New Zealand.

ANALYSIS.

INSPECTION OF MACHINERY ACT 1928.

INSPECTION OF MACHINERY AMENDMENT ACTS:—

1931 No. 43.

AFFECTED BY ACTS:—

REGULATIONS:—

Fees for inspection of Machinery and Boilers: Gaz. 1928 p. 3602.

Regs re Land Air-Receivers: 1928 p. 3008.

Machinery for spraying fruit-trees exempted if less than 3 h.p.: Gaz. 1929 p. 1712.

Examn of Extra First-Class Engineers etc.: Gaz. 1918 p. 3917.

Examination of Engineers and Engine-Drivers for Stationary Engines: Gaz. 1909 p. 1223.
Amended: 1920 p. 675.
1921 p. 2387.
1923 p. 2809.
1924 p. 2701.

Examn of Locomotive and Traction-Engine Drivers: Gaz. 1915 p. 1648.
Amended: 1924 p. 2700.

Examn of Winding-Engine Drivers: Gaz. 1914 p. 718.

Examn of Electric Winding-Engine Drivers: Gaz. 1913 p. 945.
Amended: 1924 p. 2703.

Fees for Examtn of Drawings of Boilers, Lifts and Cranes: Gaz: 1931 p. 473.

Fees for Inspection of Machinery and Boilers: See now Gaz. 1931 p. 463.

Regs as to Land Air-Receivers: Gaz. 1928 p. 3008.
Amended: Gaz. 1929 p. 2179.

General Regs. as to Examtns for Certificates: Gaz. 1931 p. 2501.

1928, No. 17.

Title.

An Act to consolidate certain Enactments of the General Assembly relating to the Inspection of Machinery. [*2nd October, 1928.*

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

Short Title and commencement.

1. This Act may be cited as the Inspection of Machinery Act, 1928, and it shall come into force on the first day of January, nineteen hundred and twenty-nine.

Interpretation.
1908, No. 88, s. 2
1914, No. 53, ss. 2, 13
1927, No. 36, s. 3

2. In this Act, if not inconsistent with the context,—

"Boiler" includes—

(*a*) Any boiler or vessel in which steam is used or applied above atmospheric pressure for any purpose;

(*b*) Any vessel (other than a container for transport) used as a receiver for compressed air or gas the pressure of which exceeds thirty pounds to the square inch;

(*c*) Any vessel used as an economizer or superheater;

(*d*) The setting and all fittings and mountings, steam and other pipes, feed-pumps and injectors, and other equipment necessary to maintain the efficiency of the boiler:

"Building" means any manufactory, mill, shop, shed, or other place or building in which any machinery is erected, or where the same is kept, used, worked, or in operation:

"Inspector" means any person appointed to be an Inspector of Machinery under this Act:

"Machinery" means and includes every shaft (whether upright, oblique, or horizontal) and every drum, wheel, belt, chain, rope, band, or pulley by which the motion of the first moving-power is communicated to any machinery; and every machine, gearing, contrivance, or appliance worked by steam or water-power, or by electricity, gas, gaseous products, or compressed air, or in any other manner by which motive power may be obtained for any purpose:

"Minister" means the Minister of Marine:

"Owner" means and includes as well the owner of any boiler or machinery as also the mortgagee or lessee thereof, and any engineer, overseer, foreman, agent, or person in charge

or having the control or management of any such boiler or machinery:

"Premises" means and includes any yard, place, house, or buildings, and any farm, paddock, field, road, or place, in which any machinery is kept, worked, used, or is in operation:

"Prescribed" means prescribed by this Act or by regulations made thereunder:

"Secretary" means the Secretary of the Marine Department.

Exceptions from Act.

Machinery to which Act not to apply.
1927, No. 36, s. 3 (2), (3)

3. (1) Nothing in this Act shall apply to—

(*a*) Any machinery driven by manual or animal power; or

(*b*) Any machinery the motive power of which does not exceed one horse-power; or

(*c*) Any boiler or machinery which is declared by the Governor-General by Order in Council in that behalf not to be subject to the provisions of this Act.

(2) Any Order in Council under paragraph (*c*) of the last preceding subsection may apply generally to any particular class of boilers or machinery irrespective of the purpose for which they are used, or to such boilers or machinery only while used exclusively for any specified purpose or purposes.

Act not to apply to machinery, &c., of railways, steamships, or tramways.
1908, No. 88, s. 62
1927, No. 36, s. 25

4. Nothing in this Act shall apply to or affect any engines, boilers, or machinery used on or employed in the working of any railway or other public work constructed on behalf of His Majesty or the Government of New Zealand under the authority of any Act; nor shall this Act prejudice or in any way interfere with the powers of inspection and regulation of steamships, and the machinery thereof, contained in the Shipping and Seamen Act, 1908, or the powers of inspection and regulation of machinery, air-cylinders, and braking systems of tramways contained in the Tramways Act, 1908.

Administration.

Chief Inspector and Inspectors.
1908, No. 88, s. 4
1912, No. 23, s. 60 (3)
1914, No. 53, s. 13

5. There may from time to time be appointed some duly qualified person to be Chief Inspector of Machinery and such number of duly qualified persons as are deemed necessary to be Inspectors of Machinery.

Inspector's certificate of appointment.
1908, No. 88, s. 5
1914, No. 53, s. 13

6. Every Inspector shall be furnished with a certificate in writing of his appointment; and on his entering upon any place or premises or into any building for any of the purposes of this Act he shall, if required, produce the said certificate to the owner.

False certificate.
1908, No. 88, s. 6

7. Every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or who falsely pretends to be an Inspector under this Act, commits an offence and is liable to imprisonment, with or without hard labour, for any period not exceeding three months.

Powers and duties of Chief Inspector.
Ibid., s. 7

8. The Chief Inspector shall have all the powers of an Inspector, and he may exercise such powers alone or in conjunction with any Inspector.

Inspector to keep records and report to Secretary.
1927, No. 36, s. 4

9. Every Inspector shall keep such records of all his proceedings and shall from time to time report the same to the Secretary with such particulars and information as the Secretary may require.

Powers and duties of Inspectors.
1908, No. 88, s. 9
1914, No. 53, s. 13

10. (1) An Inspector may enter into any building or premises wherein there is placed or erected any machinery, whether the same is subject to this Act or not, or into or upon any premises where such machinery is in use or working or is kept, and may then and there inspect and examine such machinery and the appliances connected therewith or belonging thereto, in order to ascertain whether the provisions of this Act have been complied with.

(2) Such entry may be made at any time either by day or by night, and whether such machinery is in operation or working or not.

(3) In making such inspection the Inspector may call to his aid any constable or any person he may think competent to assist therein, and may require the owner of the machinery to explain the working thereof and may examine him as to the compliance with this Act in any particulars.

(4) If any person wilfully impedes the Inspector in the execution of any part of his duty under this Act, or if the owner of any such machinery refuses to give such explanation or information as aforesaid, every such person, and all persons aiding or assisting therein, shall be liable to a fine not exceeding twenty pounds and not less than five pounds.

Machinery subject to Act.

Persons having machinery subject to Act to notify Inspector.
1908, No. 88, s. 11
1914, No. 53, ss. 3, 13

11. (1) Every person who becomes the owner of any machinery subject to the provisions of this Act shall within one month thereafter send to the Inspector for the time being in charge of the district where the same is, or in which it is intended to use, keep, or work the same, a notice stating the name of such owner, the place or town where such machinery is erected, kept, or intended to be used, the nature and kind of machinery, and the nature and amount of the motive power.

(2) Every person who fails to give any such notice is liable to a fine not exceeding ten pounds.

Drawings of boilers, lifts, and cranes to be submitted to Chief Inspector of Machinery.
1927, No. 36, s. 2

12. (1) The owner or other person at whose request the first inspection of any boiler, lift, or crane is made shall, not later than the date of making application for such inspection, forward to the Chief Inspector of Machinery a drawing of the boiler, lift, or crane containing all such dimensions and other particulars as may be necessary to enable the Chief Inspector to determine whether or not any regulations made pursuant to the next succeeding subsection have been complied with.

(2) The Governor-General may from time to time, by Order in Council, make regulations—

(*a*) Prescribing standard conditions to be observed in the design and construction of boilers, lifts, and cranes so as to secure the safe working thereof:

(*b*) Prescribing the fees to be paid in respect of examination by the Chief Inspector of Machinery of drawings of boilers, lifts, and cranes.

Alterations in cylinders to be notified to Inspector.
1908, No. 224, s. 6
1914, No. 53, s. 13

13. If the cylinders of any steam-engine have been bored out or renewed at any time, or any alteration has been made in the diameter of the cylinders, notice of such alteration shall within one month be sent by the owner to the Inspector for the time being in charge of the district in which the engine is working.

Sec. 16.

1. See: HORNE v. DALGETY & CO. LTD.: 33 N.Z.L.R. 405: 15 G.L.R. 571: 16 G.L.R. 202. The decision in this case was rendered of little value by the Amdmt Act 1914 No. 53.

2. As to sufficient guarding of lift-well: O'HALLORAN v. CHAMBERS & SON LTD.: 33 N.Z.L.R. 643.

3. Sec. 68 **post** not a bar to an actn for dges based on breach of duty to guard machinery: BRADY v. ROWE: 1922 G.L.R. 62.

Secs. 16 & 17.

Refer: Secs. 2 & 3 1931 No. 48 as follows:—

"2. (1) For the purposes of section seventeen of the principal Act the term "owner" includes (in addition to the persons included in that term by virtue of the definition thereof in section two of that Act) every person for the time being is in possession of any machinery.

(2) In addition to the matters specified in subsection two of the said section seventeen, a notice under that section may require the owner of any machinery to refrain from selling, hiring, or otherwise disposing of, or parting with the possession of, such machinery until the requirements of the Inspector as specified in such notice have been complied with.

(3) With the exception of section sixteen and of section seventeen (as extended by this Act), nothing in the principal Act shall apply to any machinery, the motive power of which does not exceed six-horse power, used exclusively for farming purposes."

14. The owner of any portable threshing-machine, or any traction-engine or steam-wagon, or any portable boiler shall at all times keep his name and place of residence legibly painted thereon.

Portable machinery and boilers.
1908, No. 224, s. 10
1927, No. 36, s. 26

Employment of Young Persons.

15. (1) A person under the age of fourteen years shall not be employed in working or assisting to work at or with any machinery.

Young persons not to be employed in certain cases.
Ibid., s. 5

(2) A person under the age of fifteen years shall not be allowed to clean any part of the gearing of any machinery while the same is in motion, nor to work between the fixed and traversing part of any self-acting machine while the latter is in motion by the action of the steam-engine, water-wheel, or other mechanical power.

(3) No steam-boiler, or steam-, gas-, or oil-engine, shall at any time be left in charge or control of any person unless in the case of a male he is at least eighteen years of age, or in the case of a female she is at least twenty years of age.

(4) No hydraulic, electric, or other lift of any kind, other than a lift worked by manual power, shall be worked at any time unless it is in charge of a male attendant of at least eighteen years of age or a female attendant of at least twenty years of age :

Provided that the Minister may at any time on being satisfied that no attendant is necessary for the safe working of any particular class of lifts exempt, by notice in the *Gazette*, that class of lifts from the requirements of this subsection, and any exemption so granted may by a like notice be at any time withdrawn.

(5) In the case of a breach of any of the provisions of this section the owner of the machinery shall be liable to a fine not exceeding twenty pounds and not less than five pounds.

Guarding of Machinery.

16. (1) The moving parts of all machinery shall be so guarded as to afford adequate protection to all persons working the machinery or in connection therewith, or who may be in the vicinity thereof.

Moving parts of machinery to be guarded.
1914, No. 53, s. 4

(2) The owner of any machinery who permits any moving part thereof to be used without being so guarded is liable to a fine not exceeding twenty pounds, unless he satisfies the Court adjudicating on the matter that it was impossible to so guard such moving part.

17. (1) Where any machinery subject to the provisions of this Act, or any appliance or contrivance connected or used with such machinery or any part thereof, is or appears to an Inspector, by reason of any fault or defect therein or of insufficient fencing or guarding thereof, to be so dangerous as to be likely to cause loss of life or bodily injury to any person, he may give to the owner of such machinery a notice to that effect.

Faulty, defective, and insufficiently guarded machinery.
1927, No. 36, s. 6

(2) Such notice shall specify the fault or defect required to be remedied, or the guarding or fencing required to be provided, and may either require the owner—

(*a*) To desist from working or using such machinery or any appliance or contrivance used or connected therewith until the requirements of the Inspector as specified in such notice have been complied with ; or

(*b*) To have such machinery, appliance, or contrivance altered, or fenced, or guarded, or the faulty or defective part renewed or repaired within a certain time to be stated in such notice.

(3) The owner shall sign a duplicate copy of such notice in acknowledgment of his having received it.

(4) If the owner does not comply with the terms of such notice he shall be liable to a fine of not less than ten pounds.

Provisions affecting Boilers.

Certain provisions of Act applied to boilers.
1908, No. 88, s. 16

18. All the powers of entry and inspection and other powers and authorities conferred upon Inspectors, and all other powers, rights, duties, and authorities conferred upon or given to any person or persons, and all penalties imposed on any owner of machinery or other person under the foregoing provisions of this Act, shall, subject to the provisions hereinafter contained, be applicable and may be enforced in carrying into effect the succeeding sections of this Act relating to boilers.

Standards and appliances to be provided.
Ibid., s. 17

19. The Chief Inspector shall provide each Inspector with proper standards and appliances by which all pressure-gauges can at any time be compared and tested, and with all other appliances necessary for carrying into effect the succeeding sections of this Act relating to boilers, and shall from time to time issue to each Inspector such instructions (not inconsistent with this Act or any regulations made hereunder) as he thinks fit.

Record of first inspection.
Ibid., s. 18

20. (1) On the first inspection of a boiler the Inspector shall make and keep a complete record of all particulars necessary to ascertain the state and condition thereof.

(2) Such record shall contain particulars respecting the nature and construction of the boiler, the name of the maker, the pressure which the boiler is calculated to sustain, the mode of working it, and generally as to the state and condition thereof and of all appliances used in connection therewith, and the fitness thereof for the particular purpose to which it is applied.

Subsequent inspections.
Ibid., s. 19

21. (1) On each subsequent inspection of a boiler the Inspector shall carefully make a comparison with such standards as aforesaid, and shall record any changes since the previous inspection.

(2) If any change or alteration has been made in such boiler, or any repairs effected therein, he shall duly record the same in such manner as is prescribed by regulations made hereunder.

(3) If no change, or no material change, has occurred in the state and condition of such boiler, he shall also record the fact in manner aforesaid.

When boilers to be inspected.
Ibid., s. 21
1927, No. 36, s. 7

22. All boilers shall be inspected at least once in every year, or oftener as occasion requires:

Provided that the Governor-General may, on such conditions and restrictions as he thinks fit, direct that any class of boilers shall be inspected only once in every two years; but this provision shall not restrict or prohibit inspection if the certificate granted in respect of any boiler of such class is for a less period than two years:

Provided further that the Minister may exempt from the periodical inspection required by this section boilers or any class of boilers used for domestic purposes only which do not exceed two cubic feet in

capacity and of which the working-pressure does not exceed ten pounds to the square inch.

23. Inspection of boilers may be made at any time in the day-time at all reasonable hours, and so as not unnecessarily to impede the working or use of any boiler, unless the Inspector sees fit to exercise the powers hereinafter conferred upon him.

May be inspected at any reasonable time.
1908, No. 88, s. 22

24. (1) The Inspector shall legibly stamp every boiler inspected by him with the official number of the boiler on some conspicuous part thereof.

Official number of boiler to be stamped thereon.
1908, No. 224, s. 11

(2) Every person who disfigures, destroys, or conceals such official number is liable to a fine not exceeding twenty pounds.

25. (1) If upon inspection it appears to the Inspector that any boiler is unsafe, or that it would be dangerous to life or property if it were to continue to be used in its then state, he may give to the owner a notice requiring him—

Notice to owner of faulty boiler.
1908, No. 88, s. 23
1927, No. 36, s. 8

(*a*) To wholly desist from working or using the boiler, from a period to be fixed in such notice, until certain repairs or alterations stated in the notice have been effected ; or

(*b*) To desist from working or using such boiler, from such a period as aforesaid, at a greater pressure than that stated in such notice until any repairs or alterations mentioned in such notice have been effected.

(2) Every person to or upon whom any such notice has been delivered or served as hereinafter provided who fails during the period specified by the Inspector in such notice to desist from working such boiler according to the exigency of the notice is liable to a fine not exceeding one hundred pounds and not less than twenty pounds.

26. (1) The owner shall, before—

Owner to notify Inspector of repairs.
1908, No. 88, s. 24
1927, No. 36, s. 9

(*a*) Effecting any important structural repairs to a boiler ; or

(*b*) Adding to or taking away from a boiler any fittings or appliances ; or

(*c*) In any manner altering the construction of a boiler,—

give to the Inspector notice in writing setting forth full particulars of the proposed work.

(2) The person by whom or by whose direction any such work as aforesaid is actually done shall on completion thereof furnish a report to the Inspector giving full particulars of the nature of the work done, together with such other particulars in relation thereto as the Inspector may require.

(3) Every person who fails to comply with the provisions of this section is liable to a fine not exceeding twenty pounds.

(4) This section does not apply to cases where repairs have been effected in accordance with a notice to effect repairs given by any Inspector under the powers hereinbefore contained.

27. (1) Every person who by any means does anything to increase or that tends to increase the pressure in a boiler beyond that stated in the certificate then in force, and every person who aids or abets in increasing the pressure as aforesaid, or procures such pressure to be increased, commits an offence, and is liable to a fine not exceeding one hundred pounds.

Increasing pressure in boiler.
1908, No. 88, s. 25
1908, No. 224, s. 4
1927, No. 36, s. 10

(2) The person in charge of a boiler at the time such increased pressure is discovered, or who finding the same in a state of increased

pressure allows the same to continue at such increased pressure, shall be deemed *prima facie* to have committed an offence within the meaning of this section.

Glass water-gauges to be protected.
1908, No. 224, s. 5

28. Every glass water-gauge fitted to a boiler shall at all times be provided by the owner of the boiler with suitable protection.

Fees for Inspection.

Fees for inspection.
1927, No. 36, s. 11

29. The fees payable in respect of inspections of machinery or boilers shall be such as may from time to time be prescribed by regulations in that behalf.

Inspectors not to receive fees or other consideration.
Ibid., s. 12

30. Every Inspector commits an offence and is liable to a fine of not less than fifty pounds, and, in addition, to forfeit his office, who without the written authority of the Secretary demands or receives, directly or indirectly, from any person any money or other valuable consideration in respect of any duties performed by him pursuant to this Act, or in respect of the sale or purchase of any boiler or machinery.

Certificates of Inspection.

Special inspections of machinery or boilers.
Ibid., s. 13

31. (1) Any person who desires a special inspection or test of any machinery or boiler may make application therefor to an Inspector.

(2) There shall be payable in respect of any such inspection or test such special fee as the Minister determines in that behalf, together with all expenses incurred in making such inspection or test.

Certificate of inspection.
Ibid., s. 14

32. Where an Inspector has inspected any boiler or machinery and is satisfied,—

(*a*) In the case of a boiler, that the same is in good repair and may be safely used for the purpose for which it is then used or intended to be used; or

(*b*) In the case of a lift, that the same is securely guarded and is in good repair and may be safely used for the purpose for which it is then used or intended to be used; or

(*c*) In the case of any other machinery, that the same is adequately fenced and guarded and is in good repair and may be safely used for the purpose for which it is then used or intended to be used,—

he shall report to the Secretary accordingly, who, if satisfied that all the requirements of this Act have been complied with, shall, on payment of the prescribed fee, issue to the owner a certificate in such form as the Minister from time to time approves.

Certificate to be exhibited in conspicuous place.
1908, No. 88, s. 30

33. (1) The certificate granted to the owner of any machinery or boiler shall be exhibited in some conspicuous place, to be determined by the Inspector, where it can be seen by all persons working at or with any machinery or boiler; and every owner who neglects so to exhibit such certificate is liable to a fine not exceeding twenty pounds.

(2) In any proceedings under this section it shall be a sufficient defence if the defendant satisfies the Court—

(*a*) That, owing to the size of the boiler or machinery, the locality where it was working, or other sufficient cause, there was no conspicuous place in which the certificate could reasonably be affixed; and also

(*b*) That at all reasonable times he kept the certificate available for inspection by all persons working at or with the boiler or machinery, and also by the Inspector and all members of the Police Force.

Duration of certificate of boiler.
1908, No. 88, s. 31
1927, No. 36, s. 15

34. (1) The certificate granted to the owner of a boiler shall remain in force for the period stated in the certificate.

(2) Such period shall not exceed one year, except in respect of a boiler brought within the provisions of section twenty-two hereof, in which case the certificate may be granted for any period not exceeding two years:

Provided that the Secretary on the report of an Inspector may at any time cancel or suspend any certificate where he deems it necessary in the interests of the public safety so to do.

When machinery to be inspected.
Ibid., s. 16

35. All machinery shall be inspected at intervals as follows:—

(*a*) Machinery used solely for threshing, chaff-cutting, or crushing grain and not worked for more than six months in any year shall be inspected at least once in every two years.

(*b*) Lifts shall be inspected at intervals of not more than six months.

(*c*) All other machinery shall be inspected at least once in each year.

Duration of certificate of machinery
Ibid., s. 17

36. (1) Save as provided in subsection three of this section, the certificate granted to the owner of any machinery shall remain in force for such period as may be stated in the certificate in that behalf.

(2) Such period shall not exceed—

(*a*) Six months in the case of a lift; or

(*b*) Two years in the case of machinery used solely for threshing, chaff-cutting, or crushing grain and not worked for more than six months in any one year; or

(*c*) One year in the case of any other class of machinery.

(3) The Secretary may on the report of an Inspector at any time cancel or suspend any certificate if any material alteration is made in or to the machinery, or if the machinery is not at all times kept securely fenced and guarded and in good repair and fit to be safely used for the purpose for which it is used, or in any other case in which he deems such cancellation or suspension to be necessary in the interests of safety.

Temporary use of machinery without machinery certificate.
Ibid., s. 18

37. Notwithstanding anything to the contrary in this Act, the owner of any machinery may, pursuant to a permit in that behalf under the hand of an Inspector, use such machinery before it is first inspected under this Act or after the expiration of the period for which any certificate in respect thereof has been granted, but for such time only and subject to such conditions as may be specified in such permit.

Working without a certificate.
1908, No. 88, s. 33
1927, No. 36, s. 19

38. Every owner who works or uses a boiler or machinery in respect of which a certificate has not been issued, or for which a certificate is not in force, is liable to a fine not exceeding one hundred pounds.

Duties and Liabilities of Owners of Boilers and Machinery.

Notice of sale, &c., of boiler or machinery.
1908, No. 88, s. 34

39. (1) Where a person sells or absolutely disposes of a boiler or machinery to any person, the seller shall forthwith give notice to the Inspector stating the name, occupation, and abode of the person to whom such sale or disposition has been made.

(2) Where a boiler or machinery is let on hire, or for a certain term, or to be returned to the owner, a similar notice shall in every such case be given to the Inspector by the lessor or owner in manner aforesaid.

(3) If default is made in giving any such notice, the person offending is liable to a fine not exceeding ten pounds.

Liability of owner in first instance.
1908, No. 88, s. 35

40. (1) The owner of a boiler or machinery in respect of which an offence has been committed against this Act, and for which a fine may be imposed, shall in every case (save as hereinafter provided) be deemed in the first instance to have committed the offence and be liable to pay the fine; but an owner who has been proceeded against by an Inspector is entitled, upon complaint or information duly made by such owner, to have any agent, servant, or workman brought before the Court at the time appointed for hearing the complaint made against him by the Inspector.

(2) If, after the commission of the offence has been proved, the owner proves to the satisfaction of the Court that he had used due diligence to enforce the execution of this Act and that the said agent, servant, or workman had committed the act in question without his knowledge, consent, or connivance, the said agent, servant, or workman shall be convicted of the offence and shall pay the fine instead of the owner.

Proceedings against actual offender.
Ibid., s. 36

41. Where it appears to an Inspector at the time of discovering the offence that the owner had used all due diligence to enforce the execution of this Act, and also by what person the offence was committed, and that it had been committed without the personal knowledge, consent, or connivance of the owner and in contravention of his orders, then the Inspector may proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the owner.

Notice of intention to prosecute.
Ibid., s. 37

42. Where an Inspector intends to prefer a complaint against an owner of machinery that a young person has been employed in the management or in the working or control thereof, as the case may be, or that any part of the machinery, or hoist, or any wheel-race, is not securely fenced and protected, he shall give ten days' notice previous to the day fixed for hearing the complaint; and if the party complained against intends to bring forward any person skilled in the construction of the machinery as a witness at the hearing of the case he shall give notice of such intention to the Inspector at least forty-eight hours prior to the hearing of the case.

When owners and mortgagees not liable.
Ibid., s. 38

43. (1). No person shall be liable to the provisions of this Act as an owner of machinery or a boiler unless the same is under his immediate power or control, nor shall any mortgagee of machinery or a boiler be liable as hereinbefore mentioned unless he is in actual possession thereof or has the same under his immediate power or control.

(2) For the purposes of this section the words "immediate power or control" mean where the machinery or boiler is worked or used by the owner of such machinery personally, or by his agents, servants, or others under his orders or directions, and for his benefit or profit.

(3) Nothing herein shall exempt any corporate body from liability under this Act by reason only that any such machinery or boiler is under the control of any directors, secretary, manager, or other person elected or employed by such corporate body for the benefit of or on behalf of such body.

REFER: S. 40 (2) 1921 No. 42: Fines imposed under Factories Act to be in lieu of any fine imposed hereunder in respect of the corresponding default under this Act.

Inquiries as to Accidents.

Inspector to be notified of accident.
1927, No. 36, s. 20

44. (1) Where loss of life or serious bodily injury to any person occurs by reason of the explosion of a boiler, or as the result of an accident caused by machinery, the owner of the boiler or machinery shall within twenty-four hours after such explosion or accident send notice thereof to an Inspector at his office or usual place of residence, and the Inspector shall forthwith transmit such notice to the Secretary.

(2) So soon as practicable after receiving such notice or otherwise becoming aware of such explosion or accident the Inspector, or some other Inspector, shall go to the place where the explosion or accident occurred and make such inquiry as he thinks fit as to the cause of the explosion or accident, and for that purpose may examine the owner of the boiler or machinery and all persons employed about the boiler or machinery, and shall report to the Secretary the result of such inquiry.

(3) It shall not be lawful for any person to do any act likely to prevent the discovery of the cause of the explosion or accident until the Inspector has visited the scene thereof and completed his inquiry:

Provided that nothing in this subsection shall prohibit the owner from doing anything reasonably necessary to prevent further damage or injury to any person or property or from disconnecting a boiler from others connected with it.

(4) Every person commits an offence and is liable on summary conviction to a fine of not less than ten pounds who—

(*a*) Fails to give the notice required by subsection one hereof; or,

(*b*) Except as authorized in the proviso to the last preceding subsection, does or causes to be done any act likely to prevent the discovery of the cause of the explosion or accident.

Inquiry into cause of accident.
1908, No. 88, s. 40

45. (1) In the event of an accident happening to machinery or a boiler (whether such machinery or boiler comes under the provisions of this Act or not), or where, by reason of such accident, any loss of life has happened or serious bodily injury occurred to any person, the Minister may direct an inquiry to be held before a Magistrate, together with a person skilled in the use and construction of such machinery or boiler to be appointed by the Minister.

(2) The Magistrate, together with such person, shall have power to hold such inquiry at such times and places as the Minister appoints, and shall report on the cause of such accident to the Minister.

(3) With respect to the summoning and attendance of witnesses at or upon any such inquiry, and the examination of such witnesses upon oath, every such Magistrate shall have all the powers which he would have or might exercise in any case within his ordinary jurisdiction under the Justices of the Peace Act, 1927.

Examination and Certificates of Engine-drivers.

Winding-engine drivers.
1914, No. 53, s. 7
1927, No. 36, s. 30

46. (1) Every person employed or acting in the capacity of engine-driver who is in charge of any winding-engine or winding machinery by means whereof persons are drawn up, down, or along any shaft, pit, or inclined plane or level in any mine or coal-mine, or by means whereof

material is raised or lowered when a shaft is being sunk in any mine or coal-mine, shall be the holder of a winding-engine driver's certificate.

Traction-engine drivers.

(2) Every person who is in charge of a steam traction-engine while being propelled or moved from place to place by its own motive power and machinery shall be the holder of a traction-engine driver's certificate, and every person who is in charge of a steam locomotive while being propelled or moved from place to place by its own motive power and machinery shall be the holder of a locomotive driver's certificate:

Provided that the holder of a locomotive and traction-engine driver's certificate heretofore granted under the Inspection of Machinery Act, 1908, shall be entitled to have charge of and drive either a steam traction-engine or a steam locomotive; and provided also that any person who may hereafter obtain a certificate to be called a locomotive and traction-engine driver's certificate may have charge of and drive either a steam traction-engine or a steam locomotive:

Provided further that this subsection shall not apply to engines and boilers used or employed in the working of any railway the property of His Majesty.

Examination and certificate of competency.

(3) For the purpose of this section every person shall pass an examination prescribed by the Board of Examiners appointed under this Act, and shall obtain from the Secretary a certificate of competency as to his possessing the necessary knowledge and requirements as to the working of such engines or machinery.

Physical disqualification of engine-drivers.

(4) No certificate shall be issued under this section unless the applicant produces to the Secretary a certificate in writing signed by a registered medical practitioner that the applicant is neither wholly nor partially deaf, nor has defective eyesight, nor is subject to any other infirmity likely to interfere with the efficient discharge of his duties.

(5) The holder of a certificate under subsection one of this section shall be deemed to be the holder of a certificate under subsection two, and the holder of any certificate under this section, except the holder of a traction-engine driver's certificate, shall be deemed to be the holder of a second-class certificate under section forty-nine hereof:

Provided that this subsection shall not apply to electric-winding-engine drivers' certificates nor to hydraulic-winding-engine drivers' certificates.

Further powers of holders of certain certificates.
1927, No. 36, s. 28

47. (1) The holder of a certificate under subsection one of the last preceding section shall also be entitled to drive and have charge of any log-hauling engine and its boiler.

(2) The holder of a traction-engine driver's certificate under the last preceding section shall, in respect of any steam traction-engine which he owns or which he is employed to drive while it is used as a traction-engine, also be entitled to drive and have charge of such traction-engine while it is used as a steam stationary engine.

Exemptions.
1914, No. 53, s. 8

48. The Secretary may, subject to such conditions as he thinks fit, exempt any boiler or machinery from the requirement as to having a certificated driver for such time as he may prescribe if it is proved to his satisfaction that compliance with such requirement is unnecessary or would unduly stop the working of the engine or boiler.

Drivers of stationary engines and boilers.
1908, No. 88, s. 42

49. (1) Every person employed or acting in the capacity of engine-driver in charge of any steam stationary engine (other than a

winding-engine as aforesaid) and boiler, or of any steam boiler with no machinery attached thereto, whether such engine or boiler is on land or on a vessel, shall hold an engine-driver's certificate under this Act.

(2) Such certificates shall be by examination, and shall be of two grades, to be called first-class and second-class engine-drivers' certificates respectively:

Provided that the holder of a first-class engine-driver's certificate who has worked as an apprentice for at least five years in a workshop where engines are manufactured or repaired, or where work of a similar character is performed, shall be entitled after examination to receive a certificate to be called an "extra-first-class certificate," in which the holder thereof shall be designated "an engineer."

(3) An extra-first-class or a first-class certificate entitles the holder thereof to drive and have charge of any steam stationary engine and its boilers.

(4) A second-class certificate entitles the holder thereof to drive and have charge of any steam stationary engine the area of cylinder or combined area of cylinders of which does not exceed two hundred circular inches, and of its boilers.

(5) A certificate of any class entitles the holder thereof to have charge of any boiler to which no machinery is attached.

(6) This section shall not apply to an engine the area of cylinder or combined area of cylinders of which does not exceed one hundred and forty-four circular inches, or a boiler of fifteen horse-power or under, or to any engine or boiler forming part of the propelling machinery of any ship.

Proof of service. 1908, No. 224, s. 20

50. When an applicant for examination for an engine-driver's certificate is unable to produce written proof of his service by reason of the loss or destruction of his papers, certificates, and discharges, or any of them, the Board may accept as evidence of his service a statutory declaration by the applicant giving particulars of his service and of the loss of papers and certificates.

Certain engineers deemed qualified under this Act. 1908, No. 88, s. 43 1908, No. 224, s. 15

51. For the purposes of section forty-nine hereof—

(*a*) The holder of a first-class engineer's certificate issued under the Shipping and Seamen Act, 1908, shall be deemed to be the holder of an extra-first-class certificate under the said section:

(*b*) The holder of a second-class or third-class engineer's certificate issued under the Shipping and Seamen Act, 1908, shall be deemed to be the holder of a first-class certificate under the said section:

(*c*) The holder of a river engineer's certificate issued under the Shipping and Seamen Act, 1908, shall be deemed to be the holder of a second-class certificate under the said section.

Provision for gold-dredges. 1908, No. 88, s. 44

52. Where a gold-dredge is worked in shifts there shall be a person in general charge of the engine who is the holder of a certificate as required by this Act, and every other person in charge during any shift shall be the holder of a second-class certificate, or one of a superior grade.

Holders of certain certificates may be granted certificates under this Act. Ibid., s. 45

53. The Secretary, on the recommendation of the Board, may grant a certificate of the appropriate class, and without examination, to the holder of a certificate either of a river engineer, or a marine-engine driver, or driver of a winding-engine, upon the production of satisfactory

evidence that the holder thereof has for not less than twelve months been in charge of an engine, either on land or afloat, with cylinders of the area prescribed for such class.

Drivers in charge of steam turbine stationary engines.
1908, No. 224, s. 7

54. The class of engine-driver required to be in charge of a steam turbine stationary engine shall be determined by reference to the horse-power of the boilers used for supplying steam for such engine, as follows :—

(*a*) If the aggregate horse-power is fifteen horse-power or under, no certificated engine-driver shall be required ;

(*b*) If the aggregate horse-power is over fifteen and under twenty-five horse-power, then an engine-driver holding a certificate not lower than second class shall be in charge ; and

(*c*) If the aggregate horse-power is twenty-five horse-power or over, then a first-class engine-driver shall be in charge.

Engine-driver to be in effective charge.
Ibid., s. 8
1914, No. 53, s. 10

55. (1) Where an engine and boiler of over fifteen horse-power are in charge of a certificated engine-driver, he shall at all times be in effective charge thereof while the machinery is running or steam is being taken from the boiler for any purpose.

(2) Every such engine-driver who while in charge of an engine and boiler absents himself from his charge in breach of the provisions of this section, and every owner of an engine and boiler who requires him to so absent himself, commits an offence.

In certain case engine and boilers to be in charge of different persons.
1908, No. 224, s. 9

56. (1) If on the report of an Inspector the Chief Inspector of Machinery is of opinion that it is impracticable or dangerous for any certificated engine-driver to take sole charge of any steam-engine and its boilers at the same time, the Chief Inspector may by notice in writing to the owner of the engine and boilers require that, on and after a date to be stated in the notice, the boilers shall be in charge of some person other than the certificated engine-driver in charge of the engine.

(2) Every person on whom such notice has been served who fails to comply therewith commits an offence.

Driver required when crank-shafts coupled.
Ibid., s. 12

57. Where the crank-shafts of two or more steam-engines working side by side are coupled up to form one driving-power, or where two or more steam-engines are working side by side and driving a mutual shaft by means of belting or gearing, the class of engine-driver to be in charge of such engines shall be determined with reference to the combined circular-inch area of the cylinders of such engines.

Certain maimed persons not to act as engine-drivers.
Ibid., s. 14

58. (1) No person who has suffered the loss of a hand or a foot shall act as the driver of a locomotive steam-engine, or winding-engine.

(2) Every person who acts as the driver of any such engine in breach of the provisions of this section is liable to a fine not exceeding five pounds for every day on which he so acts, and every person who employs him so to act is liable to a fine not exceeding five pounds for every day during which such employment continues.

Recognition of railway-locomotive drivers' certificates.
Ibid., s. 22
1914, No. 53, s. 11
1927, No. 36, s. 30

59. (1) Notwithstanding anything in this Act, any person of good repute who is the holder of a certificate under the hand of the General Manager of the New Zealand Government Railways to the effect that such person has been or is employed in the Government Railways Department in driving either a locomotive or stationary engine, and has passed an examination as driver, shall be entitled at any time to

obtain a certificate under this Act, and the Secretary shall, on application therefor and without payment of any fee, grant a certificate to such person accordingly.

(2) An applicant who has been employed as aforesaid as the driver of a locomotive shall be entitled to receive a locomotive- and traction-engine driver's certificate, and an applicant who has been so employed as the driver of a stationary engine shall be entitled to receive a second-class stationary-engine driver's certificate.

(3) The provisions of this section shall, with the necessary modifications, extend and apply to engine-drivers employed on any railway the property of His Majesty in any British possession other than the United Kingdom, or on any railway in the United Kingdom.

Certificate of service to rank equally with certificate of competency.
1908, No. 224, s. 16

60. Every valid and subsisting certificate of service granted under any enactment heretofore in force relating to the granting of certificates of service shall for all purposes rank equally with a certificate of competency of a corresponding class, and the holder thereof shall be entitled to the same rate of wages as the holder of a certificate of competency of a corresponding class.

Examinations.
1908, No. 88, s. 48
1908, No. 224, ss. 17, 19
1927, No. 36, s. 21

61. (1) All examinations for engine-drivers under the Mining Act, 1926, the Coal-mines Act, 1925, or this Act shall be conducted under the general direction of a Board of Examiners consisting of the Chief Inspector of Machinery and the Inspecting Engineer of the Mines Department.

(2) The Board constituted under the Inspection of Machinery Act, 1908, shall be deemed to be the Board under this Act.

(3) The Minister may from time to time appoint any fit person to be a member of the Board; but any person so appointed shall act only while the Chief Inspector of Machinery or the Inspecting Engineer of the Mines Department is absent from Wellington, or is unable to attend the meeting of the Board, and the fact of any person so appointed acting as a member of the Board is sufficient evidence of his authority so to do.

(4) The Minister shall from time to time appoint one of the members of the Board to be its Chairman, and a fit person may also be appointed to be Secretary to the Board.

(5) All applications for examination shall be forwarded to the Secretary, accompanied by the prescribed fee.

(6) Every applicant for examination for a certificate in respect of any winding machinery by means of which persons are in any mine or coal-mine drawn up or lowered down any shaft, pit, or inclined plane, or drawn along any level, or by means of which material is raised or lowered in the sinking of a shaft in a mine or coal-mine, shall be at least twenty-one years of age, be possessed of or entitled to such other certificate under this Act, and have had such experience as assistant to a certificated engine-driver in charge of winding machinery as may be prescribed, and shall, in addition to the prescribed fee, forward such proof of such experience as aforesaid as may be prescribed.

(7) On an applicant passing the prescribed examination the Secretary, on the recommendation of the Board and on being satisfied that the provisions of this Act have been complied with, shall issue a certificate of the appropriate class, to be called an "engine-driver's certificate," and, in the case of a person in charge of winding machinery as

aforesaid, such certificate shall state on the face of it whether it is granted in respect of steam winding machinery or hydraulic winding machinery.

(8) Every applicant for examination shall be a British subject and shall satisfy the Board that he can speak and write the English language sufficiently to be able to perform the duties he is required to perform as the holder of a certificate under this Act.

(9) An Inspector of Machinery may, with the approval of the Board, on occasions as he thinks fit, examine any applicant for a second-class certificate, or for a winding-engine or locomotive and traction-engine certificate, orally as to his qualifications for a certificate as an engine-driver, and the oral examination may be accepted by the Board on the report of the Inspector in lieu of a written examination.

(10) The Secretary, on the recommendation of the Board, may grant or refuse a certificate upon any grounds it deems advisable.

Certificates from beyond New Zealand recognized.
1908, No. 88, s. 49
1927, No. 36, s. 30

62. On payment of the prescribed fee the Secretary may, without examination, grant any certificate required by this Act to any person of good repute who satisfies the Board that he is the holder of a corresponding certificate of equal status granted after examination by any duly constituted and recognized authority outside New Zealand.

Disqualification of holder of certificate.
Ibid., s. 22

63. (1) Where it appears to the Board of Examiners that any person being the holder of a certificate under this Act is guilty of any offence or misconduct which would render him unfit to be trusted to efficiently perform his duties as such holder, or has failed, on the inspection of any machinery of which he is in charge, to notify the Inspector of any defects which he knows or believes to exist in that machinery, the Secretary may call upon such person to show cause why his certificate should not be cancelled or suspended.

(2) If such person fails to show cause, the Secretary, on the recommendation of the Board, shall report the matter to the Minister, who may cancel such certificate or suspend it for such period as he thinks fit, and during any such period of suspension such person shall be deemed not to be the holder of such certificate.

(3) Every person whose certificate is cancelled or suspended as aforesaid shall deliver such certificate to the Secretary, and if he fails so to deliver it on demand by the Secretary he commits an offence and is liable to a fine of twenty pounds.

(4) Where any engine-driver's certificate has, whether before or after the commencement of this Act, been suspended or cancelled, the Minister may in his discretion reduce the period of suspension, or may direct the issue of a new certificate without examination to the former holder of such cancelled certificate.

Acting without certificate.
1908, No. 88, s. 51
1914, No. 53, s. 9

64. Every person who acts in the capacity of engine-driver in charge of any steam stationary engine or its boiler, or of a boiler which has no machinery attached thereto, or of any winding-engine or winding machinery, or of a steam-engine propelled or moved from place to place by its own motive power and machinery, without a proper certificate, where a certificated driver is by law required, and every person who employs such uncertificated driver or person so in charge as aforesaid, is liable to a fine not exceeding five pounds for every day or part of a day during which he so acts.

65. (1) Every person who obtains or attempts to obtain any certificate under this Act by fraud, and every person who gives to any person any false testimonial as to service, is liable to a fine not exceeding twenty pounds.

Obtaining certificate improperly.
1908, No. 88, s. 52
1927, No. 36, s. 23

(2) Every certificate improperly obtained, whether obtained before or after the passing of this Act, may be cancelled by the Secretary; and the holder thereof shall when called upon by the Secretary return such certificate.

(3) Every person who, after notice by the Secretary that any such certificate has been cancelled, uses such certificate, or fails to return the same to the Secretary, commits an offence and is liable to a fine not exceeding twenty pounds.

Miscellaneous.

66. Division IV of the Justices of the Peace Act, 1927, shall, so far as applicable, extend to protect Inspectors under this Act in the execution of their duties.

Protection of Inspectors.
1908, No. 88, s. 53

67. Any person appointed by the Minister may enter upon any premises in which machinery is working and inspect the certificate in respect of the machinery and boiler respectively, and the certificate of the person in charge of an engine or boiler.

Power to enter, and inspect certificates.
Ibid., s. 54

68. Nothing in this Act, or in any certificate granted under its provisions, shall relieve any owner of the machinery or boiler from liability to any action or suit, or from liability to any civil or criminal proceeding; but all rights of parties and all liabilities of owners of boilers or machinery, or of any other person or persons in respect thereof, shall remain unaffected by this Act.

Responsibility of owners, &c., maintained.
Ibid., s. 55

69. Where a notice, summons, or other process is required to be served upon any owner under the provisions hereof, service on the manager, foreman, conductor, or agent of such owner shall be good and lawful service.

Service of notices, &c.
Ibid., s. 56

70. Every person who wilfully contravenes any provision of this Act for which no other penalty is imposed is liable for each offence to a fine not exceeding ten pounds.

General penalty.
Ibid., s. 57

71. Any Magistrate or Justices imposing any fine under this Act may, if he or they think fit, direct that a part not exceeding one moiety thereof shall be applied to compensate any person for any bodily injury or damage sustained by him by reason of the default in respect of which such fine is imposed.

Application of part of fine to person injured.
Ibid., s. 58

72. All moneys paid to Inspectors by way of salary, and all the costs and charges of carrying this Act into execution, shall be paid out of moneys appropriated for that purpose from time to time by Parliament, and all fees and, subject to the last preceding section, all fines received under this Act shall be paid into the Public Account and form part of the Consolidated Fund.

Expenses of administration.
Ibid., s. 59

73. (1) All unpaid fees shall be recoverable in any Court of competent jurisdiction by the Secretary on behalf of the Crown by suit in his official name.

Recovery of unpaid fees.
1927, No. 36, s. 29

(2) In any action in a Magistrate's Court for the recovery of fees the Secretary may, if he thinks fit, appear by some officer of the Marine Department, and the statement of any person so appearing that he is such an officer and that he appears for the Secretary shall be sufficient evidence of the facts so stated and of his authority in that behalf.

(3) Nothing in this section shall be so construed as to limit or affect the operation of the Crown Suits Act, 1908, and the rights of recovery conferred upon the Crown by that Act and by this section shall co-exist and may be exercised independently of one another, and fees may be recovered accordingly.

No *certiorari*.
1908, No. 88, s. 60

74. A summary conviction or adjudication under this Act, or an adjudication made on appeal therefrom, shall not be quashed for want of form or be removed into the Supreme Court by *certiorari*.

Regulations.
Ibid., s. 61
1910, No. 31, s. 4
1927, No. 36, s. 24

75. The Governor-General may from time to time by Order in Council gazetted make regulations not inconsistent with this Act—

(*a*) Regulating the duties of the Chief Inspector and of Inspectors;

(*b*) Controlling the generation or use in any building of carbon-monoxide gas or other dangerous gas for motive or lighting purposes;

(*c*) Regulating the examinations for certificates, and prescribing the fees to be paid by applicants for certificates, and the forms of such certificates;

(*d*) Prescribing how and under what circumstances engines used for agricultural or dairy purposes only may be driven by uncertificated persons; and

(*e*) Generally for carrying this Act into execution.

Application of Act to Vehicles.

Provisions as to motor-vehicles and steam-wagons.
Ibid., s. 27

76. (1) Subject to the exemptions mentioned in section four hereof, and save as provided in the next succeeding subsection, all the provisions of this Act with respect to boilers and machinery shall apply to—

(*a*) Motor-vehicles not driven by steam which are used for transmitting power to any stationary machinery, or as tractors running on rails; and

(*b*) Motor-cars driven by steam, unless they are so constructed as not to emit smoke, steam, or visible vapour, except from any temporary or accidental cause; and

(*c*) Steam-wagons:

and for the purposes of those provisions all such vehicles shall be deemed to be boilers and machinery subject to this Act.

(2) The provisions of this Act with respect to engine-drivers shall not apply to drivers of the vehicles mentioned in paragraphs (*a*) and (*b*) of the last preceding subsection while such vehicles are being driven or moved from place to place by their own motive power and machinery, but shall apply to drivers of steam-wagons, and every person who is in charge of any such wagon while it is being so driven or moved shall be the holder of a traction-engine driver's certificate or of a locomotive and traction-engine driver's certificate.

(3) The decision of the Chief Inspector of Machinery as to whether or not a vehicle is a steam-wagon shall be final.

Repeals.

Repeals.

77. The enactments mentioned in the Schedule hereto are hereby repealed, and with respect to those enactments the following provisions shall apply:—

Savings.
1908, No. 88, s. 1 (2)

(*a*) All offices, appointments, Orders in Council, regulations, orders, notifications, certificates, records, instruments and generally

all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(*b*) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

SCHEDULE.

Schedule.

ENACTMENTS REPEALED.

1908, No. 88.—The Inspection of Machinery Act, 1908.
1908, No. 224.—The Inspection of Machinery Amendment Act, 1908.
1910, No. 31.—The Inspection of Machinery Amendment Act, 1910.
1914, No. 53.—The Inspection of Machinery Amendment Act, 1914.
1927, No. 36.—The Inspection of Machinery Amendment Act, 1927.