereto is notified by the Governor by Proclamation published in the *Gazette*.

Provisions as to Collisions.

Rule as to division of loss.

2. (1.) Where, by the fault of two or more ships, damage or loss is caused to one or more of them, or to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault: Provided that—

(a.) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(b.) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and

(c.) Nothing in this section shall affect the liability of any person under a contract of carriage, or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2.) For the purposes of this Act the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

3. Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several:

Damages for personal injuries.

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

4. (1.) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault:

Right of contribution.

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of or exemption from liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2.) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

5. Subsection four of section one hundred and ninety-one of the principal Act (which provides that a ship shall be deemed in fault in a case of collision where any of the collision regulations have been infringed by that ship) is hereby repealed.

Repeal.

6. (1.) The failure of the master or person in charge of a ship to comply with the provisions of section one hundred and ninety-three of the principal Act (which imposes a duty upon masters and persons in charge of ships after a collision to stand by and assist the other ship) shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

Section 193 of principal Act amended.

(2.) Subsection two of the said section one hundred and ninety-three is hereby amended by omitting the words "and the collision

shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.”

Provisions as to Salvage.

7. (1.) The master or person in charge of a ship shall, so far as he can do so without serious danger to his own ship, her crew, and passengers (if any), render assistance to every person, even if such person is a subject of a foreign State at war with His Majesty, who is found at sea in danger of being lost; and if he fails to do so he commits a crime.

(2.) Compliance by the master or person in charge of a ship with the provisions of this section shall not affect his right or the right of any other person to salvage.

8. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign ship, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country to which the ship belongs.

General Provisions.

9. No action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of any damage or loss to another ship, her cargo or freight, or any property on board, or damages for loss of life or personal injuries suffered by any person on board, caused by the fault of the former ship, whether such ship is wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered; and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of Court, extend any such period to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been a reasonable opportunity of arresting the defendant ship within the territorial waters of New Zealand, extend any such period to an extent sufficient to give such reasonable opportunity.

10. Section ninety-one of the Judicature Act, 1908 (relating to collisions between ships), is hereby repealed.

11. (1.) The foregoing provisions of this Act shall not apply in any case in which proceedings have been taken before the commencement thereof, and all such cases shall be determined accordingly as though this Act had not been passed.

(2.) The provisions of this Act shall be applied in all cases heard and determined in any Court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered.

(3.) This Act shall apply to any persons other than the owners responsible for the fault of the ship as though the expression

General duty to render assistance to persons in danger at sea.

Apportionment of salvage amongst owners, &c., of foreign ship.

Limitation of actions.

Repeal.

Application of preceding provisions.

“owners” included such persons; and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

12. Notwithstanding the provisions of section two of the principal Act, the foregoing provisions of this Act shall extend and apply to ships belonging to the Government of New Zealand, subject, however, to the provisions of the Crown Suits Act, 1908.

Act to apply to Government ships.

Amendments of Principal Act, &c.

13. Section twenty-one of the principal Act is hereby amended by inserting, after the proviso to paragraph (b) thereof, the following:—

Section 21 of principal Act amended.

“Provided also that the Secretary may, if and subject to such conditions as he thinks fit, exempt any ship from the requirements of the preceding proviso in respect of any particular voyage if it is proved to his satisfaction that to comply with those requirements would unduly delay that ship.”

14. Section four of the Shipping and Seamen Amendment Act, 1911, is hereby amended by adding thereto the following proviso:—

Section 4 of Shipping and Seamen Amendment Act, 1911, amended.

“Provided that, in the case of a foreign-going ship trading beyond intercolonial limits, a seaman who has been left on shore as aforesaid, but who has not received a certificate or other evidence of discharge, shall not be deemed to be discharged if, before the ship leaves New Zealand, he has recovered sufficiently to enable him to perform his duties on board that ship; and the seaman shall rejoin the ship on payment by the master of the expenses necessary to enable him to do so. In the event of the seaman not rejoining the ship as aforesaid the master shall, before leaving the ship's final port in New Zealand, leave with the Superintendent at that port a certificate of discharge of the seaman.”

15. (1.) The master of every intercolonial or home-trade ship shall—

Boat drill.

- (a.) Cause his crew to be properly exercised in boat drill at such times and in such manner as may from time to time be prescribed by regulations made by the Governor in Council:
- (b.) Cause an entry to be made in the official log of the date of each drill, the time of its commencement, and the time of its termination, and also of the fact that the provisions in the boats and the equipments were then examined by him and were found in good order or otherwise, as the case may be:
- (c.) Permit any Superintendent or Surveyor, or any Collector or other officer of Customs, to be present at any drill, and to inspect any entry made in the official log in pursuance of this section.

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(2.) Every master who fails to comply faithfully with any of the provisions of this section or of the regulations made thereunder is liable to a fine not exceeding fifty pounds.

(3.) Section two hundred and two of the principal Act and the reference to that section in the Second Schedule to the Shipping and Seamen Amendment Act, 1909, are hereby repealed.

Repeal.