

COLONY OF NORTH BORNEO

THE MERCHANT SHIPPING ORDINANCE, 1960 (Ordinance No. 11 of 1960)

ENACTED BY the Governor of the Colony of North Borneo with the advice and consent of the Legislative Council follows:-

PART I

Chapter 1

PRELIMINARY

Short title, commencement and application.

1. (1) This Ordinance may be cited as The Merchant Shipping Ordinance, 1960.

(2) This Ordinance shall not come into operation unless and until the Governor notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same, and, subject to subsection (3) it shall come into operation on such date as the Governor may appoint.

(3) A notification under subsection (2) may appoint different dates in relation to different provisions or may appoint different dates for the same provision for different purposes.

(4) Subject to such modifications or exceptions as may be prescribed, the provisions of this Ordinance, other than Part IX, shall apply to a ship registered or licensed in Sarawak or Brunei when within North Borneo, to the same extent as they apply to a North Borneo Ship.

(5) *(Repealed)*

Interpretation.

2. In this Ordinance –

“agreement” or “agreement with the crew” means the agreement referred to in subsection (1) of section 19;

“apprentice” means apprentice to the sea service;

“coastal trade limits” means the limits specified in Part A of the First Schedule;

“coastal trade ship” means a ship which is authorised to ply only within coastal trade limits;

“collision regulations” means regulations made under section 252 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya [*Ord. 70/1952*];

“consular officer”, where used in relation to a foreign country, means the person for the time being recognised by Her Majesty as the consul, vice-consul, consular agent, or other person authorised to discharge the duties of consul or vice-consul of that foreign country;

“dangerous goods” includes any substance of a dangerous nature;

“Director” means the Director of Marine;

“explosive” has the same meaning as in the Fire-arms and Explosive Ordinance [Ord. No. 17 of 1966.];

“fishing boat” means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing but save as otherwise expressly provided does not include a vessel used for catching fish otherwise than for profit;

“foreign-going ship” includes every ship employed in trading or going between some place or places situate beyond the limits prescribed for home-trade ships;

“government surveyor” means a surveyor appointed under the provisions of subsection (1) of section 130;

“home trade limits” means the limits specified in Part B of the First Schedule;

“home trade ship” means a ship which is authorised to ply only within home trade limits;

“inspector” means an inspector appointed under section 267;

“international voyage” means a voyage from a port in one country to a port in another country, either of those countries being a country to which the Safety Convention applies, and “short international voyage” means an international voyage –

- (a) in the course of which a ship is not more than two hundred nautical miles from a port or place in which the passengers and crew could be placed in safety; and
- (b) which does not exceed six hundred nautical miles in length between the last port of call in the country in which the voyage begins and the final port of destination;

so, however, that for the purpose of the definitions contained in this paragraph –

- (i) no account shall be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could have prevented or forestalled; and

- (ii) every colony, overseas territory, protectorate or other territory for whose international relations a government that has accepted the Safety Convention is responsible, or for which the United Nations are the administering authority, shall be deemed to be a separate country;

“legal personal representative” means any person constituted executor, administrator, or other representative of a deceased person by any probate, administration, or other instrument;

“local trade limits” means the limits specified in Part C of the First Schedule;

“local trade ship” means a ship which is authorised to ply only within local trade limits;

“Malaysian ship” has the same meaning as in the Merchant Shipping Ordinance 1952 of the Federation of Malaya;

“master” includes every person, except a pilot, having command or charge of any ship;

“Mercantile Marine Office” includes a mercantile marine sub-office;

“Merchant Shipping Acts” means the Merchant Shipping Acts from time to time in force in the United Kingdom;

“Minister” means the Minister of Transport of the United Kingdom and includes, when appropriate, references to the Board of Trade and the Minister of Transport and Civil Aviation; and “Ministry” shall be construed accordingly;

“naval court” has the same meaning as in the Merchant Shipping Acts;

“North Borneo licensed ship” means any vessel licensed under the regulations made under section 277 of the Ordinance;

“officer” when used in relation to a ship, means any master, mate, engineer or engine-driver;

“officer of customs” has the same meaning as in the Customs Ordinance [*Cap. 33.*];

“passenger” means any person carried in a ship, except -

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled; and
- (c) a child under one year of age;

“passenger ship” means a ship which is constructed for, or which is substantially or habitually (whether at regular or irregular intervals) used for, carrying more than twelve passengers;

“pilot” means any person not belonging to a ship, who has the conduct thereof;

“port” means a place prescribed as a port;

“Port Health Officer” includes the Director of Medical Services and any officer for the time being performing the duties of a Port Health Officer;

“Port Officer” means a person appointed as such for any port by the Governor and, includes any person for the time being performing with the authority and subject to the discretion of the Director in respect of matters within the jurisdiction of the Director, or the State Director in respect of matters within the jurisdiction of the State Director, the duties of the Port Officer;

“Principal Act” means the Merchant Shipping Act, 1894;

“radio rules” means the rules made under section 262 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya;

“report of character” means the report referred to in section 37;

“running agreement” means an agreement referred to in paragraph (e) of section 21;

“Safety Convention” means the International Convention for the Safety of Life at Sea signed in London on 1 November 1974; and if any amendment of the Safety Convention comes into force with respect to Malaysia, references in this Ordinance to the Safety Convention shall, unless the context otherwise requires, be construed as references to the Safety Convention as amended;

“Safety Convention certificate” means a certificate issued in accordance with the terms of the Safety Convention;

“Safety Convention ship” means a ship registered in a country to which the Safety Convention applies;

“salvor” means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of that ship;

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

“ship” means any vessel other than –

- (a) a vessel solely propelled by oars;
- (b) a vessel which has been generally exempted from the provisions of this Ordinance by the Governor under section 273; and
- (c) a vessel which has been partially exempted from the provisions of this Ordinance by the Governor under section 273; to the extent of such exemption;

“State Director” means the Director of Ports and Harbours of the State of Sabah;

“Superintendent” means the Superintendent of the Mercantile Marine Office and, subject to the provisions of subsection (3) of section 18, includes an Assistant Superintendent;

“tidal water” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tide;

“ton” means a register ton except where otherwise stated and “tonnage” shall be interpreted accordingly;

“vessel” means anything constructed or used for the carriage on water of persons or property.

PART II

Chapter 2

RESTRICTION OF TRADING IN NORTH BORNEO

Certificate or licence required by all ships trading in North Borneo.

3. *(Deleted)*

PART III

MASTERS AND SEAMEN

Chapter 3

COMPETENCY OF MASTERS AND CREW AND
CERTIFICATES THEREOF

When officer deemed duly certificated.

4. An officer shall not be deemed to be duly certificated under this Ordinance unless he is the holder for the time being of a valid certificate of competency granted under this Ordinance, or under any written law in force in North Borneo immediately before the commencement of this Ordinance, of a grade appropriate to his station in the ship or of a higher grade:

Provided that any officer in a home trade, local trade or coastal trade ship holding an equivalent certificate of competency issued by the Government of Singapore, Malaya, Brunei or Sarawak shall be deemed to be duly certificated as such for the purpose of this Ordinance.

Grades of certificates of competency.

5. (1) Certificates of competency shall be granted by or on behalf of the Governor in accordance with this Ordinance for each of the following grades –

- (a) master of a home-trade ship, mate of a home-trade ship, master of a local-trade ship, mate of a local-trade ship, master of a coastal-trade ship and mate of a coastal-trade ship;
- (b) first-class engine-driver, second-class engine-driver and third-class engine-driver.

(2) For the purposes of section 4, the certificates referred to in each paragraph of subsection (1) shall be deemed to rank among themselves in the order in which they are mentioned:

Provided that a certificate of competency as mate shall not entitle the holder thereof to go to sea as master of any ship which is required by regulation under section 277 to be provided with a duly certificated master.

Eye-sight tests.

6. No certificate of competency as master or mate shall be delivered to any person under this Ordinance unless and until he has undergone and passed the sight tests from time to time approved in the United Kingdom by the Minister for the examination of masters and mates in the mercantile marine or such other sight test as may be approved by the Governor.

Certificates granted by competent British authorities recognised.

7. (1) Every officer who holds a foreign going certificate issued by a competent authority in the United Kingdom or in any country or in any territory the certificates of which have been declared by Order in Council made under section 102 of the Principal Act to have the same force as if they were granted under that Act, shall be deemed to be duly certificated under this Ordinance if his certificate is of a grade appropriate to his station in the ship or of a higher grade.

(2) A certificate granted by any such authority as “only mate” shall be deemed to be equivalent to that of first mate.

Certificates of competency to be held by officers of various ships.

8. (1) Every British or North Borneo ship required by regulations under section 277 to have certificated or authorized officers, when going to sea from any place in North Borneo, shall be provided with officers duly certificated or authorized under this Ordinance according to the scale prescribed for such ship.

(2) The Governor, or a person designated by him in that behalf, may declare any officer to be an authorized officer for the purposes of this section:

Provided that –

- (a) such authorization shall subject to such conditions as may be endorsed thereon be valid for a period of six months only, but may from time to time be renewed in like manner and for a like maximum period;
- (b) before making any such declaration as aforesaid, the Governor or other person designated by him shall satisfy himself that the officer is competent to act as an authorized officer; and
- (c) no person shall be issued with such authorizations for a total period of more than two and a half years.

(3) The master of every ship required by regulations under section 277 to have certificated or authorized officers, leaving or attempting to leave any port in North Borneo without having on board, and entered on the register or articles of agreement, officers possessing the prescribed certificates or authorizations shall be guilty of an offence and shall be liable to a fine of one thousand dollars; and the Port Officer may refuse port clearance in case of non-compliance with the provisions of this section.

Production of certificates of competency to Superintendent.

9. (1) The master of every British or North Borneo ship –
- (a) on signing the agreement with the crew before the Superintendent, shall produce to him the certificates of competency which the officers of the ship are by or under this Ordinance required to hold; and
 - (b) in the case of a running agreement, shall also, before the second and every subsequent voyage, produce to the Superintendent the certificate of competency of any officer then first engaged by him who is required by this Ordinance to hold a certificate.
- (2) In case the master of any ship fails to comply with the requirements of this section, the ship may be detained until the certificates are produced.

Ship leaving without clearance.

10. If any ship leaves or attempts to leave any port in North Borneo when port clearance has been refused under this Part, the master thereof shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

Uncertificated and unauthorized officers.

11. Any person who, having been engaged in any of the capacities mentioned in this Chapter in any such ship as aforesaid, goes to sea in that capacity without being entitled to and in possession of the required certificate or authorization, and any person who employs any person in any of the above capacities in such ship without ascertaining that he is entitled to or possessed of such certificate or authorization, shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Examinations for certificates of competency.

12. (1) For the purpose of granting certificates of competency under this Chapter to persons desirous of obtaining such certificates, examinations shall be held at such places and times as the Director may direct.

(2) The Chief Secretary may appoint, remove and reappoint examiners to conduct the examinations and determine the remuneration of those examiners, and may regulate the conduct of all the examinations and the qualification of the applicants, and may do all such acts and things as he thinks expedient for the purpose of the examinations.

Forgery etc. of certificate of competency.

13. Any person who –

- (a) makes, assists in making or procures to be made any false representation for the purpose of procuring, either for himself or for any other person, a certificate of competency;
- (b) fraudulently uses a certificate or copy of a certificate of competency which has been forged, altered, cancelled or suspended, or to which he is not entitled; or
- (c) fraudulently lends his certificate of competency, or allows it to be used by any other person,

shall be guilty of an offence and shall be liable to imprisonment for three years and a fine.

Power of Governor to suspend or cancel certificates of competency.

14. (1) The Governor, in his discretion, may suspend or cancel the certificate of any officer if such certificate was issued in North Borneo and if the Governor is satisfied that such officer has been convicted of any offence.

(2) The Governor may in his discretion, at any time direct the re-issue and return of any certificate suspended or cancelled under subsection (1), or may direct the grant, in place thereof, of a certificate of the same or a lower grade.

Chapter 4

APPRENTICESHIP TO THE SEA SERVICE

Assistance to be given by Superintendent.

15. The Superintendent shall give to persons desirous of apprenticing boys to or requiring apprentices for the sea service such assistance as may be in his power, and may receive from those persons, such fees as may be prescribed.

Special provisions as to apprenticeship.

16. (1) Every indenture of apprenticeship shall be executed in duplicate in the prescribed form and shall be exempt from stamp duty.

(2) Every indenture of apprenticeship made in North Borneo, and every assignment or cancellation thereof, and, where the apprentice bound dies or deserts, the fact of the death or desertion shall be recorded.

(3) For the purpose of the record –

(a) a person to whom an apprentice is bound shall, within seven days of the execution of the indenture, take or transmit to the Superintendent the indenture executed in duplicate, and the Superintendent shall keep and record the one indenture and endorse on the other the fact that it has been recorded and redeliver it to the master of the apprentice;

(b) the master shall notify any assignment or cancellation of the indenture or the death or desertion of the apprentice to the Superintendent, within seven days of the occurrence, if it occurs within North Borneo or, as soon as circumstances permit, if it occurs elsewhere.

(4) Any person who fails to comply with any requirement of this section shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

(5) There shall be paid in respect of the recording of an indenture under this section such fee as may be prescribed.

Production of indenture to Superintendent before voyage in foreign-going ship.

17. (1) The master of a foreign-going ship shall, before carrying an apprentice to sea from a port in North Borneo cause the apprentice to appear before the Superintendent and shall produce to the Superintendent the indenture by which the apprentice is bound and every assignment thereof.

(2) The name of the apprentice, with the date of the indenture and of the assignment thereof, if any, and the names of the ports at which the same have been recorded, shall be entered on the agreement with the crew.

(3) Any master who fails, without reasonable cause, to comply with any requirement of this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Chapter 5

**ENGAGEMENT OF CREW AND GENERAL
PROVISIONS RELATING THERETO**

Marine office.

18. (1) The Governor may appoint a place, to be called "the Marine Office", and other places to be called "Marine Sub-Offices", at which places shall be conducted all the business within North Borneo connected with the engagement and discharge in North Borneo of seamen on board British ships and North Borneo ships and foreign ships whose flag is not represented by a consular officer resident in North Borneo.

(2) The Director shall be the Superintendent of the Marine Office and he may appoint Assistant Superintendents in any Marine Sub-Office.

(3) Any act done by, or to or before, an Assistant Superintendent within the powers conferred upon him by the Superintendent shall have the same effect as if done by, to or before, the Superintendent.

(4) (a) No seaman shall, except with the sanction of the Superintendent, be engaged to do duty on board a British, North Borneo or foreign ship elsewhere than at the Marine Office, save that in the case of a foreign

ship a seaman may be engaged before a consular officer resident in North Borneo representing the flag of such foreign ship.

- (b) No seaman shall be engaged unless he has produced to the Superintendent a certificate of discharge from such seaman's last ship, or failing production thereof such seaman has given a satisfactory explanation to the Superintendent of the cause of such non-production.
- (c) Any person engaging a seaman in contravention of this subsection shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Agreement with crew.

19. (1) The master of every North Borneo ship, except ships of less than twenty-five tons exclusively employed in trading within such limits as may be prescribed, shall enter into an agreement in accordance with this Chapter with every seaman whom he carries to sea from any port in North Borneo.

(2) If a master of a North Borneo ship carries any seaman to sea without entering into an agreement with him in accordance with this Chapter, the master in the case of a foreign-going ship, and the master and owner in the case of any other ship, shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Form, period and conditions of agreement with crew.

20. (1) Every agreement with the crew entered into in North Borneo shall be in the prescribed form, and shall be dated at the time of the first signature thereof, and shall be signed by the master before a seaman signs the same.

(2) The agreement with the crew shall contain as terms thereof the following particulars –

- (a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

- (b) the number and description of the crew, specifying how many are engaged as sailors;
- (c) the time at which each seaman is to be on board or to begin work;
- (d) the capacity in which each seaman is to serve;
- (e) the amount of wages which each seaman is to receive;
- (f) a scale of the provisions which are to be furnished to each seaman;
- (g) any regulations as to conduct on board and as to fines, short allowance of provisions or other lawful punishment for misconduct which have been approved by the Governor in Council as regulations proper to be adopted and which the parties agree to adopt.

(3) The agreement with the crew shall be so framed as to admit of such stipulations, not being contrary to law, as may be agreed between the master and seaman in any case.

(4) If the master of a ship registered at a port not in North Borneo, has an agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged, and engages seamen individually in North Borneo, such seamen may sign the agreement so made, and it shall not then be necessary for them to sign an agreement in the prescribed form.

Special provisions as to agreement with crew of foreign-going ship.

21. The following provisions shall have effect with respect to the agreements with the crew made in North Borneo in the case of foreign-going ships –

- (a) the agreement shall, subject to the provisions of this Ordinance as to substitutes, be signed by each seaman in the presence of the Superintendent;
- (b) the Superintendent shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature;

- (c) when the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the Superintendent, and the other shall be delivered to the master and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship;
- (d) when a substitute is engaged in the place of a seaman who duly signed the agreement and whose services are, within twenty-four hours before the ship puts to sea, lost by death, desertion or other unforeseen cause, the engagement shall, when practicable, be made before the Superintendent and, when not practicable, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the substitute, and the substitute shall thereupon sign the same in the presence of a witness, and the witness shall attest the signature;
- (e) the agreement may be made for a voyage or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made to extend over two or more voyages shall be known as "running agreements";
- (f) running agreements shall not be for a longer period than six months, or the first arrival of the ship at her port of destination in North Borneo after the expiration of that period, or the discharge of cargo consequent on that arrival;
- (g) on every return to a port in North Borneo before the final termination of a running agreement the master shall make, on the agreement, an endorsement as to the engagement or discharge of seaman, either that no engagements or discharges have been made or are intended to be made before the ship leaves port, or that all those made have been made as required by law and, if a master wilfully makes a false statement in any such endorsement, he shall be guilty of an offence and shall be liable to a fine of five hundred dollars;
- (h) the master shall deliver the running agreement so endorsed to the Superintendent and that officer shall, if the provisions of this Chapter relating to agreements have been complied with, sign the endorsement and return the agreement to the master.

Special provisions as to agreement with crew of a ship other than a foreign-going ship.

22. The following provisions shall have effect with respect to the agreements made with the crew in North Borneo of a ship other than a foreign-going ship for which an agreement with the crew is required under this Chapter –

- (a) agreements may be made either for the service in a particular ship or for service in two or more ships belonging to the same owner, but, in the latter case, the nature of the service shall be specified in the agreement;
- (b) crews or individual seaman shall be engaged before the Superintendent in the same manner as they are required to be engaged for foreign-going ships; but if the engagement is not made, the master shall, if practicable, before the shipputs to sea, and, if not, as soon after as possible, cause the agreement to be read and explained to each seaman; and the seaman shall thereupon sign the same in the presence of a witness, and the witness shall attest the signature;
- (c) an agreement for service in two or more ships belonging to the same owner may be made by the owner instead of by the master; and the provisions of this Ordinance with respect to the making of the agreement shall apply accordingly;
- (d) agreements shall not be for a longer period than six months, or the first arrival of the ship at her final port of destination in North Borneo after the expiration of the period, or the discharge of cargo consequent on that arrival:

Provided that the owner or his agent may enter into time agreements in the prescribed form with individual seamen to serve in any one of more ships belonging to such owner, and those agreements need not expire at the time of the ship's agreement with the crew.

Fees upon engagement and discharge.

23. (1) The fees payable upon all engagements and discharges shall be such as may be prescribed.

(2) The Superintendent shall cause a scale of such fees, together with a copy of this section, to be conspicuously exhibited in the Marine Office and may require the payment of such fees before proceeding with any engagement or discharge.

(3) The master of a ship engaging or discharging any seaman at the Marine office shall pay to the Superintendent the whole of the prescribed fees.

Changes in crew of foreign-going ships to be reported.

24. (1) The master of every foreign-going ship whose crew has been engaged before the Superintendent shall, before finally leaving North Borneo, sign and send to the nearest Superintendent a full and accurate statement, in the prescribed form of every change which takes place in his crew before finally leaving North Borneo, and that statement shall be admissible in evidence in the manner provided by this Ordinance.

(2) Any master who fails, without reasonable cause, to comply with this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Certificates as to agreement with crew of North Borneo foreign-going ships.

25. (1) In the case of a foreign-going North Borneo ship, on the due execution of an agreement with the crew in accordance with this Chapter, and also, where the agreement is a running agreement, on compliance by the master, before the second and every subsequent voyage made after the first commencement of the agreement, with the provisions of this Chapter respecting that agreement, the Superintendent shall grant the master of the ship a certificate to that effect.

(2) The master of every foreign-going North Borneo ship shall, before proceeding to sea, produce to the Superintendent that certificate, and any such ship may be detained until the conditions precedent to the grant of such certificate exist.

(3) The master of every foreign-going North Borneo ship shall, within forty-eight hours after the ship's arrival at her final port of destination in North Borneo or upon the discharge of the crew, whichever first happens, deliver his agreement with the crew to the Superintendent and that officer shall give the master a certificate of that delivery.

(4) Any such master who fails, without reasonable cause, so to deliver the agreement with the crew shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Certificate as to agreement with crew of a North Borneo ship other than a foreign-going ship.

26. (1) The owner or master of a North Borneo ship other than a foreign-going ship shall, within twenty-one days after the expiration of any agreement with the crew or within forty-eight hours of her arrival in North Borneo whichever first happens, deliver or transmit to the Superintendent in North Borneo such agreement.

(2) The Superintendent, on receiving such agreement, shall give the owner or master of the ship a certificate to that effect, and the ship may be detained until the conditions precedent to the grant of such certificate exist.

(3) Any such owner or master who fails, without reasonable cause, to comply with this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Copy of agreement to be made accessible to the crew.

27. (1) The master of every North Borneo ship to which the provisions of section 19 apply shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement with the crew, omitting the signatures, to be posted up in some part of the ship which is accessible to the crew.

(2) Any master who fails, without reasonable cause, to comply with this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Forgery, etc. of agreement with crew.

28. (1) Any person who fraudulently alters, makes any false entry in or delivers a false copy of any agreement with the crew shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

(2) Any person who assists in committing, or procures to be committed, any such offence shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Alterations in agreement with crew.

29. Every erasure, interlineation or alteration in any agreement with the crew, except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship, shall be wholly inoperative unless proved to have been made, with the consent of all the persons interested in the erasure, interlineation or alteration, by the written attestation –

- (a) in any part of the Commonwealth, of some shipping master, port officer, Superintendent, magistrate, officer of customs, or other public functionary; or
- (b) elsewhere, of a British consular officer, or where there is no such officer, of two respectable British merchants.

Seaman not to be bound to produce agreement.

30. In any legal or other proceeding, a seaman may bring forward evidence to prove the contents of any agreements with the crew or otherwise to support his case without producing, or giving notice to produce, the agreement or any copy thereof.

Chapter 6

AGREEMENTS WITH LOCAL SEAMEN

Engagement of local seamen.

31. (1) In the case of seamen engaged in North Borneo who are domiciled in North Borneo, Sarawak or Brunei when it is agreed that the engagement of any such seaman shall end at any port not in North Borneo, the agreement shall contain such stipulations as may be prescribed.

(2) Every such stipulation shall be signed by the owner of the vessel or by the master on his behalf.

Engagements between masters of foreign ships and local seamen.

32. (1) When the master of a foreign ship being at any port in North Borneo engages any seaman who is domiciled in North Borneo, Sarawak, or Brunei to proceed to any port not

in North Borneo, he shall, save in the circumstances mentioned in subsection (4) of section 20, enter into an agreement with such seaman, and the agreement shall be made before the Superintendent in the manner hereinbefore provided for the making of agreements in the case of foreign-going ships.

(2) All the provisions of section 31 respecting the stipulations to be contained in such agreements, and the making and signing of the same, shall be applicable to the engagement of such seaman.

(3) The master of such foreign ship shall give to the Superintendent a bond with the security of some approved person resident in North Borneo for an amount calculated at the rate of one hundred dollars for every such seaman and conditioned for the due performance of the agreement and the prescribed stipulations and for the repayment to the Government of all expenses which it may incur in respect of any such seaman who is discharged or left behind at any port out of North Borneo and becomes distressed and is relieved under the provisions of the Merchant Shipping Acts.

Fees payable in respect of such engagement.

33. The fees prescribed by virtue of the provisions of section 23 shall be payable in respect of every such engagement.

Penalty for breach of sections 31 and 32.

34. If any seaman who is domiciled in North Borneo Sarawak or Brunei is engaged by the master of any foreign ship otherwise than in accordance with the provisions of sections 31 and 32, the master shall be guilty of an offence and shall be liable to a fine of one hundred dollars for every such seaman so engaged.

Inspection of foreign ships in connection with agreement of local seamen.

35. The Superintendent may enter on board any foreign ship for the purpose of ascertaining that the requirements of section 32 have been complied with, in respect of any seaman domiciled in North Borneo, Sarawak or Brunei who has been engaged in North Borneo to proceed in such ship to any port not in North Borneo; and for such purposes the Superintendent shall have all the powers of an Inspector under this Ordinance.

Chapter 7
DISCHARGE OF SEAMEN

Procedure on discharge and provision for seaman left behind or remaining in North Borneo.

36. (1) No master shall discharge in North Borneo any seaman from any British, North Borneo or foreign ship without the sanction of the Superintendent or of the consular officer, if any, representing the nation to which such ship belongs, and unless due provision is made for the subsistence and maintenance of such seaman to the satisfaction of the Superintendent in the case of a British or North Borneo ship or a foreign ship whose flag is not represented in North Borneo by a consular officer, or to the satisfaction of a consular officer in the case of a foreign ship whose flag is so represented; and any master who discharges a seaman in contravention of this subsection shall be guilty of an offence and shall be liable to a fine of five hundred dollars:

Provided that no such provision shall be necessary in respect of any seaman who was engaged in North Borneo or any seaman who, being a British subject domiciled in North Borneo is discharged in accordance with the terms of his agreement.

(2) No seaman shall, except with the sanction of the Superintendent be discharged from any British or North Borneo ship or foreign ship whose flag is not represented by a consular officer resident in North Borneo, elsewhere than at the Marine Office.

(3) Whenever any seaman is discharged at the Marine Office, from any ship within North Borneo, the master of such ship shall give to such seaman at the time of such discharge a written certificate, specifying the time and nature of service, and the time and place of discharge, of such seaman, signed by himself, and shall give him a true account in writing of his wages and all deductions therefrom; and if the master fails to do so he shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

(4) The master shall also, upon the discharge of every certificated officer whose certificate of competency has been delivered to and retained by him, return the certificate to the officer, and, if without reasonable cause, he fails so to do he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

(5) Any master or any other person belonging to any British or Sarawak ship who wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind in North Borneo any seaman or apprentice belonging to such ship before the completion of the voyage for which such seaman or apprentice was engaged, shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

Report of seamen's character.

37. (1) When a seaman is discharged before the Superintendent, the master shall make and sign, in the prescribed form, a report of the conduct, character and qualifications of the seaman discharged, or may state in that form that he declines to give any opinion upon such particulars or upon any of them.

(2) The Superintendent before whom such discharge is made shall, if the seaman desires, give to him or endorse on his discharge a copy of such report.

False or forged certificate of discharge or report of character.

38. Any person who –

- (a) makes a false report of character under this Ordinance, knowing the same to be false;
- (b) forges or fraudulently alters any certificate of discharge or report of character or a copy of a report of character;
- (c) assists in committing or procures to be committed any such offence as aforesaid; or
- (d) fraudulently uses any certificate of discharge or report of character or copy of a report of character which is forged or altered or does not belong to him,

shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Protection from process.

39. No seaman who has been engaged to do duty on any ship in compliance with this Ordinance shall, during the time for which he is then engaged, be liable to be arrested on civil process, unless the debt or demand exceeds the sum of five hundred dollars:

Provided that the term "seaman" in this section means a person who has, within the space of six months previously, served on board a ship for wages as a seaman, and that the protection from arrest hereby granted shall not be held to extend to any person not coming within such definition, or in any case to any officer of the ship.

Relief of distressed seamen.

40. (1) All expenses incurred under the provisions of the Merchant Shipping Acts or any regulation made thereunder or under section 277 in the relief of distressed seaman who, at the time of such relief being granted, are domiciled in North Borneo and all expenses incurred in the United Kingdom in relieving and returning to North Borneo all such distressed seamen shall be borne by the revenue of the Federation.

(2) The Governor may order the payment out of the general revenue of all expenses incurred in North Borneo in and about the relief and repatriation of such seamen as aforesaid under the provisions of the Merchant Shipping Acts or of any regulations made under those Acts or under section 277.

(3) The Governor may order the repayment out of the general of all sums expended under the provisions of the Merchant Shipping Acts by the United Kingdom Government, or by the Shipwrecked Mariners Society, or by the Government of any country of the Commonwealth, or by any British consular officer in any foreign country, in and about the relief and repatriation of such seamen as aforesaid, and such sums shall be refunded in such manner as the Governor may think fit, or as a Secretary of State may direct.

Chapter 8
PAYMENT OF WAGES

Payment of wages before Superintendent.

41. (1) Where a seaman is discharged before the Superintendent, he shall receive his wages through or in the presence of the Superintendent, unless a competent court otherwise directs.

(2) If in such a case the owner or master of a ship pays the seamen's wages within North Borneo in any other manner, he shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Master to deliver account of wages.

42. (1) The master of every ship shall, before paying off or discharging a seaman in North Borneo, deliver at the time and in the manner provided by this Ordinance a full and true account in the prescribed form, of the seaman's wages, and of all deductions to be made therefrom on any account whatever.

(2) Such account shall be delivered –

(a) where the seaman is not to be discharged before the Superintendent to the seaman himself not less than twenty-four hours before his discharge or payment off; and

(b) where the seaman is to be discharged before the Superintendent either to the seaman himself at or before the time of his leaving the ship, or to the Superintendent not less than twenty-four hours before the discharge or payment off.

(3) Any master of a ship who fails, without reasonable cause, to comply with this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Deductions from wages.

43. (1) A deduction from the wages of a seaman paid off or discharged in North Borneo shall not be allowed unless it is included in the account delivered in pursuance of section 42 except in respect of a matter happening after such delivery.

(2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to that payment.

Notice of disrating of seaman.

44. (1) Where the master of a North Borneo ship disrates a seaman he shall forthwith enter, or cause to be entered, in the official log book a statement of the disrating, and shall furnish the seaman with a copy of the entry.

(2) Any reduction of wages, consequent on the disrating, shall not take effect until the entry has been so made and the copy so furnished.

(3) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages within the meaning of sections 42 and 43.

Time of payment of wages for foreign-going ships.

45. In the case of a foreign-going British ship registered in, trading with or being in North Borneo other than a ship employed on a voyage for which seamen by the terms of their agreement are wholly compensated by a share in the profits of the adventure –

- (a) the owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, one-fourth of the balance of wages due to him, and shall pay to him the remainder of his wages, within two clear days, exclusive of any Sunday, Public or Bank Holidays, after he so leaves the ship;

- (b) if the seaman consents, the final settlement of his wages may be left to the Superintendent and the receipt of that officer shall in that case operate as if it were a release given by the seaman in accordance with this Chapter;
- (c) in the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.

Time of payment of wages for North Borneo ship other than a foreign-going ship.

46. (1) The master or owner of every North Borneo ship other than a foreign-going ship shall pay to every seaman his wages within two days after the termination of the agreement with the crew, or at the time when the seaman is discharged, whichever first happens.

(2) If a master or owner fails without reasonable cause to make payment at that time, he shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days during which payment is delayed beyond that time, but the sum payable shall not exceed ten days' double pay.

(3) Any sum payable under this section may be recovered as wages.

Settlement of wages.

47. (1) Where a seaman is discharged from a North Borneo ship and the settlement of his wages completed before the Superintendent he shall sign in the presence of the Superintendent a release of all claims in respect of the past voyage or engagement; and the release shall also be signed by the master or owner of the ship and attested by the Superintendent.

(2) The release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

(3) The release shall be retained by the Superintendent and, on production from his custody, shall be admissible in evidence in the manner provided by this Ordinance.

(4) Where the settlement of a seaman's wages is by this Chapter required to be completed through or in the presence of the Superintendent, no payment, receipt or settlement made otherwise than in accordance with this Chapter shall operate as, or be admitted as, evidence of the release or satisfaction of any claim.

(5) Upon any payment being made by a master before the Superintendent, the Superintendent shall, if required, sign and give to the master a statement of the whole amount so paid; and the statement shall, as between the master and his employer, be admissible as evidence that the master has made the payments therein mentioned.

(6) A seaman may except from the release signed by him under this section any specified claim or demand against the master or owner of the ship, and a note to any claim or demand so excepted shall be entered upon the release.

(7) Such release shall not operate as a discharge or settlement of any claim or demand so noted, nor shall subsection (4) apply to any payment, receipt or settlement made with respect to any such claim or demand.

Decision of questions by Superintendent.

48. (1) Where a question as to wages is raised before the Superintendent between the master or owner of a ship and a seaman or apprentice, and the amount in question does not exceed fifty dollars, the Superintendent may, on the application of either party, adjudicate, and the decision of the Superintendent in the matter shall be final:

Provided that if the Superintendent is of the opinion that the question is one which ought to be decided by a court of law, he may refuse to decide it.

(2) Where any question, of whatever nature and whatever the amount in dispute, between a master or owner and any of his crew is raised before a Superintendent and both parties agree in writing to submit the same to him, the Superintendent shall hear and decide the question so submitted.

(3) An award made by him upon the submission shall be conclusive as to the rights of the parties and the submission or award shall not require a stamp; and a document purporting to be the submission or award shall be admissible as evidence thereof.

Power of Superintendent to require production of ship's papers.

49. (1) In any proceeding under this Ordinance before the Superintendent relating to the wages, claims or discharge of a seaman, the Superintendent may require the owner, or his agent, or the master, or any mate or other member of the crew, to produce any log book, paper or other document in his possession or power relating to a matter in question in the proceeding; and may require the attendance of and examine any of those persons, being then at or near the place, on the matter.

(2) Any person so required who fails, without reasonable cause, to comply with the requisition, shall be guilty of an offence and liable for each offence to a fine of five hundred dollars.

Rule as to payment of seamen in currency other than that mentioned in agreement.

50. Where a seaman has agreed with the master of a North Borneo ship for payment of his wages in local currency or any other currency, any payment of, or on account of, his wages, if made in any other currency than that stated in the agreement, shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in the agreement, for the time being current at the place where the payment is made.

Chapter 9

ADVANCE AND ALLOTMENT OF WAGES

Advances restricted.

51. (1) Where an agreement with the crew is required to be made in a prescribed form

—

- (a) the agreement may contain a stipulation for payment to or on behalf of the seaman, conditionally on his going to sea in pursuance of the agreement,

of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement; and

- (b) stipulations for the allotment of a seaman's wages may be made in accordance with this Chapter.

(2) Save as aforesaid an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in North Borneo shall be void, and any money paid in satisfaction or in respect of any such agreement shall not be deducted from the seaman's wages, and a person shall not have any right of action, suit or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

Regulations as to allotment notes.

52. (1) Any stipulation made under section 51 by a seaman at the commencement of a voyage for the allotment of any part of his wages during his absence shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made.

(2) Where the agreement is required to be made in a prescribed form, the seaman may require a stipulation to be inserted in the agreement for the allotment, by means of an allotment note, of any part, not exceeding one-half, of his wages in favour either of a near relative or of a saving bank.

(3) Allotment notes shall be in such form as may be prescribed.

(4) For the purposes of the provisions of this Ordinance with respect to allotment notes –

- (a) "near relative" means one of the following persons, namely, the wife, father, mother, grandfather, grandmother, child, grandchild, brother or sister of the seaman; and

- (b) "savings bank" means a savings bank approved by the Director.

(5) In order to give effect to the provisions of this section, the Superintendent before whom a seaman is engaged shall, after the seaman has signed the agreement, inquire of the

seaman whether he requires a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation, shall insert the stipulation in the agreement with the crew, and any such stipulation shall be deemed to have been agreed to by the master.

Allotment through savings banks.

53. (1) An allotment in favour of a savings bank shall be made in favour of such persons and carried into effect in such manner as may be prescribed.

(2) The sum received by a savings bank in pursuance of an allotment shall be paid out only on an application made through the Superintendent by the seaman himself, or, in case of his death, by some person to whom his property, if under one thousand dollars in value, may be paid under this part.

Master to give facilities to seamen for remitting wages.

54. (1) Where the balance of wages due to a seaman belonging to a North Borneo ship is more than one hundred dollars, and the seaman expresses to the master of the ship, while the ship is in North Borneo his desire to have facilities afforded to him for remitting all or any part of the balance to a savings bank, or to a near relative in whose favour an allotment note is made, the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of one hundred dollars, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port, or otherwise than conditionally on the seaman going to sea in the ship.

(2) Any master of a ship who fails to comply with this section shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Right of suing on allotment notes.

55. (1) The person in whose favour an allotment note under this Chapter is made may, unless the seaman is shown, in the manner in this Ordinance specified, to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted, when and as the same are made payable, with costs from the owner of the ship with

respect to which the engagement was made, or from any agent of the owner who has authorized the allotment, in the same court and manner in which wages of seamen not exceeding five hundred dollars may be recovered under this Ordinance:

Provided that the wife of a seaman, if she deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall forfeit all right to further payments under any allotment made in her favour.

(2) In any proceeding for such recovery, it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court –

- (a) by the official statement of the change in the crew caused by his absence, made and signed by the master, as by this Ordinance is required;
- (b) by a certified copy of some entry in the official logbook to the effect that he has left the ship;
- (c) by a credible letter from the master of the ship to the same effect; or
- (d) by such other evidence as the court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Time for payment of an allotment note.

56. A payment under an allotment note shall begin at the expiration of one month from the date of the agreement with the crew, and shall be paid at the expiration of every subsequent month after the first month, and shall be paid only in respect of wages earned before the date of payment.

Chapter 10

RIGHTS OF SEAMEN IN RESPECT OF WAGES

Right to wages, etc. when to begin.

57. The right of a seaman belonging to a North Borneo ship to wages and provisions shall be taken to begin either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Right to recover wages and salvage not to be forfeited.

58. (1) A seaman belonging to a North Borneo ship shall not by any agreement forfeit his lien on the ship, or be deprived of any remedy for the recovery of his wages, to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship, or abandon any right that he has or obtains in the nature of salvage; and every stipulation in any agreement inconsistent with any provisions of this Ordinance shall be void.

(2) Nothing in this section shall apply to a stipulation made by the seaman belonging to any North Borneo ship which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to any other ship.

Wages not to depend on freight.

59. (1) The right of a seaman belonging to a North Borneo ship to wages shall not depend on the earning of freight.

(2) Every seaman and apprentice who would be entitled to demand and recover any wages, if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same, notwithstanding that freight has not been earned.

(3) In all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

(4) Where a seaman or apprentice who would, but for his death, be entitled by virtue of this section to demand and recover any wages, dies before the wages are paid, they shall be paid and applied in the manner provided by this Part with respect to the wages of a seaman who dies during a voyage.

Wages on termination of service by wreck.

60. (1) When the service of a seaman employed on a North Borneo ship terminates before the date contemplated in the agreement, by reason of the wreck or loss of a ship, he shall be entitled, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, to receive wages at the rate to which he was entitled at that date.

(2) A seaman shall not be entitled to receive wages under this section if the owner shows that the unemployment was not due to the wreck or loss of the ship and shall not be entitled to receive wages under this section in respect of any day if the owner shows that the seaman was able to obtain suitable employment on that day.

(3) In this section "seaman" includes every person employed or engaged in any capacity on board any ship, but, in the case of a ship which is a fishing vessel, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the vessel.

Wages on termination of service by illness.

61. Where the service of a seaman belonging to a North Borneo ship terminates before the date contemplated in his agreement by reason of his being left on shore at any place not in North Borneo under a certificate, granted in the manner provided in the Merchant Shipping Acts, of his unfitness or inability to proceed on the voyage, he shall be entitled to wages up to the time of such termination, but not for any longer period.

Wages not to accrue during refusal to work or imprisonment.

62. A seaman or apprentice belonging to a North Borneo ship shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work, when required,

whether before or after the time fixed by the agreement for his commencement of such work, nor, unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Forfeiture of wages etc., of seaman when illness caused by his own default.

63. Where a seaman belonging to a North Borneo ship is by reason of illness incapable of performing his duty, and it is proved that the illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of the illness incapable of performing his duty.

Costs of procuring punishment may be deducted from wages.

64. Whenever in any proceeding relating to a seaman's wages, it is shown that a seaman or apprentice belonging to a North Borneo ship has, in the course of the voyage, been convicted of an offence by a competent tribunal and rightfully punished for that offence by imprisonment or otherwise, the Court hearing the case may direct any part of the wages due to the seaman, not exceeding one month's wages, to be applied in reimbursing any costs properly incurred by the master in procuring the conviction and punishment.

Compensation to seaman improperly discharged.

65. If a seaman, having signed an agreement to serve in a North Borneo ship is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages which he has earned, due compensation for the damage caused to him by the discharge, not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

Restriction on sale of and charge upon wages.

66. (1) As respects wages due or accruing to a seaman or apprentice belonging to a North Borneo ship –

- (a) they shall not be subject to attachment or arrestment from any court;

- (b) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) a payment of wages to the seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of those wages, or any attachment, encumbrance, or arrestment thereof.

(2) Nothing in this section shall affect the provisions of this Part with respect to allotment notes.

Chapter 11

MODE OF RECOVERING WAGES

Summary proceedings for wages.

67. A seaman or apprentice or a person duly authorized on his behalf may as soon as any wages due to him, not exceeding five hundred dollars, become payable sue for the same in a summary manner before any Court of a Magistrate of the First Class in or near the place at which his service has terminated, or at which he has been discharged, or at which any person, on whom the claim is made, is or resides, and the order made by the Court in the matter shall be final.

Saving in case of foreign ships.

68. Nothing in this Chapter shall be construed as limiting the jurisdiction of a Court to refuse to entertain an action for wages by the master or a member of the crew of a ship –

- (a) if the ship is not a British or North Borneo ship; or
- (b) if, in the case of a British ship, the provisions of section 166 of the Principal Act apply.

Remedies of master for wages disbursements, etc.

69. (1) The master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Ordinance or by any law or custom.

(2) The master of a ship, and every person lawfully acting as a master of a ship by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any proceeding in the High Court exercising Admiralty jurisdiction touching the claim of a master in respect of wages, or of such disbursements or liabilities as aforesaid, any right of set-off or counter-claim is set up, the Court may enter into and adjudicate upon all questions, and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

Powers of Court in case of unreasonable delay in paying master's wages.

70. In any action or other legal proceedings by the master of a ship for the recovery of any sum due to him on account of wages, the Court may, if it appears to it that the payment of the sum due has been delayed otherwise than owing to the act or default of the master, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the person liable to make the payment, order that person to pay, in addition to any sum due on account of wages, such sum as it thinks just as damages in respect of the delay, without prejudice to any claim which may be made by the master on that account.

Chapter 12

POWERS OF COURTS TO RESCIND CONTRACTS

Power of Court to rescind contract between owner or master and seaman or apprentice.

71. (1) Where a proceeding is instituted in or before any Court in relation to any dispute between an owner or master of a ship and a seaman or apprentice arising out of or incidental

to their relation as such, or is instituted for the purpose of this section, the Court, if having regard to all the circumstances of the case it thinks fit, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the Court thinks just.

(2) This power shall be in addition to any other jurisdiction which the Court can exercise independently of this section.

Chapter 13 PROPERTY OF DECEASED SEAMEN

Property of seaman who dies during voyage.

72. (1) If any seaman or apprentice belonging to a North Borneo ship the crew of which are to be discharged in or the final port of destination of which is in North Borneo dies during a voyage the master of the ship shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.

(2) The master may, if he thinks fit, cause any of the effects to be sold by auction at the mast or otherwise by public auction.

(3) The master shall enter in the official log book the following particulars –

- (a) a statement of the amount of the money and a description of the effects;
- (b) in case of a sale, a description of each article sold and the sum received for each;
- (c) a statement of the sum due to the deceased for wages and of the amount of deductions, if any, to be made from the wages.

(4) The entry shall be signed by the master and attested by a mate and some other member of the crew.

(5) The above-mentioned money, effects, and balance of wages are in this Chapter referred to as the property of the seaman or apprentice.

Dealing with and account of property of seaman who dies during voyage.

73. (1) Where a seaman or apprentice dies as aforesaid the master shall, within forty- eight hours after his arrival at his port of destination in North Borneo, deliver and pay the property to the Superintendent at that port.

(2) In all cases where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the Superintendent such accounts as, and in such form as, he requires of the property of the deceased.

(3) A deduction claimed by the master in such account shall not be allowed unless verified, if an official log book is required to be kept, by an entry in that book made and attested as required by this Ordinance, and also by such other vouchers, if any, as are reasonably required by the Superintendent.

(4) The Superintendent may, if he thinks fit, sell any of the property of a deceased seaman or apprentice delivered to him or of which he takes charge under this Chapter and the proceeds of such sale shall be deemed to form part of the said property.

(5) The Superintendent shall grant to a master, upon due compliance with such provisions of this section as relate to acts to be done at the port of destination, a certificate to that effect.

Penalty for non-compliance with provisions as to property of deceased seaman.

74. (1) Any master of a ship to which section 72 refers who fails to comply with the provisions of this Chapter with respect to –

- (a) taking charge of the property of a deceased seaman or apprentice;
- (b) making in the official log book the proper entries relating thereto;
- (c) procuring the proper attestation of those entries as required by this Chapter; or
- (d) the payment or delivery of the property,

shall be accountable for the property to the Superintendent and shall pay and deliver the same accordingly and shall, in addition to paying and delivering the same accordingly, be guilty of an offence and shall be liable to a fine of treble the value of the property not accounted for, or, if such value is not ascertained, of five hundred dollars.

(2) If any such property is not duly paid, delivered or accounted for by the master, the owner of the ship shall pay, deliver and account for the same, and such property shall be recoverable from him accordingly, and if he fails to account for and deliver or pay the same, he shall, in addition to his liability for the same, be guilty of an offence and shall be liable to a fine of treble the value of the property not accounted for, delivered or paid over, or, if such value is not ascertained, of five hundred dollars.

(3) The property may be recovered in the same Court and manner in which the wages of seamen may be recovered under this Ordinance.

Recovery of wages of seamen lost with their ship.

75. (1) Where a seaman or apprentice belonging to a ship to which section 72 refers is lost with the ship to which he belongs, the Superintendent may recover the wages due to him from the owner of the ship, in the same Court and in the same manner in which seaman's wages are recoverable, and shall deal with those wages in the same manner as with the wages of the other deceased seamen and apprentices under this Chapter.

(2) In any proceeding for the recovery of the wages, if it is shown by some official return produced out of the custody of the Superintendent or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board, either immediately after the time at which she was last heard of, or at such later time as the Court hearing the case thinks probable.

(3) Any duplicate agreement made out, or statement or a change of the crew delivered, under this Part, or under the Merchant Shipping Acts, at the time of the last departure of the ship from North Borneo, or a certificate purporting to be a certificate from a consular or other public officer at any port outside North Borneo stating that certain seamen and apprentices were shipped in the ship from the said port, shall, if produced out of the

custody of the Superintendent be, in the absence of proof to the contrary, sufficient proof that the seamen and apprentices therein named as belonging to the ship were on board at the time of the loss.

Property of seaman dying in North Borneo.

76. If a seaman or apprentice belonging to a ship to which section 72 refers dies in North Borneo and was at the time of his death entitled to claim from the master or owner of a ship in which he has served any effects or unpaid wages, the master or owner shall pay and deliver or account for such property to the Superintendent at the port where the seaman or apprentice was discharged or was to have been discharged.

Payment over of property of deceased seamen by the Superintendent.

77. (1) Where any property of a deceased seaman or apprentice belonging to a ship to which section 72 refers come into the hands of the Superintendent, the Superintendent after deducting expenses incurred in respect of that seaman or apprentice or of his property such sum as he thinks proper to allow, shall, subject to the provisions of this Chapter, deal with the residue as follows –

- (a) if the property exceeds in value one thousand dollars he shall pay and deliver the residue to the legal personal representative of the deceased;
- (b) if the property does not exceed in value one thousand dollars, he may, as he thinks fit, either –
 - (i) pay or deliver the residue to any claimant who is proved to his satisfaction to be the widow or a child of the deceased, or, to be entitled to the personality of the deceased either under his will, if any, or any statute of distribution or otherwise, or to be a person entitled to take out representation, although no such representation has been taken out, and shall be thereby discharged from all further liability in respect of the residue so paid or delivered; or
 - (ii) require representation to be taken out, and pay and deliver the residue to the legal personal representative of the deceased.

(2) Every person to whom any such residue is so paid or delivered shall apply the same in due course of administration.

Dealing with deceased seaman's property when he leaves a will.

78. (1) Where a deceased seaman or apprentice belonging to a ship to which section 72 refers has left a will, the Superintendent may refuse to pay or deliver any residue as provided in section 77 –

- (a) if the will was made on board ship, to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first mate of the ship; and
- (b) if the will was not made on board ship, to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in writing and signed or acknowledged by the testator in the presence of, and is attested by, two witnesses, one of whom is the Superintendent, or a person holding a similar office or is a minister of religion officiating in the place in which the will is made, or, where there are no such persons, a Magistrate, a British consular officer, or an officer of customs.

(2) Whenever the Superintendent refuses under this section to pay or deliver the residue to a person claiming under a will, the residue shall be dealt with as if no will had been made.

Claims by creditors.

79. (1) A creditor shall not be entitled to claim from the Superintendent the property of a deceased seaman or apprentice received by the Superintendent under this Ordinance, or any part thereof, by virtue of representation obtained as a creditor.

(2) A creditor shall not be entitled by any means whatever to obtain payment of his debt out of the property, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after the death.

(3) The demand shall be made by the creditor delivering to the Superintendent an account in writing, stating the particulars of his demand and the place of his abode, and signed by him and verified by a statutory declaration.

(4) If before the demand is made, any claim to the property of the deceased made by any person has been allowed, the Superintendent shall give notice to the creditor of the allowance of the claim.

(5) If no claim has been allowed, the Superintendent shall investigate the creditor's account, and may for that purpose require him to prove the same, and to produce all books, accounts, vouchers and papers relating thereto; and if by means of them the creditor satisfies the Superintendent of the justice of the demand, either in the whole or in part, the same shall be allowed and paid accordingly, so far as the property then in the hands of the Superintendent will extend for that purpose, and the Superintendent shall thereby be discharged from all further liability in respect of money so paid.

(6) If the Superintendent is not satisfied as to the claim, or if such books, accounts, vouchers or papers as aforesaid are not produced, and sufficient reason is not given for their non-production, the demand shall be disallowed.

(7) In any case whatever the Superintendent may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand.

(8) If in the course of such time a claim to the property of the deceased is made by any person as widow, next of kin or legatee, and allowed by the Superintendent under this Chapter, the Superintendent may pay and deliver the same to that person.

(9) Where the property has been paid and delivered by the Superintendent to any person as widow, next of kin or legatee of the deceased, whether before or after the demand made by the creditor, the creditor shall have the same rights and remedies against that person as if he had received the property as the legal personal representative of the deceased.

Dealing with unclaimed property of deceased seaman.

80. (1) Where no claim to the property of a deceased seaman or apprentice received by the Superintendent under this Chapter is substantiated within one year after the receipt thereof, the Superintendent shall pay the same, or the proceeds thereof, into the general revenue.

(2) If any subsequent claim is made to such property or the proceeds thereof, and is established to the satisfaction of the Superintendent, the amount, or so much as appears to be due to the claimant, shall be paid to the claimant out of the general revenue.

(3) If any claim is not established to the satisfaction of the Superintendent, the claimant may apply by summons to the High Court, and that Court, after taking evidence either orally or on affidavit, shall make such order on the summons as seems just.

(4) After the expiration of six years from the receipt of such property or proceeds by the Superintendent, no such claim shall be entertained without the sanction of the Governor.

Forgery of documents, etc., for purpose of obtaining property of deceased seaman.

81. Any person, who, for the purpose of obtaining either for himself or for any other person, any property of any deceased seaman or apprentice –

- (a) forges or fraudulently alters, or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered any document purporting to show or assist in showing any right to such property;
- (b) makes use of any document which has been so forged or fraudulently altered as aforesaid;
- (c) gives or assists in giving, or procures to be given, any false evidence, knowing the same to be false;
- (d) makes or assists in making, or procures to be made, any false representation, knowing the same to be false; or
- (e) assists in procuring any false evidence or representation to be given or made, knowing the same to be false,

shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Chapter 14

PROVISIONS, HEALTH AND ACCOMMODATION

Complaints as to provisions or water.

82. (1) If three or more of the crew of a North Borneo ship where such ship is within North Borneo, consider that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity, they may complain thereof to the Superintendent or a Port Health Officer, and such officer may either examine the provisions or water complained of or cause them to be examined.

(2) If such officer or the person making the examination finds that the provisions or water are of bad quality and unfit for use, or deficient in quantity, he shall signify it in writing to the master of the ship, and if the master of the ship does not thereupon provide other proper provisions or water in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any provisions or water so signified to be deficient in quantity or uses any provisions or water so signified to be of bad quality and unfit for use, he shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

(3) Such officer or the person making the examination shall enter a statement of the result of the examination in the official log book of the ship, and shall send a report thereof to the Superintendent, and that report shall be admissible in evidence in the manner provided by this Ordinance.

(4) If such officer or the person making the examination certifies in the statement entered in the official log book that there were no reasonable grounds for the complaint, he may order that each of the complainants shall forfeit to the owner out of his wages a sum not exceeding one week's wages.

Inspection of provisions and water.

83. (1) An inspecting officer may inspect, either on board the ship or before shipment, any provisions (other than provisions provided by the crew themselves) or water intended for the use of the crew of any North Borneo ship which is going from any port in North Borneo and for which an agreement with the crew is required under this Ordinance and if he finds that the provisions or water are in any respect deficient in quality, the ship shall be detained until the defects are remedied to his satisfaction:

Provided that any inspection of provisions or water under this section shall be made before shipment whenever practicable, and if the owner, agent or master of a ship gives notice to the inspecting officer that any provisions or water for the ship are ready for inspection, the inspecting officer shall not have power to inspect any such provisions or water under this section, if they are at a convenient place for inspection, except within forty-eight hours after the notice is given, without prejudice to the power of the inspecting officer to inspect any provisions or water not specified in the notice or, without unnecessarily delaying the ship, to proceed on board the ship in order to satisfy himself that there has been no evasion of the requirements of this section by the substitution of other provisions or water for those which have been inspected on shore or specified in a notice as being the provisions or water for the ship, or otherwise.

(2) Where any provisions or water are found deficient in quality under this section, the master of the ship shall be guilty of an offence and shall be liable to a fine of five thousand dollars, unless the Court before which the case is tried thinks that finding of the inspecting officer was not justified; but, if the master of the ship shows to the satisfaction of the Court that the responsibility for the defects in the provisions or water rests either with the owner of the ship, or any agent of the owner of the ship, or with the person who has supplied the provisions or water, that owner, agent or person shall be liable to conviction for the offence instead of the master, and the master shall be exempt.

(3) The master of the ship and any other person having charge of any provisions or water liable to inspection under this section shall give the inspecting officer every reasonable facility for the purpose of his inspection under this section, and, if such master or other person refuses or fails to do so, he shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

(4) Where any provisions are inspected under this section either before shipment or on board a ship there shall be payable in respect of such inspection such fees as may be prescribed:

Provided that where provisions, which have been inspected and sealed by an inspecting officer, are found on board any ship within such time as may be prescribed as the time for which the seals are to hold good, no fee shall be charged for the verification of the seals.

(5) The Director may appoint officers for the purposes of any inspection under this section, and the expression "inspecting officer", wherever used in this section, means an officer so appointed.

Allowance for short or bad provisions.

84. In either of the following cases, that is to say –

- (a) if during a voyage of a North Borneo ship where such ship is within North Borneo, the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement with the crew, and also except for any time during which the seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct either on board or on shore); or
- (b) if it is shown that any of those provisions are or have been, during a voyage of any such ship as aforesaid, bad in quality and unfit for use,

the seaman shall receive, by way of compensation for that reduction or bad quality, such sums as may be prescribed; but if it is shown to the satisfaction of the Court before the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take those circumstances into consideration, and shall modify or refuse compensation as the justice of the case requires.

Weights and measures on board.

85. (1) The master of a North Borneo ship where the ship is within North Borneo, shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out the provisions and articles in the presence of a witness whenever any dispute arises about the quantities.

(2) If the master of any such ship fails without reasonable cause to comply with this section he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Ship to carry medicines, medical stores etc. in accordance with scale.

86. (1) The owner, agent and master of every North Borneo ship of a tonnage exceeding fifteen tons whose voyage commences from any port in North Borneo shall cause to be kept on board such ship a supply of medicines and medical stores in accordance with such scale, and a copy of such instructions for dispensing the same, as may be prescribed.

(2) The owner, agent and master of any such ship who wilfully refuses or neglects to provide and keep on board such medicines, medical stores and instructions as are required by this section shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Inspection of medicines etc.

87. (1) A Port Health Officer may inspect any medicines or medical stores or appliances with which any ship is under the provisions of this Chapter required to be provided, and for the purposes of such inspection shall have all the powers of an inspector under this Ordinance.

(2) If the Port Health Officer is of the opinion that the articles inspected are deficient in quantity or quality, or are placed in improper receptacles, he shall give notice in writing to the Superintendent and also to the master, owner or agent of the ship, and the master of the ship before proceeding to sea shall produce to the Superintendent a certificate under the hand of the Port Health Officer that the default found by him has been remedied, and if that certificate is not so produced, the ship shall be detained until the certificate is produced; and

if the ship proceeds to sea, the owner, master or agent of the ship shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Expenses of medical attendance in case of injury or illness.

88. (1) If the master of, or a seaman or apprentice belonging to a North Borneo ship where such ship is within North Borneo, receives any hurt or injury in the service of the ship, or suffers from any illness (not being an illness due to his wilful act or default or to his own misbehaviour) the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master, seaman or apprentice until he is cured or dies or is returned either to the port at which he was shipped or to a port in the country to which he belongs, and of his conveyance to such port, and in the case of death the expense, if any, of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from the wages of such master, seaman or apprentice:

Provided that nothing in this section shall prejudice the rights of any master, seaman or apprentice under the Workmen's Compensation Ordinance [*Ord. No. 14 of 1955.*] so, however, that no person shall be entitled to payments under that Ordinance in respect of the period during which the owner of the ships is liable to defray the expenses of such person's maintenance under this Chapter.

(2) If a master, seaman or apprentice as aforesaid is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty the expense of the removal and of providing the necessary advice, attendance and medicine, and of his maintenance while away from the ship, shall be defrayed in the manner provided in subsection (1).

(3) The expense of all medicines, surgical and medical advice, and attendance given to a master, seaman or apprentice as aforesaid whilst on board his ship shall be defrayed in the manner provided in subsection (1).

(4) In all other cases any reasonable expenses duly incurred by the owner of any such ship, where such ship is within North Borneo, for any seaman or apprentice in respect of illness, and also any reasonable expenses duly incurred by the owner of any such ship as aforesaid in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman or apprentice.

Recovery of expenses from owner.

89. (1) If any of the expenses attendant on the illness, hurt or injury of a seaman or apprentice which are to be paid under this Chapter by the master or owner of the ship to which such seaman or apprentice belongs are paid by any authority on behalf of the Government or if any other expenses in respect of the illness, hurt or injury, of any seaman or apprentice belonging to any North Borneo ship whose wages are not accounted for under this Part to that authority, are so paid, those expenses shall be repaid to that authority by the master or owner of the ship.

(2) If any expenses are not repaid as required by subsection (1), the amount thereof, with costs, shall be a charge upon the ship and shall be recoverable from the master or from the owner of the ship for the time being, or where the ship has been lost from the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, as a debt due to the Government, either by ordinary process of law or in the Court and in the manner in which wages may under this Part be recovered by seamen and apprentices.

(3) In any proceeding for such recovery, a certificate of the facts, signed by the aforesaid authority, together with such vouchers, if any, as the case requires, shall be sufficient proof that the expenses in respect of which the proceeding has been instituted were duly paid by that authority.

Accommodation for seamen etc.

90. The accommodation for seamen and apprentices in North Borneo ships shall be such as may be prescribed and provision may be made in the same manner for the inspection of such accommodation and for fees to be paid in respect of such inspection.

Certain ships to carry medical practitioners.

91. (1) Every foreign-going ship which proceeds from North Borneo, not being an emigrant ship within the meaning of Part III of the Principal Act, having one hundred persons or upwards on board, shall carry on board as part of her complement some duly qualified

medical practitioner, and if she does not, her owner shall for every voyage of the ship or any part thereof made without a duly qualified medical practitioner be guilty of an offence and liable to a fine of five thousand dollars.

(2) The provisions of section 303 of the Principal Act shall apply in respect of an emigrant ship, as defined for the purposes of Part III of that Act, which proceeds from North Borneo and for any voyage made in breach of such provisions the owner shall be liable to the like penalty as provided for a breach of the provisions of subsection (1).

(3) For the purposes of subsection (1), “duly qualified medical practitioner” means a medical practitioner authorised by law to practise as a legally qualified medical practitioner in some part of the Commonwealth or, in the case of a foreign ship, in the country to which the ship belongs.

Penalty on master on filthy condition of ship carrying passengers.

92. (1) If any ship carrying passengers is found on arrival in North Borneo to be in a filthy and insanitary condition, the master of that ship shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

(2) The Port Health Officer may inspect any such ship on arrival in order to ascertain the sanitary condition thereof; and that officer shall, for that purpose, have all the powers of an inspector under this Ordinance.

Medical inspection of seamen.

93. The Port Health Officer shall, on application by the owner or master of any British or North Borneo ship and on payment by such owner or master of the prescribed fees, examine any seaman applying for employment in that ship, and shall give to the Superintendent a report under his hand stating whether the seaman is in a fit state for sea, and a copy of the report shall be given to the master or owner.

Chapter 15
FACILITIES FOR MAKING COMPLAINTS

Facilities for making complaint.

94. (1) If a seaman or apprentice whilst on board a North Borneo ship where such ship is within North Borneo states to the master of the ship his desire to make a complaint to the Superintendent or a Magistrate against the master or any of the crew, the master shall, as soon as the service of the ship will permit, -

- (a) if the ship is then at a port in North Borneo; or
- (b) if the ship is not then at such a port after her first arrival at any such port,

allow the complainant to go ashore or send him ashore in proper custody, so that he may be enabled to make his complaint.

(2) If the master of a ship fails without reasonable cause to comply with this section, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Chapter 16
PROTECTION OF SEAMEN FROM IMPOSITION

Assignment or sale of salvage invalid.

95. Subject to the provisions of this Ordinance, an assignment or sale of salvage payable to a seaman or apprentice belonging to a North Borneo ship made prior to the accruing thereof shall not bind the person making the same; and a power of attorney or authority for the receipt for any such salvage shall not be irrevocable.

No debt exceeding \$5 recoverable till end of voyage.

96. A debt exceeding in amount five dollars incurred by any seaman belonging to a North Borneo ship after he is engaged to serve shall not be recoverable until the service agreed for is concluded.

Penalty for overcharging by lodging house keepers.

97. If a person demands or receives from a seaman or apprentice payment in respect of his board or lodging in the house of that person for a longer period than that during which the seaman or apprentice has actually resided or boarded therein, that person shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Penalty for detaining seamen's effects.

98. (1) If a person receives or takes into his possession or under his control any money or effects of a seaman or apprentice, and does not return the same or pay the value thereof, when required by the seaman or apprentice, subject to such deduction as may be justly due to him from the seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

(2) Notwithstanding any limitation of the ordinary jurisdiction of any Court by which an offence under subsection (1) is tried –

- (a) the Court may, besides inflicting a fine, make an order directing the amount of the money, or the value of the effects, subject to such deduction as aforesaid, if any, or the effects themselves, to be forthwith paid or delivered to the seaman or apprentice; and
- (b) if the person to whom such order is addressed makes default in complying therewith, he may, in the discretion of the Court be ordered to pay a sum (which shall for the purposes of the Criminal Procedure Code [Ordinance No. 4 of 1959.] be deemed to be a fine which he is sentenced to pay under any written law) not exceeding ten dollars for every day during which he is in default, or to be imprisoned until he has remedied his default, but so that he shall not, for non-compliance with such order, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate five hundred dollars.

Penalty for solicitations by lodging house keepers.

99. If, within twenty-four hours after the arrival of a ship at a port in North Borneo, a person then being on board the ship solicits a seaman to become a lodger at the house of a person letting lodgings for hire, or takes out of the ship any effects of a seaman, except under the personal direction of the seaman, and with the permission of the master, he shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

Penalty for being on board ship without permission before seamen leave.

100. Where a North Borneo ship is about to arrive, is arriving or has arrived at any port in North Borneo, and any person, not being in Her Majesty's service or not being duly authorized by law for the purpose –

- (a) goes on board the ship, without the permission of the master before the seamen lawfully leave the ship at the end of their engagement or are discharged, whichever last happens; or
- (b) being on board the ship, remains there after being warned to leave by the master, or by a police officer, or by the superintendent,

that person shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars; and the master of the ship or the Superintendent may take him into custody, and deliver him up forthwith to a police officer to be taken before a Court having jurisdiction in respect of the offence.

Chapter 17

PROVISIONS AS TO DISCIPLINE

Misconduct endangering life or ship.

101. If a master, seaman or apprentice belonging to a North Borneo ship by wilful breach of duty or by neglect of duty or by reason of drunkenness –

- (a) does any act tending to the immediate loss, destruction or serious damage of the ship or tending immediately to endanger the life or limb of a person belonging to or on board the ship; or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board the ship from immediate danger to life or limb,

he shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Desertion and absence without leave.

102. If a seaman lawfully engaged, or an apprentice belonging to a North Borneo ship where such ship is within North Borneo, commits any of the following offences he shall, on conviction thereof, be liable to be punished as follows –

- (a) if he deserts from his ship, he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board and of the wages which he has then earned, and to satisfy any excess of wages paid by the master or owner of the ship to any substitute engaged in his place at a higher rate of wages than the rate at which wages have been stipulated to be paid to him; and he shall also be liable to imprisonment for twelve weeks;
- (b) if he neglects or refuses without reasonable cause, to join his ship, or to proceed to sea in his ship, or is absent without leave at any time within the period of twenty-four hours next before the ship's sailing from a port, either at the commencement or during the progress of a voyage, or is absent at any time, without leave and without sufficient reason, from his ship or from his duty, he shall, if the offence does not amount to desertion, or is not treated as such by the master, be guilty of the offence of absence without leave, and be liable to forfeit out of his wages a sum not exceeding two days' pay, and, in addition, for every twenty-four hours of absence, either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute; and he shall also be liable to imprisonment for ten weeks.

Provisions as to failure to join ship and desertion.

103. (1) Where a seaman belonging to a North Borneo ship who has been lawfully engaged and has received under his agreement an advance note, after negotiating his advance note wilfully or through misconduct fails to join his ship or deserts therefrom before the note becomes payable, he shall be guilty of an offence and shall be liable to imprisonment for three months and a fine of five hundred dollars; but nothing in this section shall take away or limit any remedy by suit or otherwise which any person would otherwise have in respect of the negotiation of the advance note, or which an owner or master would otherwise have for breach of contract.

(2) Where it is shown to the satisfaction of the Superintendent that a seaman belonging to a North Borneo ship and lawfully engaged has wilfully or through misconduct failed to join his ship, the Superintendent may direct that the seaman's certificate of discharge shall be withheld for such period as he may think fit, and while a seaman's certificate of discharge is so withheld the Superintendent and any other person having the custody of the necessary documents, may, notwithstanding anything in this or any other written law, refuse to furnish copies of any of his certificates of discharge or certified extracts of any particulars of service or character.

Conveyance of deserter on board ship.

104. (1) If in North Borneo a seaman or apprentice belonging to a North Borneo ship is guilty of the offence of desertion or of absence without leave, or otherwise absents himself from his ship without leave, the master or any mate, or the owner, agent, or charterer of the ship may, with or without the assistance of any police officers, convey him on board his ship, and every police officer is hereby directed to give assistance if required:

Provided that if the seaman or apprentice so requires, he shall first be taken before the Court of a Magistrate to be dealt with according to law.

(2) If it appears to the Court before which the case is brought that the seaman or apprentice has been conveyed on board or taken before the Court on improper or insufficient grounds, that Court may, notwithstanding any limitation of its ordinary jurisdiction, inflict on the master, mate, owner, agent or charterer, as the case may be, a fine of five hundred

dollars; but the infliction of that fine shall be a bar to any action for false imprisonment in respect of the arrest.

Power of Court to order offender to be taken on board ship.

105. (1) Where a seaman or apprentice belonging to a North Borneo ship is brought before a Court on the ground of the offence of desertion, or of absence without leave, or of otherwise absenting himself without leave, the Court, if the master or the owner or his agent so requires, may, in lieu of committing him to prison, cause him to be conveyed on board his ship for the purpose of proceeding on the voyage or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned or by virtue of his then existing engagement may afterwards earn.

(2) If in North Borneo a seaman or apprentice as aforesaid intends to absent himself from his ship or his duty, he may give notice of his intention, either to the owner or to the master of the ship, not less than forty-eight hours before the time at which he ought to be on board his ship,; and, in the event of that notice being given, the Court shall not exercise any of the powers conferred by this section for causing the offender to be conveyed on board his ship.

Seaman imprisoned for desertion may be sent on board before term of imprisonment completed.

106. Where a seaman or apprentice belonging to a North Borneo ship has been imprisoned for having been guilty of the offence of desertion or of absence without leave, or for having committed any other breach of discipline, and during his imprisonment and before his engagement is at an end of his services are required on board his ship, any Magistrate may, except where such seaman or apprentice has given notice under subsection (2) of section 105, on the application of the master or of the owner or his agent, notwithstanding that the period of imprisonment is not at an end, cause the seaman or apprentice to be conveyed on board his ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship, or to the owner or his agent, to be by them so conveyed.

General offences against discipline.

107. If a seaman lawfully engaged in, or an apprentice belonging to, a North Borneo ship where such ship is within North Borneo, commits any of the following offences (in this Ordinance referred to as “offences against discipline”), he shall, on conviction thereof, be liable to be punished as follows –

- (a) if he quits the ship without leave after her arrival at her port of delivery, and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay;
- (b) if he is guilty of wilful disobedience to any lawful command, he shall be liable to imprisonment not exceeding four weeks, and also, at the discretion of the Court, to forfeit out his wages a sum not exceeding two days' pay;
- (c) if he is guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty, he shall be liable to imprisonment not exceeding twelve weeks, and also, at the discretion of the Court, to forfeit for every twenty-four hours continuance of disobedience or neglect either a sum not exceeding six days' pay or any expenses properly incurred in hiring a substitute;
- (d) if he assaults any officer of the ship, he shall be liable to imprisonment not exceeding twelve weeks;
- (e) if he combines with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment not exceeding twelve weeks;
- (f) if he wilfully damages his ship, or dishonestly misappropriates or converts to his own use, or commits criminal breach of trust in respect of, or wilfully damages, any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment not exceeding twelve weeks;
- (g) if he is convicted of any act of smuggling, whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to the master or owner a sum sufficient to reimburse the loss or damage; and the

whole or a proportionate part of his wages may be retained in satisfaction or on account of that liability, without prejudice to any further remedy.

Summary remedies not to affect other remedies.

108. Nothing in section 107 or in the sections relating to the offences of desertion or absence without leave shall take away or limit any remedy by suit or otherwise which an owner or master would, but for those provisions, have for any breach of contract in respect of the matters constituting an offence under those sections, but an owner or master shall not be compensated more than once in respect of the same damage.

Penalty for false statement as to last ship or name.

109. (1) If a seaman, on or before being engaged, wilfully and fraudulently makes a false statement of the name of his last ship, or alleged last ship, or wilfully and fraudulently makes a false statement of his own name, he shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

(2) The fine may be deducted from any wages which the seaman may earn by virtue of his engagement as aforesaid, and shall, subject to any reimbursement of the loss and expenses, if any, occasioned by any desertion previous to the engagement, be paid into the general revenue.

Entry of offences in official log book.

110. If on or in respect of any North Borneo ship, where such ship is within North Borneo, any offence within the meaning of this Chapter of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed, for which the offender's agreement imposes a fine and it is intended to enforce the fine –

- (a) an entry of the offence or act shall be made in the official log book and signed by the master and also by the mate or one of the crew;
- (b) the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port before her departure therefrom,

- either be furnished with a copy of the entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit;
- (c) a statement of a copy of the entry having been so furnished, or of the entry having been so read over, and, in either case, the reply, if any, made by the offenders, shall likewise be entered and signed in manner aforesaid; and
 - (d) in any subsequent legal proceeding the entries by this section required shall, if practicable, be produced or proved, and in default of that production or proof the Court hearing the case may, in its discretion, refuse to receive evidence of the offences or act of misconduct.

Facilities for proving desertion in proceedings for forfeiture of wages.

111. (1) Whenever a question arises whether the wages of any seaman or apprentice are forfeited under this Chapter for desertion from a North Borneo ship while such ship was within North Borneo, it shall be sufficient for the person insisting on the forfeiture to show that the seaman or apprentice was duly engaged in or belonged to the ship, and that he left the ship before the completion of the voyage or engagement, and that an entry of his desertion has been duly made in the official log book.

(2) The desertion shall thereupon, so far as relates to any forfeiture of wages under this Chapter, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

Application of forfeitures.

112. (1) Where any wages or effects are under this Chapter forfeited for desertion from a ship those effects may be converted into money; and those wages and effects, or the money arising from the conversion of the effects, shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and subject to that reimbursement, shall be paid into the public revenue.

(2) Where wages are forfeited under the provisions of this Ordinance in any case other than for desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Decision of questions of forfeiture and deductions in suits for wages.

113. Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice under this Ordinance may be determined in any proceedings lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises although by this Ordinance made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Ascertainment of amount of forfeiture out of wages.

114. If a seaman contracts for wages by the voyage, by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Ordinance shall be an amount bearing the same proportion to the whole wages or share as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture as the case may bear to the whole time spent in the voyage or run; and, if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Deductions of fines from wages and payment to Superintendent.

115. (1) Every fine imposed on a seaman belonging to a North Borneo ship for any act of misconduct for which his agreement imposes a fine shall be deducted as follows –

- (a) if the offender is discharged in North Borneo and the offence and the entry in the log book required by the Merchant Shipping Acts or by this Ordinance as the case may be in respect of the offence are proved to the satisfaction of the Superintendent before whom the offender is discharged, the master or owner shall deduct the fine from the wages of the offender;
- (b) if the offender enters Her Majesty's naval service at any place within North Borneo, and the offence and the entry as aforesaid are proved to

the satisfaction of the officer in command of the ship he so enters, the fine shall be deducted as aforesaid, and an entry shall be made in the official log book of the ship and signed by the officer to whose satisfaction the offence is proved.

(2) Every fine so deducted shall be paid to the Superintendent.

(3) If a master or owner of a ship fails without reasonable cause to pay any fine as required by this section, he shall be guilty of an offence and shall be liable to a fine of six times the amount of the fine not so paid.

(4) An act of misconduct for which any fine has been inflicted and paid by, or deducted from the wages of, the seaman shall not be otherwise punishable under this Ordinance.

Penalty for enticing to desert and harbouring deserters.

116. (1) If a person by any means whatever persuades or attempts to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea, in, or to desert from, his ship, or otherwise to absent himself from his duty, he shall be guilty of an offence and shall be liable, in respect of each seaman or apprentice whom he persuades or attempts to persuade as aforesaid, to a fine of two hundred dollars.

(2) If a person wilfully harbours or secretes a seaman or apprentice who has wilfully neglected or refused to join, or has deserted from, his ship knowing or having reason to believe the seaman or apprentice to have so done, he shall be guilty of an offence and shall be liable to, in respect of every seaman or apprentice so harboured or secreted, a fine of five hundred dollars.

Penalty on stowaways.

117. If a person secretes himself in any ship intending to go to sea in such ship without the consent either of the owner, agent or master, or of a mate, or of the person in charge of the ship, or of any other person entitled to give that consent, he shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

Chapter 18
OFFICIAL LOG BOOKS

Official log books to be kept and to be evidence.

118. (1) An official log book shall be kept in every North Borneo ship in the appropriate form for that ship approved by the Director.

(2) Such official log books, which may be different for different classes of ships, shall contain proper spaces for the entries required by this Ordinance.

(3) The official log book may, at the discretion of the master or owner, be kept distinct from, or united with, the ordinary ship's log book, so that, in all cases, the spaces in the official log book shall be duly filled up.

(4) An entry required by this Ordinance in an official log book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and of the entry respecting it; and, if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

(5) Every entry in the official log book shall be signed by the master and by the mate or some other member of the crew, and also –

(a) if it is an entry of illness, injury or death, by the surgeon or medical practitioner on board, if any;

(b) if it is an entry of wages due to a seaman or apprentice who dies, by the mate and by some member of the crew in addition to the master; and

(c) if it is an entry of wages due to a seaman who enters Her Majesty's naval service, by the seaman, or by the officer authorised to receive the seaman into that service.

(6) Every entry made in an official log book in the manner provided by this Ordinance shall be admissible in evidence.

Entries required in official log book.

119. The master of a North Borneo ship shall enter or cause to be entered in the official log book the following matters, that is to say –

- (a) every conviction by a legal tribunal of a member of his crew, and the punishment inflicted;
- (b) every offence committed by a member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the copy or reading over of that entry, and concerning the reply, if any, made to the charge, as is required by this Ordinance or by the Merchant Shipping Acts, as the case may be required;
- (c) every offence for which punishment is inflicted on board, and the punishment inflicted;
- (d) a statement of the conduct, character, and qualification of each of his crew, or a statement that he declines to give an opinion of those particulars;
- (e) every case of illness or injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted, if any;
- (f) every marriage taking place on board, with the names and ages of the parties;
- (g) the name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof;
- (h) the wages due to any seaman who enters Her Majesty's naval service during the voyage;
- (i) the wages due to any seaman or apprentice who dies during the voyage and the gross amount of all deductions to be made therefrom;
- (f) every collision with any other ship, and the circumstances under which the same occurred;

- (k) every accident sustained or caused by the ship which has occasioned any loss of life or any serious injury to any person or any material damage to the ship affecting her seaworthiness or her efficiency in her hull, equipments, or machinery, and every grounding of the ship; and
- (l) and other matter directed by this Ordinance to be entered.

Offences in respect of official log books.

120. (1) If an official log book required by this Chapter to be kept is not kept in the manner required by this Chapter, or if an entry directed by this Ordinance to be made therein is not made at the time and in the manner directed by this Ordinance, the master of the ship shall, in respect of each such failure to keep an official log book or to make an entry as aforesaid, be guilty of an offence and shall be liable, save in respect of an offence under subsection (2) or (3) or under sections 74, 122, 124, 157, or 175, to a fine of one hundred dollars.

(2) If any person makes, or procures to be made, or assists in making, any entry in an official log book as aforesaid in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after that arrival, he shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

(3) If any person wilfully destroys, mutilates or renders illegible any entry in an official log book as aforesaid, or wilfully makes or procures to be made or assists in making a false fraudulent entry in or omission from any such official log book, he shall be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Delivery of official log books to Superintendent.

121. (1) The master of every foreign-going North Borneo ship shall within forty-eight hours after the ship's arrival at a port in North Borneo or upon the discharge of the crew, whichever first happens, deliver or transmit the official log book of the voyage to the Superintendent.

(2) The master or owner of every North Borneo ship other than a foreign-going ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of

December in every year, transmit or deliver the official log book for the preceding half-year to the Superintendent.

(3) Upon the delivery or transmission of an official log book to the Superintendent under the provisions of this section, the Superintendent shall give to the master or owner of the ship a certificate of such delivery or transmission, and may detain any ship to which this section applies until the conditions precedent to the giving of the certificate exists.

(4) If the master or owner of a ship fails without reasonable cause to deliver or transmit any official log book as required by this section, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Official log books to be sent home in case of transfer of ship, and in case of loss.

122. (1) Where by reason of transfer of ownership or change of employment of a North Borneo ship the official log book ceases to be required in respect of the ship or to be required at the same date, the master or owner of the ship shall, if the ship is then within North Borneo, within one month, and if she is elsewhere, within six months, after such cessation deliver or transmit to the Superintendent the official log book duly made out to the time of the cessation.

(2) If a North Borneo ship is lost or abandoned, the master or owner thereof, shall, if practicable, and as soon as possible, deliver or transmit to the Superintendent the official log book duly made out to the time of the loss or abandonment.

(3) If the master or owner of a ship fails, without reasonable cause, to comply with any requirement of this section, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Chapter 19
REGISTRATION AND RETURNS

Register of seamen.

123. The Director shall, by means of the documents transmitted to him in pursuance of this Ordinance, and by any other means in his power, keep at his office a register of all persons who serve in North Borneo ships.

Returns of births and deaths in North Borneo ships.

124. (1) The master of every North Borneo ship and the master of every sea-going British ship the managing owners of which are resident in North Borneo and which is exempt from registry under section 3 of the Principal Act, shall, as soon as may be after the occurrence of the birth of a child or the death of a person happening on board his ship, record in his official log book or otherwise the fact of the birth or death, and such particulars as may be prescribed concerning the birth or death, or such of them as may be known to him.

(2) The master of every ship as aforesaid shall upon her arrival at a port in North Borneo deliver or transmit to the Director, in such form as may be prescribed a return of the facts recorded by him in respect to the birth of a child or the death of a person on board such ship.

(3) The Director shall send a certified copy of the returns relating to such births and deaths to the Registrar-General of Births and Deaths for North Borneo, who shall cause the same to be filed and such certified copy shall be deemed to be a certified copy of a register for the purposes of Registration of Births and Deaths Ordinance [Cap. 123.].

(4) If the master of any ship fails to comply with any requirement of this section, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Transmission of documents to Director.

125. The Superintendent shall take charge of all documents which are delivered or transmitted to or retained by him in pursuance of this Ordinance, and shall keep them for

such time, if any, as may be necessary for the purpose of settling any business arising at his port, or for any other proper purpose, and shall, if required, produce them for any of those purposes and he shall then transmit such documents to the Director, who shall record and preserve them and they shall be admissible in evidence in manner provided by this Ordinance, and they shall, on payment of the prescribed fee, or without payment if the Financial Secretary so directs, be open to the inspection of any person.

Documents to be handed over to successor on change of master.

126. (1) If during the progress of a voyage of a North Borneo ship, the master is removed, or superseded or for any other reason quits the ship, and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and if he fails without reasonable cause, so to do, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

(2) The successor to every master shall immediately on assuming the command of a ship enter in the official log book a list of the documents so delivered to him.

PART IV
PASSENGER SHIPS AND GENERAL PROVISIONS
RELATING TO SURVEY

Chapter 20
SURVEY

Annual Survey of passenger ships.

127. (1) Subject to the provisions of subsections (2) and (3) and of any order made under section 128, every passenger ship shall be surveyed once at least in each year in the manner provided in this Part.

(2) Subsection (1) shall not apply to any passenger ship having a certificate granted by –

(a) the Ministry;

- (b) the government of any part of the Commonwealth, where such certificate has been declared under section 284 of the Principal Act to be of the same force as if granted under the Act; or
- (c) the government of any other part of the Commonwealth whose certificate is accepted by the Governor as being equivalent to a certificate granted under this Part,

so long as such certificate remains in force and applicable to the voyage under which the vessel is about to proceed.

(3) Notwithstanding anything contained in subsection (1), where a valid Safety Convention certificate is produced in respect of a Safety Convention passenger ship –

- (a) the provisions of this Part as to the survey of passenger ships by radio surveyors shall be deemed to have been complied with in the case of such ship; and
- (b) the survey by any government surveyor shall be limited to ascertaining the number of passengers which the ship is fit to carry, and it shall not be necessary for the declaration made by that surveyor to contain a statement of any further particulars than those set out in paragraph (e) of subsection (3) of section 132:

Provided that, where there is produced in respect of any Safety Convention passenger ship a valid Safety Convention certificate, and also a certificate issued by or under the authority of the government of the country to which the ship belongs showing the number of passengers which the ship is fit to carry, and the Governor is satisfied that the number has been determined substantially in the same manner as in the case of a British ship registered in North Borneo, the Governor may, if he thinks fit, dispense with the survey of the ship mentioned in paragraph (b) and direct that the last mentioned certificate shall have effect as a passenger ship's certificate for the purpose of this Part.

Power of Governor to exempt certain ships.

128. The Governor may, by order, declare that all or any of the provision of this Part relating to the survey of passenger ships shall not apply in the case of any specified passenger ship or class of passenger ship or shall apply thereto with such modifications as the Governor may direct.

Passenger ship not to clear without certificate.

129. (1) Subject to the provisions of subsections (2) and (3) of section 127 and to any order made under section 128, no passenger ship shall ply or proceed to sea or on any voyage or excursion with any passengers on board unless the owner or master has the certificate from the Director as to survey required by this Part the same being in force and applicable to the voyage or excursion on which the ship is about to proceed.

(2) A passenger ship attempting to ply or go to sea may be detained until such certificate as aforesaid is produced to the Port Officer.

Appointment and powers of surveyors of ships.

130. (1) The Chief Secretary may appoint such number of fit and proper persons to be government surveyors for the purposes of this Ordinance as he may think proper and such government surveyors may be appointed as ship surveyors, nautical surveyors, engineer surveyors or radio surveyors, or in more than one of such capacities.

(2) Any government surveyor may, in the execution of his duties, go on board any ship to which this Part applies at all reasonable times and inspect the same, or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, or any certificates of any officer thereof, to which the provisions of this Ordinance or the Merchant Shipping Acts apply, not necessarily detaining or delaying the ship from proceeding on any voyage; and if, in consequence of any accident to any such ship or for any other reason, a government surveyor considers it necessary to do so, he may require the ship to be taken into dock for the purpose of surveying the hull thereof.

(3) Any person who hinders any such surveyor from going on board any ship in pursuance of subsection (2), or otherwise impedes him in the execution of his duty under this Ordinance shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Instruction and regulations relating to surveys.

131. (1) The Chief Secretary may issue instructions to government surveyors and may make rules prescribing the manner in which surveys of ships are to be made, the notice to be given to the government surveyors when surveys are required, and the amount and payment of the fees due and of any travelling or other expenses incurred by such surveyors in the execution of their duties.

(2) Such instructions may specify the persons by whom and the conditions under which any such payment shall be made.

Mode of survey and declaration of survey.

132. (1) The owner, agent or master of every passenger ship being within North Borneo waters shall if so required (and to the extent required) by this Part, cause the same to be surveyed by one or more government surveyors, who shall thereupon, if satisfied that it can properly be done, complete a declaration or declarations of survey in the prescribed form:

Provided that a survey by a radio surveyor shall only be required in the case of a sea-going passenger ship required by this Ordinance to be provided with a radio installation.

(2) If, in the judgment of any such surveyor, a passenger ship is fit to ply on international voyages while engaged in a special passenger trade only, his declaration of survey shall state that fact.

(3) The declaration or declarations of the government surveyor or surveyors (other than the radio surveyor) shall contain statements of the following particulars –

- (a) that the hull of the ship is sufficient for the service intended and in good condition;
- (b) that the life-saving appliances, light signals, compasses and shelter for deck passengers are such, and in such condition, as are required by, or

by any rules or regulations made under, the Merchant Shipping Acts, or, in respect of any matter regarding which no such requirements as aforesaid exist in respect of the ship, such, and in such condition, as are required by this Ordinance;

- (c) the time, if less than one year, for which the hull and equipments will be sufficient;
- (d) the voyages or class of voyages on which, as regards construction and equipment, the ship is, in the surveyor's judgment, fit to ply;
- (e) the number of passengers which the ship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins; those numbers to be subject to such conditions and variations according to the time of year, the nature of voyage, the cargo carried or other circumstances, as the case requires;
- (f) that the certificates or authorities of the master and mate or mates are such as are required by this Ordinance;
- (g) that the machinery of the ship is sufficient for the service intended, and in good condition;
- (h) the time, if less than one year, for which the machinery will be sufficient;
- (i) that the safety valves and appliances for the prevention, detection and extinction of fire are such, and in such condition, as are required by, or by any rules made under, the Merchant Shipping Acts, or in respect of any matter regarding which no such requirements as aforesaid exist in respect of the ship, such, and in such condition, as are required by or under this Ordinance;
- (j) the limit of the weight to be placed on the safety valves;
- (k) the voyages or class of voyages on which, as regards machinery, the ship is, in the surveyor's judgment fit to ply;

(l) that the certificates of the engineer or engineers or engine driver of the ship are such as are required by this Ordinance.

(4) The declaration of the radio surveyor shall contain statements of the following particulars –

(a) the voyage or class of the voyage on which, as regards radio, the ship is fit to ply;

(b) that, having regard to the tonnage of the ship and the voyages or class of voyages on which she is declared to be fit to ply, the radio installation complies with the radio rules;

(c) that the certificates and the numbers of the radio operators are such as are required by those rules.

Transmission of declarations.

133. (1) The owner, agent, or master of a passenger ship surveyed shall within fourteen days after the receipt by him of a declaration of survey transmit it to the Director.

(2) If an owner, agent or master of a passenger ship fails without reasonable cause to transmit a declaration of survey, he shall forfeit a sum not exceeding five dollars for every day during which the transmission is delayed, and any sum so forfeited shall be payable on the granting of a certificate in addition to the fee, and shall be applied in the same manner as the fee.

Issue of passenger ship's certificate.

134. (1) Subject to the provisions of subsection (3), the Director shall, on receipt of the declarations of survey and if he is satisfied that the requirements of this Part have been complied with, issue in duplicate a passenger ship's certificate, that is to say, a certificate stating such compliance and stating, according to the declarations –

(a) the limits, if any, beyond which the ship is not fit to ply; and

(b) the number of passengers which the ship is fit to carry, distinguishing, if necessary, the number to be carried in each part of the ship, and any conditions, and variations to which the number is subject.

(2) Notwithstanding anything contained in sections 128 to 133 inclusive, the Director may accept for the purposes of subsection (1), in lieu of any statement required under this Part to be contained in any declaration of survey in respect of any matter, a certificate of partial survey granted either in the United Kingdom by an authority empowered to issue certificate under section 274 of the Principal Act, or by the Government of any prescribed part of the Commonwealth if such certificate relates to such matter and is substantially to the same effects as the statement which would otherwise under this Part be required to be contained in such declaration of survey, and if it is for the time being in force.

(3) On receipt of a declaration made by a government surveyor under paragraph (b) of subsection (3) of section 127, the Director shall issue a certificate containing only a statement of the particulars set out in paragraph (b) of subsection (1), and a certificate so issued shall have effect as a passenger ship's certificate for the purposes of this Ordinance.

Transmission of certificate.

135. (1) The Director shall give notice of the issue of the passenger ship's certificate to the owner, agent or master of the ship, and shall, on such owner, agent or master applying and paying the prescribed fee and any other prescribed sums, deliver to him both copies of the certificate.

(2) In proving the issue of a passenger ship's certificate it shall be sufficient to show that the certificate was duly issued by the Director, and that due notice of the issue was given to the owner, agent or master.

(3) Such certificate in duplicate, when completed, shall be delivered by the Director to the owner, agent or master applying for the same subject to payment of the fee and other sums, if any, payable in that behalf.

(4) (a) The owner, agent or master of every such ship shall, upon the transmission of any such certificate as aforesaid to him or his agent, cause one of the duplicates thereof so transmitted, to be exhibited in

some conspicuous part of the ship so as to be visible to all persons on board the same, and shall cause it to continue to be exhibited so long as it remains in force and such ship is in use.

- (b) Any owner, agent or master contravening this subsection shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Appeal to Court of Survey.

136. (1) If the owner, agent or master of a ship is aggrieved –

- (a) by a declaration of a government surveyor or surveyors under this Part, or by the refusal of a government surveyor to give such declaration; or
- (b) by the refusal of a government surveyor to grant any certificate which he is empowered to grant under this Ordinance,

he may appeal, in the prescribed manner, to a Court of Survey constituted under section 212, and upon the constitution thereof by the Governor, such Court may make such order with respect to the costs of any such investigation as it thinks fit, and recoverable in the same manner as costs in Civil proceedings before a Magistrate.

(2) On any such appeal the Court of Survey shall report to the Governor on the question raised by the appeal and the Governor, when satisfied that the requirements of the report and the provisions of this Part have been complied with, may grant the certificate required.

(3) An owner, agent or master of any ship preferring an appeal under this section or under paragraph (b) of subsection (3) of section 202 may give notice in and by the prescribed notice of appeal that he objects to any specified person being a member of the Court of Survey, stating the grounds of his objection; and the Director shall forward such notice to the Governor, who may in his discretion direct that such person shall not be a member of the Court of Survey.

(4) Subject to any order made by the Court of Survey, the costs of, and incidental to, an appeal under this section shall follow the event.

No appeal in certain cases.

137. Where the survey of a ship is made for the purpose of a declaration under section 132, the person appointed to make the survey shall, if so required by the owner, agent, master or charterer, be accompanied on the survey by some competent person appointed by the owner, agent, master or charterer, to be approved by the Governor and, in such case, if those two persons agree, there shall be no appeal to the Court of Survey as provided by section 136.

Duration of certificate.

138. (1) No certificate shall be held to be in force for the purposes of this Part beyond a period of one year from the date of its issue or any shorter time specified in the certificate; and no certificate shall be in force after notice is given by the Governor to the owner, agent or master of the ship to which the same relates that he has cancelled the same:

Provided that, if any ship is absent from North Borneo at the time of expiry of any certificate granted, no penalty shall be incurred under this section until the ship commences avoyage after its next return to North Borneo.

(2) The Director may require any certificate which has expired or has been cancelled to be delivered up as he directs, and every owner, agent or master who, without reasonable excuse, refuses or neglects to comply with such requirement shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Governor may cancel certificate and require fresh declaration.

139. (1) The Governor may cancel any certificate granted under the provisions of this Part in any case in which he has reason to believe –

- (a) that the declarations of the sufficiency and good condition of the hull, equipments and machinery of the ship have been fraudulently or erroneously made;
- (b) that such certificate has otherwise been issued upon false or erroneous information; or

- (c) that, since the making of such declarations, the hull, equipments or machinery of the ship has or have sustained any injury or has or have been altered without authority or is or are otherwise insufficient

and in every such case the Governor may require the owner of the ship to have the hull, equipments or machinery of the ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before re-issuing any certificate or granting a fresh one in lieu thereof.

(2) The Governor may cancel any such certificate in any case in which he has reason to believe that the certificated master of the ship is not exercising, or is not permitted to exercise, proper control of the ship.

Government surveyors to make returns and owners to supply information.

140. (1) (a) A government surveyor shall, from time to time, make such returns as the Director may require with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel and the nature and particulars of machinery and equipments of every ship surveyed by him.

(b) The owner, master and engineer of any such ship shall, on demand give to such surveyor all such information and assistance within his power as he may require for the purpose of such returns.

(c) Any such owner, master or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance shall be guilty of an offence and shall be liable to a fine of five thousand dollars.

(2) If any structural alteration is made in any passenger ship, the owner, agent, charterer and master shall, within twenty-four hours after the alteration is made or as soon thereafter as possible, report the same by letter to the Director, and, in default without reasonable excuse therefor, they shall be severally guilty of an offence and shall be liable to a fine of five thousand dollars:

Provided that the due receipt of a report from any one of the foregoing shall satisfy the provisions of this subsection.

Chapter 21

MISCELLANEOUS PROVISIONS RELATING TO PASSENGER SHIPS

Penalties for excess passengers.

141. (1) The owner, agent, charterer or master of any passenger ship shall not receive or have on board thereof at any place within North Borneo waters any number of passengers which, having regard to the time, occasion and circumstances, is in excess of the number allowed by the passenger certificate, and, in default, he shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

(2) If the provisions of this Part which require a passenger ship to be surveyed and to have a passenger certificate are not complied with in the case of any ship, the owner, agent, charterer and master shall, without prejudice to any other remedy or penalty under this Ordinance, be liable to the like imprisonment and to the like penalties in respect of all excess passengers as are specified in subsection (1) if he receives or has on board at any place within North Borneo any number of passengers in excess of twelve.

Offences.

142. If any person –

- (a) knowingly and wilfully makes, or assists in making, or procures to be made, a false or fraudulent declaration or certificate required by or under the provisions of this Part or of the Merchant Shipping Acts relating thereto; or
- (b) forges, assists in forging, procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such declaration or certificate, or anything contained in, or any signature to, any such declaration or certificate,

he shall, in respect of each contravention, be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Equipment of passenger ships.

143. (1) Every passenger ship of which a survey is required by this Part shall –
- (a) be provided with means to prevent over-pressure in any part of the boilers and machinery; and, in particular, every boiler and other pressure vessel used for generating steam shall be provided with not less than two safety valves;
 - (b) have the ship's compasses properly adjusted from time to time, such adjustment to be made to the satisfaction of a government surveyor and according to such regulations as may be prescribed;
 - (c) be provided with means for making the signals of distress at night specified in the collisions regulations; and
 - (d) be provided with such shelter for the protection of deck passengers, if any, as the Director having regard to the nature of the passage, the number of deck passengers to be carried, the season of the year, the safety of the ship and the circumstances of the case, may require.

(2) If any such passenger ship as aforesaid plies or goes to sea from any port in North Borneo without being provided as required by paragraphs (a), (c) and (d) of subsection (1), then, for each default in any of the above requisites, the owner shall, if he is in fault, be guilty of an offence and shall be liable to a fine of one thousand dollars, and the master shall, if he is at fault, be guilty of an offence and shall be liable to a fine of five hundred dollars.

(3) If any requirement of this section, or of any regulations relating to the number of permissible passengers, is not complied with in the case of any passenger ship, the Port Officer may refuse port clearance and, if any such ship attempts to go to sea without port clearance, the Port Officer may detain her.

Prohibition on putting undue or excess weight on safety-valve.

144. Any person who places an undue weight on the safety-valve of any ship or increases such weight beyond the limits fixed by a government surveyor shall, in addition to any other liabilities, be guilty of an offence and shall be liable to a fine of one thousand dollars.

Port officer may refuse clearance to ship carrying excess passengers.

145. (1) (a) The master of every ship shall, on application to the Port Officer for a port clearance, state the number of passengers he proposes to carry on the then projected voyage; and, if such numbers is in excess of the number allowed by the passenger certificate, or exceeds twelve in the case of a ship which is not provided with a passenger certificate, the Port Officer may refuse port clearance.

(b) Any master who wilfully misrepresents the number of passengers so about to be carried, or, carrying any passenger, plies or proceeds to sea from any port in North Borneo without a port clearance, shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

(2) The master of any ship who after having obtained port clearance, piles or proceeds to sea with any number of passengers greater than allowed by the clearance shall be guilty of an offence and shall be liable to a fine of five hundred dollars, in addition to a fine of fifty dollars for every passenger in excess of the number permitted to be carried by the clearance.

(3) When the master of any ship has become liable under the provisions of subsection (2) to the penalty therein mentioned, the owner, agent or charterer of such ship shall be liable to a like penalty unless he proves that such passengers were shipped without his knowledge or consent, and that he derived no profit, benefit or advantage from the shipping of such passengers.

(4) The Port Officer may refuse port clearance to any passenger ship except on the production of the passenger certificate (being a certificate then in force and applicable); and he may detain such ship until such certificate is produced.

Power to enter on and inspect passenger ship.

146. The Director or any person authorised by him may at all times enter on any passenger ship and inspect her and her fittings and the provisions and stores in her, and may muster and count the passengers on board.

Passenger landed or embarked by means of tenders.

147. Where a passenger ship takes on board passengers from a tender, or lands passengers by means of a tender, she shall for the purposes of this Part, be deemed to be taking the passengers on board from, or landing the passengers at, the port from or to which the tender comes or goes, and passengers conveyed in a tender to or from a passenger ship from or to a port in North Borneo shall, for the purposes of this Part, be deemed to be passengers carried by such ship from or to a port in North Borneo.

Prohibition of carriage of dangerous cargo.

148. (1) No passenger ship for which a certificate of survey is required by this Part shall carry as ballast or as cargo any goods which by reason of their nature, quantity, or mode of stowage are either singly or collectively liable to endanger the lives of the passengers or the safety of the ship.

(2) If goods are carried in any ship in contravention of subsection (1), the owner, agent, charterer and master shall be guilty of an offence and shall be liable to a fine of five thousand dollars; and the ship shall be deemed for the purpose of Chapter 31 to be unsafe by reason of improper loading.

PART V

SAFETY

Chapter 22

PREVENTION OF COLLISIONS

Inspection as to lights and fog signals.

149. (1) A government surveyor may inspect any British, North Borneo or foreign ship for the purpose of seeing that the ship is properly provided with lights and the means of making

fog signals, in conformity with the collision regulations; and, if the surveyor finds that the ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency and also what is, in his opinion, requisite in order to remedy the same.

(2) Every notice so given shall be communicated by such surveyor to the Port Officer and the ship shall be detained, until a certificate under the hand of a government surveyor is produced to the effect that the ship is properly provided with lights and with the means of making fog signals, in conformity with the collision regulations.

(3) For the purpose of an inspection under this section a government surveyor shall have all the powers of an inspector under this Ordinance.

(4) Where the certificate as to lights and fog signals is refused, an owner may appeal to the Court of Survey in the prescribed manner.

(5) On any such appeal, the Court of Survey shall report to the Governor on the question raised by the appeal, and the Governor, when satisfied that the requirements of the report and of the collision regulations as to lights and fog signals have been complied with, may grant or direct a government surveyor or other person appointed by him to grant the certificate.

(6) Subject to any order made by the Court of Survey, the costs of and incidental to the appeal shall follow the event.

(7) A government surveyor, in making an inspection under this section, shall, if the owner of the ship so requires, be accompanied on the inspection by some person appointed by the owner, and, if, in that case, the government surveyor and the person so appointed agree, there shall be no appeal under this section to the Court of Survey.

(8) The prescribed fees shall be paid in respect of an inspection of lights and fog signals under this section.

Chapter 23

REPORT OF ACCIDENTS AND LOSS OF SHIPS

Reports to the Port Officer of accidents to ships.

150. (1) Where any British or North Borneo ship, or any foreign ship carrying passengers between places in North Borneo, is within North Borneo and has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner and master shall, as soon as possible after the happening of the accident or damage, transmit to the Port Officer by letter signed by the owner or master, a report of the accident or damage, and of the probable occasion thereof, stating the name of the ship, her official number, if any, the port to which she belongs, and the place where she is.

(2) If the owner or master of a ship fails without reasonable cause to comply with this section, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

Notice of loss of North Borneo ship to be given to the Port Officer.

151. (1) If the owner or agent of any North Borneo ship has reason, owing to the non-appearance of the ship or to any other circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as conveniently may be, send to the nearest Port Officer notice in writing of the loss and of the probable occasion thereof, stating the name of the ship, her official number, if any, and the port to which she belongs.

(2) If the owner or agent of a ship fails without reasonable cause to comply with this section within a reasonable time, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

Chapter 24
LIFE-SAVING APPLIANCES

Rules as to life-saving appliances.

152. (1) The Governor in Council may make rules, in this Chapter referred to as the “rules for life-saving appliances”, with respect to all or any of the following matters, namely –

- (a) the arranging of ships into classes, having regard to the service in which they are employed, to the nature and duration of the voyage and to the number of persons carried;
- (b) the number and description of the boats, life-boats, life-jackets, life-rafts, line-throwing appliances and life-buoys to be carried by ships, according to the class in which the ships are arranged and to their mode of construction, and the equipments to be carried by such boats and rafts, and the methods to be provided to get such boats and other life-saving appliances into the water, which methods may include oil for use in stormy water;
- (c) the quantity, quality and description of buoyant apparatus to be carried on board ships, either in addition to or in substitution for boats, life-boats, life-rafts, life-jackets and life-buoys;
- (d) the marking of boats, life-boats, life-rafts and buoyant apparatus so as to show the dimensions thereof and the number of persons authorized to be carried thereon;
- (e) the manning of boats and life-boats, and the qualifications and certificates of life-boat men;
- (f) the provision to be made for mustering the passengers and crew and for embarking them in the boats and life-boats (including provision as to the lighting of, and as to the means of ingress to and egress from different parts of the ship);
- (g) the practising of boat drills;

- (h) the assignment of specific duties to each member of the crew in the event of an emergency;
- (i) the methods to be adopted and the appliances to be carried for the prevention, detection and extinction of fire;
- (j) the inspection of life-saving appliances during their construction, and certification of boats, buoyant apparatus and other life-saving appliances intended to form part of the life-saving appliances of ships.

(2) The Governor may direct that the rules for life-saving appliances shall not apply to any ship, not being a passenger ship, if –

- (a) being a British or North Borneo ship she is proved to be equipped in compliance with the rules for life-saving appliances made by the Minister with respect to such ships; or
- (b) being a ship of a foreign country in which the provisions in force relating to life-saving appliances appear to him to be as effective as the rules for life-saving appliances, on proof that those provisions are complied with in the case of that ship.

Duties of owner and master as to carrying life-saving appliances.

153. It shall be the duty of the owner and master of every ship to which the rules for life-saving appliances apply to see that his ship is provided, in accordance with the rules for life-saving appliances, with such of those appliances as, having regard to the nature of the service on which the ship is employed, and the avoidance of undue encumbrance of the ship's deck, are best adapted for securing the safety of her crew and passengers.

Penalty for contravention of rules for life-saving appliances.

154. In the case of any ship to which the rules for life-saving appliances apply –

- (a) if the ship proceeds on any voyage or excursion without being so provided in accordance with the rules applicable to the ship;

- (b) if any of the appliances with which the ship is so required to be provided are lost or rendered unfit for service in the course of the voyage or excursion through the wilful fault or negligence of the owner or master;
- (c) if the master wilfully neglects to replace or repair, on the first opportunity, any such appliances lost or injured in the course of the voyage or excursion;
- (d) if such appliances are not kept so as to be at all times fit and ready for use; or
- (e) if any provision of the rules for life-saving applicable to the ship is contravened or not complied with,

the owner of the ship, if he is in fault, shall, for each contravention, be guilty of an offence and shall be liable to a fine of one thousand dollars; and the master of the ship, if he is at fault, shall, for each contravention be guilty of an offence and shall be liable to a fine of five hundred dollars.

Survey of ship with respect to life-saving appliances.

155. (1) A government surveyor may inspect any ship, other than a Safety Convention passenger ship in respect of which a valid Safety Convention certificate is produced, for the purpose of seeing that the rules for life-saving appliances have been complied with in her case, and for the purpose of any such inspection shall have all the powers of an inspector under this Ordinance.

(2) If the surveyor finds that the rules for life-saving appliances have not been complied with, he shall give written notice to the owner or master stating in what respect those rules have not been complied with, and what, in his opinion, is required to rectify the matter.

(3) Every notice so given shall be communicated by such surveyor to the Port Officer, and port clearance shall not be granted to the ship, and the ship shall be detained until a certificate under the hand of a government surveyor is produced to the effect that the matter has been rectified.

Fees for inspecting life-saving appliances.

156. There shall be paid in respect of every inspection of a ship under section 155 such fees as may be prescribed.

Entry in log book of boat drill, etc.

157. (1) The master of every ship to which the rules for life-saving appliances apply shall cause to be entered in the official log book a statement, or, if there is no official log book, shall cause some other record to be kept, of every occasion on which boat drill or fire drill is practised on board the ship, or on which the appliances and equipment required by the rules for life-saving appliances to be carried are examined to see whether they are fit and ready for use, and the result of any such examination; and if –

- (a) in the case of a passenger ship, boat drill or fire drill is not practised on board the ship in any week;
- (b) in the case of any other ship, boat drill or fire drill is not practised on board the ship in any month; or
- (c) in the case of any ship, such appliances and equipment are not examined in any such period as is prescribed by such rules,

the master shall cause a statement to be entered, or other record to be kept, as aforesaid, of the reasons why the drill was not practised, or the appliances and equipment were not examined, in that week, month or period.

(2) The master shall, if and when required by any Port Officer or any government surveyor produce for inspection any such entry or record.

(3) If the master fails to comply with any requirement of this section, he shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Application of rules as to life-saving appliances to foreign ships in North Borneo waters.

158. Sections 152 to 155 inclusive shall apply to all foreign ships while within North Borneo to the same extent as they apply to British ships:

Provided that those sections and section 157 shall not apply to –

- (a) any Safety Convention ship which carries a Safety Convention certificate; or
- (b) any ship of a country other than a Safety Convention country with regard to which it has been declared by Order of Her Majesty in Council that the provisions in force in that country relating to life-saving appliances are as effective as those of the Merchant Shipping Acts, on proof that such former provisions are complied with in the case of that ship.

Chapter 25
STABILITY

Information about ship's stability.

159. (1) There shall be carried on board every North Borneo ship whose keel is laid after the commencement of this Chapter, such information in writing about the ship's stability as is necessary for the guidance of the master in loading and ballasting the ship.

(2) Such information shall be in such a form as may be approved by the Director (who may approve the provision of the information in the form of a diagram or drawing only) and shall be based on the determination of the ship's stability by means of an inclining test of the ship:

Provided that the Director may allow the information to be based on a similar determination of the stability of a sister ship.

(3) When any information under this section is provided for any ship, the owners shall send a copy thereof to the Director:

Provided that the owner shall not be required to send a copy of any information to the Director if a previous copy of the same information has been sent to the Director.

(4) If any such ship proceeds, or attempts to proceed, to sea without such information as aforesaid on board, the owner or master of the ship shall be guilty of an offence and shall be liable to a fine of one thousand dollars; and, if the owner of any ship contravenes subsection (3), he shall be liable to a like fine.

Information under section 159 to be document relating to navigation of a ship.

160. It is hereby declared that, for the purposes of any enactment requiring documents relating to navigation to be delivered by the master of a ship to his successor, information under section 159 shall be deemed to be a document relating to the navigation of the ship.

Chapter 26

GENERAL EQUIPMENT

Adjustment of compasses and provision of hose.

161. (1) Every sea-going mechanically propelled British and North Borneo ship, if employed to carry passengers, shall have her compasses properly adjusted from time to time; and every such ship not used wholly as a tug shall be provided with a hose capable of being connected with the engines of the ship, and adapted for extinguishing fire in any part of the ship.

(2) If any such ship plies or goes to sea from any port in North Borneo and any requirement of this section is not complied with, then for each matter in which default is made the owner, if he is in fault, shall be guilty of an offence and shall be liable to a fine of two thousand dollars, and the master, if he is in fault, shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

Report of dangers to navigation.

162. (1) The master of any North Borneo ship which is within North Borneo and which has met with any dangerous derelict or any other direct danger to navigation shall, if possible,

send information accordingly to any ships which may be in the vicinity, and shall also report such derelict or other danger to the Port Officer at the earliest opportunity.

(2) If the master of a ship fails to comply with any of the provisions of this section, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

Signalling lamps.

163. No North Borneo ship being a ship of over one hundred and fifty tons gross tonnage, shall proceed to sea on any voyage from a port in North Borneo to a port not in North Borneo unless the ship is provided with a signalling lamp of a type approved by the Director, and, if any ship proceeds or attempts to proceed to sea in contravention of this section, the owner or master of such ship shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Chapter 27
LOAD LINES

Definition.

164. For the purposes of this Chapter –

“Load Line Convention” means the International Load Line Convention signed on behalf of the Government of the United Kingdom in London on the 5th day of July, 1930;

“Load Line Convention certificate” means a certificate issued in accordance with the terms of the Load Line Convention;

“Load Line Convention country” means –

- (a) a country the government of which has been declared by Her Majesty in Council to have accepted the Load Line Convention, and has not been so declared to have denounced that Convention;

- (b) a territory to which it has been so declared that the Load Line Convention extends, not being a territory to which it has been so declared that that Convention has ceased to extend.

“Load Line Convention ship” means a ship of one hundred and fifty tons gross tonnage and upwards belonging to the countries to which the Load Line Convention applies.

Ships exempt from provisions relating to load lines.

165. The following ships are exempt from the provisions of this Chapter namely –

- (a) sailing ships, other than foreign-going ships, of less than three hundred tons gross tonnage;
- (b) ships solely engaged in fishing; and
- (c) pleasure yachts.

Definition of “load line ships”.

166. Ships which are not exempt from the provisions of this Ordinance relating to load lines by virtue of section 165 are hereafter in this Chapter referred to as “load line ships”.

Load line rules.

167. (1) The Governor in Council may make such rules (in this Chapter referred to as “the load line rules”) as appear to him to be necessary for the purpose of giving effect to the provisions of Articles 6 to 10 inclusive of the Load Line Convention and Annex I and Annex II thereto.

(2) Such of the load line rules as are made to give effect to Part II of Annex I to the Load Line Convention are in this Chapter referred to as “the conditions of assignment”.

Marking of deck-lines and load lines.

168. (1) No North Borneo load line ship being a ship the keel of which was laid after the commencement of this Chapter shall proceed to sea unless –

- (a) the ship has been surveyed in accordance with the load line rules;
 - (b) the ship complies with the conditions of assignment;
 - (c) the ship is marked on each side with a mark (in this Chapter referred to as a “deck-line”) indicating the position of the uppermost complete deck as defined in the load line rules, and with marks (in this Chapter referred to as “load lines”) indicating the several maximum depths to which the ship can be safely loaded in various circumstances prescribed by the load line rules;
 - (d) the deck-line and load lines are of the description required by the load line rules, the deck-line is in the position required by those rules and the load lines are of the number required by such of those rules as are applicable to the ship; and
 - (e) the load lines are in the position required by such of the load line rules as are applicable to the ship.
- (2) No North Borneo load line ship being a ship the keel of which was laid before the commencement of this Part shall proceed to sea unless –
- (a) the ship has been surveyed and marked in accordance with paragraphs (a), (c) and (d) of subsection (1);
 - (b) the ship complies with the conditions of assignment in principle and also in detail so far as, in the opinion of the Director, is reasonable and practicable having regard to the efficiency of the protection of openings, the guard rails, the freeing ports and the means of access to the crew’s quarters provided by the arrangements, fittings and appliances existing on the ship at the time when she is first surveyed under this section; and
 - (c) the load lines are either in the position required by paragraph (e) of subsection (1) or in the position required by the tables used by the Board of Trade on the 31st day of December, 1906, for fixing the position of load lines, subject to such modifications of those tables and of the application

thereof, approved by the Board of Trade under section 438 of the Principal Act as were in force immediately before the 5th day of July, 1930.

(3) If any ship proceeds or attempts to proceed to sea in contravention of this section the master and the owner of the ship shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

(4) Any ship attempting to proceed to sea without being surveyed and marked as required by this section may be detained until she has been so surveyed and marked; and any ship which does not comply with the conditions of assignment to the extent required in her case by this section shall be deemed to be unsafe for the purpose of Chapter 31.

Submersion of load line.

169. (1) A North Borneo load line ship shall not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded.

(2) If any such ship is loaded in contravention of this section, the master and owner of the ship shall be guilty of an offence and shall be liable to a fine of two thousand dollars, and to such additional fine, not exceeding the amount hereafter in this section specified, as the Court thinks fit to impose having regard to the extent to which the earning capacity of the ship was, or would have been, increased by reason of the submersion.

(3) The additional fine mentioned in subsection (2) shall not exceed two thousand dollars for every inch or fraction of an inch by which the appropriate load line on each side of the ship was submerged, or would have been submerged if the ship had been in salt water and had no list.

(4) In any proceedings against an owner or master in respect of a contravention of this section, it shall be a good defence to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.

(5) Without prejudice to any proceedings under the provisions of subsections (1) to (4) inclusive, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

Miscellaneous offences in relation to marks.

170. If –

- (a) the owner or master of a North Borneo load line ship which has been marked in accordance with the provisions of this Chapter fails without reasonable cause to keep the ship so marked; or
- (b) any person conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate, any mark placed on any such ship in accordance with the provisions of sections 167, 168 and 169 except with the authority of a person entitled under the load line rules to authorize the alteration of the mark or except for the purpose of escaping capture by an enemy,

he shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

Inspection of ships with respect to load lines.

171. A government surveyor may inspect any North Borneo load line ship for the purpose of seeing that the provisions of this Chapter have been complied with in the case of such ship, and for the purpose of any such inspection a government surveyor shall have all the powers of an inspector under this Ordinance.

Issue of load line certificates and effect thereof.

172. (1) Where a North Borneo load line ship has been surveyed and marked in accordance with the provisions of section 168 and complies with the conditions of assignment to the extent required in her case by those provisions, there shall be issued to the owner of the ship on his application, and on payment of such fee as may be prescribed by the load line rules a load line certificate (in this Chapter referred to as “a North Borneo load line certificate”).

(2) Every such certificate shall be issued either by the Director or by such other person as may be authorized in that behalf by the Director, and shall be issued in such form and manner as may be prescribed by the load line rules.

(3) Any such certificate issued by the Director may be signed on behalf of the Director by any person authorized by him for the purpose.

(4) Where a North Borneo load line certificate, issued in pursuance of this section and for the time being in force, is produced in respect of a ship, such ship shall, for the purposes of the provisions of sections 167 to 171 inclusive, be deemed to have been surveyed as required by section 168 and, if the deck-line and load lines on the ship are of the number and description required by the load line rules and the position of the deck-line and load lines corresponds with the position specified in the certificate, the ship shall be deemed to be marked as required by section 168.

Duration, renewal and cancellation of certificates.

173. (1) Every North Borneo load line certificate issued by or under the authority of the Director shall, unless it is renewed in accordance with the provisions of subsection (2), expire at the end of such period, not exceeding five years from the date of its issue, as may be specified therein.

(2) Any such load line certificate may, after a survey not less effective than the survey required by load line rules before the issue of the certificate, be renewed from time to time by the Director or by any person authorized by the Director to issue a North Borneo loadline certificate, for such period (not exceeding five years on any occasion) as the Director or such person thinks fit.

(3) The Director shall cancel any such load line certificate in force in respect of any ship, if he has reason to believe that –

- (a) material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; or
- (b) the fittings and appliances for the protection of openings, the guard rails, the freeing ports, or the means of access to the crew's quarters have not

been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4) The owner of every ship in respect of which any such certificate has been issued shall, so long as the certificate remains in force, cause the ship to be surveyed in such manner as may be prescribed by the load line rules once at least in each year after the issue of the certificate for the purpose of seeing whether the certificate should remain in force, having regard to subsection (3), and if the ship is not so surveyed, the Director shall cancel the certificate:

Provided that the Director if he thinks fit in any particular case, may extend such period of one year.

(5) Where any such load line certificate has expired or been cancelled, the Director may require the owner or master of the ship to which the certificate relates to deliver up the certificate as he directs; and the ship may be detained until such requirement has been complied with; and, if the owner or master fails without reasonable cause to comply with such requirement, he shall be guilty of an offence and shall be liable to a fine of one hundred dollars.

(6) On the survey of any ship in pursuance of this section there shall be paid by the owner of the ship such fees as may be prescribed.

Ships not to proceed to sea without certificate.

174. (1) No North Borneo load line ship shall proceed to sea unless there is in force in respect of the ship a North Borneo load line certificate.

(2) The master of every North Borneo load line ship shall produce to the Port Officer the certificate which is required by subsection (1) to be in force when the ship proceeds to sea, and port clearance shall not be granted, and the ship may be detained, until that certificate is so produced.

(3) The master of every ship which proceeds or attempts to proceed to sea in contravention of this section shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

Publication of load line certificate and particulars relating to depth of loading.

175. (1) Where a North Borneo load line certificate has been issued in pursuance of the provisions of this Chapter in respect of a North Borneo load line ship –

- (a) the owner of the ship shall forthwith on the receipt of the certificate cause it to be framed and posted up in some conspicuous place on board the ship, and to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use within North Borneo; and
- (b) the master of the ship, before making any other entry in any official log book, shall enter therein the particulars as to the position of the deck-line and load lines specified in the certificate.

(2) Before any North Borneo load line ship leaves any dock, wharf, port or other place in the North Borneo for the purpose of proceeding to sea, the master of such ship shall –

- (a) enter in the official log book such particulars relating to the depth to which the ship is for the time being loaded as may be prescribed; and
- (b) cause a notice in such form and containing such of the above mentioned particulars as may be prescribed to be posted up in some conspicuous place on board the ship and to be kept so posted up and legible while the ship remains within North Borneo.

(3) If the master or owner of any North Borneo load line ship fails to comply with the provisions of this section he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Insertion of particulars as to load lines in agreements with crew.

176. (1) Before an agreement with the crew of any North Borneo load line ship in respect of which a North Borneo load line certificate is in force, is signed by any member of the crew, the master of the ship shall insert in the agreement the particulars as to the position of the deck-line and load lines specified in the certificate; and, if he fails to do so, he shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

(2) In the case of a North Borneo load line ship being a foreign-going ship, the Superintendent shall not proceed with the engagement of the crew until –

- (a) there is produced to him a North Borneo load line certificate for the time being in force in respect of the ship; and
- (b) he is satisfied that the particulars required by this section have been inserted in the agreement with the crew.

Survey, marking and conditions of assignment in the case of ships not registered in North Borneo.

177. The provisions of section 168 shall apply to load line ships not registered in North Borneo proceeding or attempting to proceed to sea from ports in North Borneo as they apply to North Borneo load line ships but subject to the following modifications, namely –

- (a) that section shall not apply to a Load Line Convention ship, if a valid Load Line Convention certificate is produced in respect of the ship; and
- (b) subject to the provisions of paragraph (a), a foreign ship which does not comply with the conditions of assignment to the extent required in her case by section 168 shall be deemed to be unsafe for the purpose of Chapter 31.

Submersion of load line on ships not registered in North Borneo.

178. The provisions of section 169 shall apply to load line ships not registered in North Borneo while they are within any port in North Borneo as they apply to North Borneo load lineships but subject to the following modifications, namely –

- (a) no Load Line Convention ship shall be detained and no proceedings shall be taken against the owner or master thereof, by virtue of that section, except after inspection by a government surveyor as provided by section 180; and
- (b) the expression “the appropriate load line”, in relation to any ship not registered in North Borneo shall mean –

- (i) in the case of a Load Line Convention ship in respect of which there is produced on such an inspection as aforesaid a valid Load Line Convention certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded; and
- (ii) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded or, if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

Inspection of ships not registered in North Borneo.

179. The provisions of section 171 shall apply to load line ships, other than North Borneo ships and Load Line Convention ships, while they are within any port in North Borneo, as they apply to North Borneo load line ships.

Inspection and control of Load Line Convention ships.

180. (1) A government surveyor may go on board any Load Line Convention ship, when within any port in North Borneo for the purpose of demanding the production of any load line certificate for the time being in force in respect of the ship.

(2) If a valid Load Line Convention certificate is produced to a government surveyor on any such demand, such surveyor's powers of inspecting the ship with respect to load line shall be limited to seeing –

- (a) that the ship is not loaded beyond the limits allowed by the certificate;
- (b) that the position of the load lines on the ship corresponds with the position specified in the certificate;
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; and
- (d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters

have been maintained on the ship in as effective a condition as they were in when the certificate was issued;

and, for the purpose of any such inspection, such surveyor shall have all the powers of an inspector under this Ordinance.

(3) If it is found on any such inspection that the ship is loaded beyond the limits allowed by the certificate the ship may be detained and proceedings may be taken against the master or owner thereof under section 169.

(4) If it is found on any such inspection that the load lines on the ship are not in the position specified in the certificate, the ship may be detained until the matter has been rectified to the satisfaction of a government surveyor.

(5) If it is found on any such inspection that the ship has been so materially altered in respect of the matters referred to in paragraphs (c) and (d) of subsection (2) that the ship is manifestly unfit to proceed to sea without danger to human life, the ship shall be deemed to be unsafe for the purpose of sections 197 and 198 in the case of a British ship, or for the purpose of section 202 in the case of a foreign ship:

Provided that where the ship has been detained under either section 198 or 202 the Director shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

(6) If a valid Load Line Convention certificate is not produced to a government surveyor on such demand as aforesaid, such surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Chapter have been complied with, as if the ship were a North Borneo ship.

(7) For the purposes of this section, a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as to submerge in salt water, when the ship has no list, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded.

Load line certificate of ships not registered in North Borneo.

181. (1) The provisions of this Chapter relating to the issue, effect, duration and cancellation of North Borneo load line certificate shall apply to load line ships not registered in North Borneo as they apply to North Borneo load line ships, but so that the survey required for the purpose of seeing whether the certificate should remain in force shall take place when required by the Director.

(2) For the purposes of this Chapter a United Kingdom load line certificate issued under section 47 of the Merchant Shipping (Safety and Load Line Convention) Act, 1932, shall have the same effect as a North Borneo load line certificate.

(3) Where Her Majesty has by Order in Council under subsection (2) of section 59 of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932, directed that load line certificates issued in pursuance of the provisions of the law in force in any part of the Commonwealth outside the United Kingdom and outside North Borneo or in any foreign country in which for the time being Her Majesty has jurisdiction, in respect of British ships (or any class or description of British ships) registered in that part of the Commonwealth or in that foreign country, or in pursuance of the provisions of the law in force in any foreign country in respect of ships (or any class or description of ships) of that foreign country, as the case may be, shall have the same effect for the purpose of Part II of the above mentioned Act as United Kingdom load line certificates, any load line certificate so issued shall have the same effect, for the purpose of this Chapter, as a North Borneo load line certificate.

Certificate to be produced to the Port Officer by ships not registered in North Borneo.

182. The master of every load line ship, other than a North Borneo ship shall produce to the Port Officer either a North Borneo load line certificate, or a valid Load Line Convention certificate, or a certificate having effect under this Ordinance as a North Borneo load line certificate being a certificate for the time being in force in respect of the ship, and port clearance shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

Chapter 28

RADIO

Radio requirements. Offences and penalty.

183. (1) Every sea-going North Borneo ship, being a passenger ship or a ship of sixteen hundred tons gross tonnage or upwards, shall be provided with a radio telegraph installation, which shall be at least sufficient to comply with the radio rules and with one or more qualified operators at least, in accordance with those rules and shall maintain such radio service as may be prescribed in those rules; and a radio telegraph installation or a radio telephone installation, at the option of the owner shall be provided on every sea-going North Borneo ship, which is not a passenger ship, of five hundred tons gross tonnage or upwards but less than sixteen hundred tons gross tonnage:

Provided that the Governor may exempt any ships or classes of ships from the obligations imposed by this section if he is of the opinion that having regard to the nature of the voyages on which those ships are engaged, or other circumstances of the case, the provision of radio apparatus thereon is unnecessary.

(2) If the requirements of subsection (1) are not complied with in the case of any ship, the master or owner of the ship shall be guilty of an offence and shall be liable to a fine of five thousand dollars.

Inspection of ships by radio surveyors.

184. (1) A radio surveyor may inspect any ship for the purpose of seeing that such ship is properly provided with a radio installation and with qualified operators in conformity with the requirements of this Chapter, and for the purpose of such inspection he shall have all the powers of an inspector under this Ordinance.

(2) If a radio surveyor finds that any ship inspected under subsection (1) is not provided with a radio installation, or with qualified operators as aforesaid, he shall give to the master or owner of the ship notice in writing pointing out the deficiency and also pointing out what, in his opinion, is requisite to remedy the deficiency.

(3) There shall be paid in respect of every inspection of a ship under this section such fees as may be prescribed.

Applications of sections 183 and 184 to ships not registered in North Borneo.

185. Subject to the provisions of section 186, the provisions of sections 183 and 184 shall apply to ships other than North Borneo ships while they are within any port in North Borneo in like manner as they apply to North Borneo ships.

Radio provisions applicable to ships holding Safety Convention certificates.

186. (1) Where a valid Safety Convention certificate is produced in respect of a Safety Convention ship, being a passenger ship or being a ship of five hundred tons gross tonnage or upwards, then –

- (a) if the certificate shows that the ship is wholly exempt from the provisions of the Safety Convention relating to radio, the ship shall be exempt from the provisions of sections 183 and 184; and
- (b) if the certificate shows that the ship is not wholly exempt from those provisions of the Safety Convention, the provisions contained in subsections (2) and (3) shall apply to the ship in lieu of the provisions of sections 183 and 184.

(2) A radio surveyor may inspect the ship for the purpose of seeing that the radio installation and the number of qualified operators carried on the ship corresponds substantially with the particulars stated in the certificate.

(3) If upon any such inspection it appears to the radio surveyor that the ship cannot proceed to sea without danger to the passengers or crew owing to the fact that the radio installation or the number of operators does not correspond substantially with those particulars, he shall give to the master notice in writing pointing out the deficiency and also pointing out what, in his opinion, is requisite to remedy the deficiency.

Ship may be detained until deficiency in radio equipment is remedied.

187. Every notice given under subsection (2) of section 184 or under subsection (3) of section 186 shall be communicated by the radio surveyor to the Port Officer and, if the ship to which it relates is not a British or North Borneo ship, to the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being; and port clearance shall not be granted to the ship, and the ship shall be detained, until a certificate under the hand of a radio surveyor is produced to the effect that the deficiency has been remedied.

Power of Governor to make radio rules.

188. (1) The Governor in Council may make rules (in this Ordinance referred to as “the radio rules”) in respect of ships to which the provisions of this Chapter apply –

- (a) prescribing the nature of the radio installation to be provided;
- (b) prescribing the number, grade and qualifications of operators to be carried; and
- (c) making provision as to the certificates to be held by operators.

(2) The radio rules shall require that the radio installation to be provided on all ships and ships of sixteen hundred tons gross tonnage or upwards proceeding on an international voyage shall include an efficient radio direction finding apparatus capable –

- (a) of receiving clearly perceptible signals and of taking bearings from which the true bearings and direction may be determined; and
- (b) of receiving signals on the frequencies prescribed for distress, direction finding, and radio beacons by any international radio-telegraph convention for the time being in force,

and that efficient communication shall be provided between such apparatus and the bridge of the ship.

Obligations in respect of radio to be in addition to those imposed by the Telecommunications Ordinance.

189. The obligations imposed by the provisions of this Chapter shall be in addition to, and not in substitution for the obligations as to telecommunication and radio communications imposed by the Telecommunications Ordinance [Cap. 139].

Chapter 29

EXPLOSIVES AND DANGEROUS GOODS

Port Officer to be furnished with particulars of explosives due to arrive in North Borneo.

190. (1) The master, agent and charterer of every vessel due to arrive at a port in North Borneo, having on board thereof as cargo any quantity of explosive, shall, not less than forty-eight hours before the arrival of such vessel in North Borneo, furnish the Port Officer with a copy of the manifest of the same, the marks of all packages and the names of the consignees thereof if he knows the same.

- (2) The master of every such vessel –
- (a) shall, on arrival, take the same to the place specified to him by the Port Officer, and that vessel shall not be removed therefrom without the written permission of the Port Officer;
 - (b) shall hoist by day a red flag and show at night a red light where best it may be seen and shall keep such red flag flying by day and such red light showing by night so long as any explosive is on board; and
 - (c) shall not anchor such vessel within five hundred yards of any other vessels, except with the permission of the Port Officer.

Notice to Port Officer and procedure when explosives due to be shipped from North Borneo.

191. (1) The master of every vessel about to take on board as cargo any quantity of explosive shall give notice to the Port Officer, and shall take the vessel into such place as the Port Officer may deem expedient, and shall not remove the vessel therefrom except for the purpose of proceeding on his voyage or for some other sufficient cause to be approved by the Port Officer.

(2) No explosive shall be shipped, landed or transhipped within North Borneo except with the permission of a Port Officer.

Explosives Rules.

192. The Governor in Council may make rules for carrying out the provisions of sections 190 and 191, and for the control, movement, carriage, landing, shipment and transhipment of explosives and the precautions to be taken in connection therewith.

Penalty.

193. Any person who contravenes any provision of section 190 or 191 shall be guilty of an offence and shall be liable to imprisonment for three years and a fine.

Restrictions on carriage of dangerous goods.

194. (1) Any person who sends or attempts to send by, or (not being the owner or master of the vessel) carries or attempts to carry in any vessel any dangerous goods without distinctly marking their nature, by means of a label which will indicate the danger to which they give rise, on the outside of the container or package containing the same and giving written notice of the nature of such goods and of the name and address of the sender or carrier thereof to the owner or master of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel, shall be guilty of an offence and shall be liable to a fine of five thousand dollars:

Provided that, if such person shows that he was merely an agent in the shipment of any such goods and was not aware, and did not suspect and had no reason to suspect, that the

goods shipped by him were dangerous goods, he shall be liable to a fine of five hundred dollars.

(2) Any person who knowingly sends or attempts to send by or carries or attempts to carry in any vessel any such dangerous goods under a false description, or falsely describes the sender or carrier thereof, shall be guilty of an offence and shall be liable to a fine of five thousand dollars.

(3) The owner or master of any vessel may refuse to take on board any package or container which he suspects to contain such dangerous goods and may require it to be opened to ascertain the fact.

(4) The Port Officer may refuse port clearance to any vessel if there are on board any such dangerous goods which are not stowed to his satisfaction.

(5) Where any such dangerous goods have been sent or carried, or attempted to be sent or carried, on board any vessel without being marked as aforesaid, or without such notice having been given as aforesaid, and where any such goods have been sent or carried, or attempted to be sent or carried, under a false description, or the sender or carrier thereof has been falsely described, a Magistrate of the First Class may declare such goods and any package or receptacle in which they are contained to be forfeited, and they shall thereupon be disposed of as the Magistrate may direct.

(6) The Magistrate shall have, and may exercise, the aforesaid powers of forfeiture and disposal notwithstanding that the owner of the goods may not have committed any offence under the provisions of this section relating to dangerous goods, and may not be before the Magistrate, and may not have notice of the proceedings, and notwithstanding that there may be no evidence of the ownership of the goods, but the Magistrate may, in his discretion, require notice of such proceedings to be given to the owner or shipper of the goods before the same are forfeited.

(7) The Governor in Council may make rules for regulating, in the interests of safety, the carriage of dangerous goods in any North Borneo ship or in any other vessel while such vessel is in any port in North Borneo or is, within North Borneo embarking or disembarking passengers or loading or discharging cargo or fuel; and any person who contravenes any rules made under this subsection shall be guilty of an offence and shall be

liable to a fine of five thousand dollars, and the ship shall, for the purposes of Chapter 31, be deemed to be unsafe by way of improper loading.

(8) The provisions of this section shall be deemed to be in addition to, and not in substitution for or in restraint of, any other written law relating to dangerous goods, but so that nothing in those provisions shall be deemed to authorize that any person is sued or prosecuted twice in the same matter.

Saving.

195. Nothing in sections 190 to 194 inclusive shall apply to any ship of war or to any auxiliary armed vessel belonging to Her Majesty or to the Government of any part of the Commonwealth or any foreign country.

Chapter 30
CARRIAGE OF GRAIN

Carriage of grain.

196. (1) Where grain is loaded on board any North Borneo ship or is loaded within any port in North Borneo on board any ship, all necessary and reasonable precautions shall be taken to prevent the grain from shifting; and, if such precautions as aforesaid are not taken, the owner or the master of the ship, or any agent of the owner who was charged with the loading or with sending the ship to sea laden with the grain, shall be guilty of an offence under this subsection, and the ship shall be deemed for the purposes of Chapter 31 to be unsafe by reason of improper loading.

(2) Where any ship, having been loaded with grain outside North Borneo without the taking of all necessary and reasonable precautions to prevent the grain from shifting, enters any port in North Borneo so laden, the owner or master of the ship shall be guilty of an offence under this subsection, and the ship shall be deemed for the purposes of Chapter 31 to be unsafe by reason of improper loading:

Provided that this subsection shall not have effect if the ship would not have entered any such port but for stress of weather or any other circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.

(3) Without prejudice to the generality of subsections (1) and (2), any particular precaution which may be prescribed, in relation to the loading of ships generally or of ships of any class, as being a precaution to be treated for the purposes of those subsections as a necessary or reasonable precaution to prevent grain from shifting, shall be so treated in the case of ships generally, or of ships of that class, as the case may be:

Provided that this subsection shall not apply where a ship is loaded in accordance in all respects with any provisions approved by the Director as respects the loading in question.

(4) The penalty for any person committing an offence under subsection (1) or subsection (2), shall be one thousand dollars.

(5) On the arrival at a port in North Borneo from a port not in North Borneo of any ship carrying a cargo of grain, the master shall cause to be delivered to the Port Officer together with any report required by any other written law, a notice stating –

- (a) the draught of water and freeboard of that ship after the loading of her cargo was completed at the final port of loading; and
- (b) the following particulars of the grain carried, namely –
 - (i) the kind of grain and the quantity thereof, stated in cubic feet, quarters, bushels, or tons weight;
 - (ii) the mode in which the grain is stowed;
 - (iii) the precautions taken to prevent the grain from shifting;

and, if the master fails to deliver any notice required by this subsection, or, if, in any such notice, he makes any statement that he knows to be false in a material particular, or recklessly makes any statement that is false in material particular, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

(6) Any person having a general or special authority in that behalf from the Director may, for securing the observance of the provisions of this section, inspect any grain, and the mode in which it is stowed, and for that purpose shall have all the powers of an inspector under this Ordinance.

(7) In this section the expression “grain” includes wheat, maize, oats, rye, barley, rice, pulses and seeds, and the expression “ship carrying a cargo of grain” means a ship carrying a quantity of grain exceeding one-third of the ship’s registered tonnage, reckoning one hundred cubic feet, or two tons weight, of grain as equivalent to one ton of registered tonnage.

Chapter 31

UNSEAWORTHY SHIPS

Sending unseaworthy British or North Borneo ship to sea.

197. (1) Any person who sends, or attempts to send, or is a party to sending or attempting to send, a British or North Borneo ship to sea from any North Borneo port in such an unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves either that he used all reasonable means to ensure the ship being sent to sea in a seaworthy state, or that the going to sea in such an unseaworthy state was, in the circumstances reasonable and justifiable, be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

(2) The master of a British or North Borneo ship who knowingly takes the same to sea from any North Borneo port in such an unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that the going to sea in such an unseaworthy state was, in the circumstances, reasonable and justifiable, be guilty of an offence and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Power to detain unseaworthy ship and procedure for detention.

198. (1) Where a British or North Borneo ship being in any North Borneo port is an unsafe ship, that is to say, is by reason of the defective condition of the hull, equipments or machinery, or by reason of undermanning or of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which the ship is intended, any such ship (hereinafter described as “unsafe”) may be provisionally detained, and afterwards either finally detained or released as provided in this section.

(2) The Director or any government surveyor, if he has reason to believe, on complaint or otherwise, that a British or North Borneo ship is unsafe, may order the provisional detention of such ship for a period not exceeding twenty-four hours, and subject to the further provisions of this section, the Governor may by order extend such period either indefinitely or for such definite period as he may deem fit.

(3) When a ship has been provisionally detained, there shall be forthwith served on the master of the ship a written statement of the grounds of detention, and the Governor may, if he thinks fit, appoint some competent person to survey the ship and report to him.

(4) The Governor, on receiving the report, may either order the ship to be released or, if in his opinion the ship is unsafe, may order the ship to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the ship, as the Governor thinks necessary for the protection of human life, and he may vary or add to any such order.

(5) Before the order for final detention is made, a copy of the report shall be served on the master of the ship, and, within seven days of such service, the master, owner or agent of the ship may appeal in the prescribed manner to a Court of Survey.

(6) (a) Where a ship has been provisionally detained, the master, owner or agent of the ship may, at any time before the person appointed under subsection (3) to survey the ship makes such survey, require that he shall be accompanied by such person of nautical, engineering or other special skill and experience to be approved by the Governor as the owner, agent or master may select.

(b) In any such case, if the surveyor and assessor agree, the Governor shall cause the ship to be detained or released accordingly; but, if they differ, the Governor may act as if the requisition had not been made, and the master, owner or agent shall have the like appeal touching the report of the surveyor as is before provided by this section.

(7) Where a ship is provisionally detained, the Governor may at any time, if he thinks it expedient, refer the matter to the Court of Survey.

(8) The Governor may at any time, if satisfied that a ship detained under this Chapter is not unsafe, order such ship to be released, either upon or without any condition.

Liability of Government and ship owner for costs and damages.

199. (1) If it appears that there was not reasonable and probable cause by reason of the condition of the ship or the act or default of the owner or agent for the provisional detention of the ship under section 198, the Government shall be liable to pay to the owner of the ship his costs of, and incidental to, the detention and survey of the ship, and compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) If a ship is finally detained under this Ordinance, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to the Government the costs of, and incidental to, the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable before a Magistrate of the First Class.

(3) (a) For the purposes of this Ordinance, the costs of, and incidental to, any proceedings before the Court of Survey and a reasonable amount in respect of remuneration of the surveyor appointed under subsection (3) of section 198 shall be part of the costs of the detention and survey of the ship.

(b) Any dispute as to the amount of costs under this section may be referred to a Registrar of the High Court who, on request made to him for that purpose by the Governor, shall ascertain and certify the proper amount of such costs.

(4) A claim for any costs or compensation payable by the Government under this section may be brought against the Attorney-General under the provisions of the Government Proceedings Ordinance [Cap. 166].

Power to require security for costs from complainant.

200. Where a complaint is made to the Governor that a British or North Borneo ship is unsafe, he may require the complainant to give security to his satisfaction for the costs and compensation which may be incurred by the Government; and any action that may be necessary to enforce such security may be brought in the name of the Attorney-General:

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship and is not in the opinion of the Governor frivolous or vexatious, such security shall not be required, and the Governor shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.

Supplementary provisions as to detention of ships.

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

(2) A ship which has been detained under this Ordinance shall not be released by reason of the British register of such ship being subsequently closed or by reason of the North Borneo licence therefor being subsequently cancelled.

(3) For the purposes of a survey under this Chapter any person authorized to make the same may go on board the ship and inspect the same and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Application to foreign ships of provisions as to detention.

202. (1) When a foreign ship whilst in North Borneo is unsafe by reason of the defective condition of the hull, equipments or machinery, or by reason of undermanning or of overloading or improper loading, the provisions of this Chapter with respect to the retention of ships shall, with the modifications contained in this section, apply to that foreign ship as if such ship were a North Borneo ship.

(2) A copy of the order for the provisional detention of such ship shall be forthwith served on the consular officer for the state to which the ship belongs or, if there is no such consular officer, on the master of the ship.

(3) (a) Where a ship has been provisionally detained, the consular officer, on the request of the master, owner or agent of the ship, and if there is no such consular officer, the master, the owner or agent of the ship, may require that the person, if any, appointed by the Governor to survey the ship shall be accompanied by such person as such consular officer, master, owner or agent, as the case may be, may select.

(b) In any such case, if the surveyor and such person agree, the Governor shall cause the ship to be detained or released accordingly; but, if they differ, the Governor may act as if the requisition had not been made, and the master, owner or agent shall have the like appeal to a Court of Survey touching the report of the surveyor as hereinbefore provided.

(4) Where the master, owner or agent of the ship appeals to the Court of Survey, the consular officer, on the request of such master, owner or agent, or, if there is no such consular officer the master, owner or agent, may nominate any competent person or persons, not exceeding two, to be members of the Court of Survey.

Safety Convention passenger ship not to be detained if condition of ship corresponds substantially with certificate.

203. Notwithstanding anything in section 198 or 202, where a valid Safety Convention certificate is produced in respect of any Safety Convention passenger ship, such ship shall not be deemed to be unsafe for the purposes of either of those sections by reason of the defective condition of her hull, equipments or machinery, unless it appears that such ship cannot proceed to sea, without danger to the passengers or crew owing to the fact that the actual condition of the ship does not correspond substantially with the particulars stated in the certificate.

Survey of ships alleged by seamen to be unseaworthy.

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

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

(3) For the purposes of this section the Court may require any government surveyor, or if a government surveyor cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the Court, competent to deal with the special circumstances of the case, then, any other impartial surveyor appointed by the Court, and having no interest in the ship, her freight or cargo, to survey the ship, and to answer any question concerning her which the Court thinks fit to put.

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

(5) Any person making a survey under this section shall for the purposes thereof have all the powers of an inspector under this Ordinance.

(6) The costs, if any, of the survey shall be determined by the Port Officer, according to a scale of fees to be prescribed and shall be paid, in the first instance from the general revenue.

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

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

Saving.

205. Nothing in this Part shall affect any foreign ship not bound to North Borneo which comes into North Borneo for any purpose other than that of embarking or landing passengers, or taking in or discharging cargo, or taking in bunkers.

PART VI

SPECIAL SHIPPING ENQUIRES AND COURTS

Chapter 32

INVESTIGATION AND ENQUIRES AS TO SHIPPING CASUALTIES

Preliminary inquiry.

206. (1) Where a shipping casualty within the meaning of section 208 has occurred, a preliminary inquiry may be held respecting the casualty by any person appointed for the purpose by the Director.

(2) For the purpose of any such inquiry, the person holding the same shall have all the powers of an inspector under this Ordinance.

(3) After the conclusion of such inquiry, the person holding the same shall forward a report thereof to the Governor through the Director without delay and, in any event, within one month after such conclusion.

Marine Court.

207. (1) The Governor may, whenever occasion may arise in the circumstances detailed in subsection (1) of section 208 (whether or not a preliminary inquiry under section 206 has been held) by warrant under his hand and seal constitute a Court (which shall be called "the Marine Court") to make investigations as to casualties affecting ships, or to inquire into charges of incompetency or misconduct on the part of officers of ships.

(2) The Marine Court shall consist of not more than five nor less than three members of whom one shall be a Judge or a President of the Sessions Court who shall be President of the Court and the remainder shall be masters of foreign-going British ships or such persons of nautical, engineering or other special skill or knowledge as the Governor may appoint:

Provided that, where any investigation involves or appears likely to involve any question as to the cancellation or suspension of the certificate of any officer, the Court shall include not less than two members having experience in the Merchant Service.

(3) Each of the member of the Marine Court other than the Judge or Magistrate shall be paid such sum as may be prescribed, or such other sum as the Governor may in any special case direct during each day that the Court sits.

Shipping casualties.

208. (1) For the purpose of an investigation under this Part, a casualty shall be deemed to occur –

- (a) when on or near the coasts of North Borneo any British or North Borneo ship is lost, abandoned or materially damaged;
- (b) when, on or near the coasts of North Borneo any British or North Borneo ship causes loss or material damage to any other ship;

- (c) when any loss of life ensues by reason of any casualty happening to or on board any British or North Borneo ship on or near the coasts of North Borneo;
 - (d) when, in any place, any such loss, abandonment, material damage or casualty as above mentioned has occurred, and any witness is found in North Borneo;
 - (e) when, in any place, any British or North Borneo ship has been stranded or damaged, and any witness is found in North Borneo; and
 - (f) when any British or North Borneo ship has been lost, or is supposed to have been lost, and any evidence is obtainable in North Borneo as to the circumstances in which such ship proceeded to sea or was last heard of.
- (2) In any of the following cases –
- (a) where a casualty occurs to a British or North Borneo ship on or near the coasts of North Borneo or to any such ship in the course of a voyage to North Borneo;
 - (b) where a casualty occurs in any part of the world to a North Borneo ship;
 - (c) where some of the crew of a British or North Borneo ship to which a casualty has occurred, and who are competent witnesses to the facts, are found in North Borneo;
 - (d) where the incompetency or misconduct has occurred on board a British ship on or near the coasts of North Borneo, or on board any such ship in the course of a voyage to North Borneo;
 - (e) where the incompetency or misconduct has occurred on board a North Borneo ship;
 - (f) where any officer of a British or North Borneo ship who is charged with incompetency or misconduct on board that ship is found in North Borneo;

the Marine Court may make investigation respecting such casualty and may hear and inquire into any such charge of incompetency or misconduct; and, for such purpose, that Court shall have the same jurisdiction over the matter in question as if it had occurred within its ordinary jurisdiction but subject to all provisions, restrictions and conditions which would have been applicable if it had so occurred, and the Marine Court shall also have the powers given to inspectors under this Ordinance as well as all the powers of a Magistrate of the First Class.

(3) An inquiry shall not be held into any matter which has once been the subject of an investigation or inquiry, other than a preliminary inquiry under section 206, and has been reported on by a competent Court or tribunal in any part of the Commonwealth, or in respect of which the certificate of any officer of a ship has been cancelled or suspended by a Naval Court.

(4) Where an investigation or inquiry has been commenced in the United Kingdom with reference to any matter, an inquiry with reference to the same matter shall not be held under this Chapter.

Grounds for cancellation or suspension of certificate.

209. (1) The certificate of any officer of a British or North Borneo ship may be cancelled or suspended –

- (a) if the Marine Court finds that the loss or abandonment of, or serious damage to, any ship or loss of life has been caused by his wrongful act or default; or
- (b) if the Marine Court finds he is incompetent, or that he has been guilty of any gross act of misconduct, drunkenness or tyranny, or that in a case of collision, he has failed to render such assistance or give such information as is required by this Ordinance.

(2) Where any case before the Marine Court involves a question as to the cancellation or suspension of a certificate, the Court shall, at the conclusion of the case or as soon afterwards as possible, state in open Court the decision to which it has come with respect to the cancellation or suspension thereof.

(3) Any officer of a British or North Borneo ship whose certificate is cancelled or suspended in pursuance of this Ordinance shall, on the demand of the Marine Court, deliver his certificate to the Court, or if it is not demanded by that Court deliver it to the Governor or to such other persons as the Governor directs, and in default such officer shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

(4) The Marine Court shall, in all cases, send a full report on the case with the evidence to the Governor and shall also, if it determines to cancel or suspend any certificate, send the certificate cancelled or suspended to the authority by whom the certificate was granted.

(5) A certificate shall not be cancelled or suspended by a Marine Court under this Chapter unless a copy of the report or a statement of the case on which the investigation or inquiry has been ordered has been furnished before the commencement of the investigation or inquiry to the holder of the certificate.

Provisions for re-hearing and appeal.

210. (1) The Governor may, in any case where under this Ordinance an investigation into the conduct of a holder of a certificate of competency granted under this Chapter has been held, order the case to be re-heard, either generally or as to any part thereof, either by the Marine Court by which it was heard in the first instance or by another Marine Court and shall do so –

- (a) if new and important evidence which could not be produced at the investigation or inquiry has been discovered; or
- (b) if for any other reason there has, in his opinion, been ground for suspecting that a miscarriage of justice has occurred.

(2) Where an application under subsection (1) for a re-hearing is not made or is refused, and where an application under subsection (6) of section 478 of the Principal Act for a re-hearing of any inquiry under this Chapter is not made or is refused, an appeal shall lie from any order or finding of the Court or tribunal holding the inquiry to the Court of Appeal:

Provided that an appeal under this section shall not lie in any case, other than an investigation under paragraph (e) of subsection (2) of section 208 in which an appeal to the

High Court of England under section 478 of the Principal Act or under section 66 of the Merchant Shipping Act, 1906, is competent.

(3) Any re-hearing or appeal under this section shall be subject to, and in accordance with, such terms and conditions as may be prescribed.

(4) Notwithstanding anything in this Chapter contained, the Governor may in his discretion, at any time direct the re-issue and return of any certificate issued under this Ordinance, or may direct the grant in place thereof of a certificate of the same or a lower grade.

Further powers of Marine Court.

211. (1) The Marine Court shall have the following further powers –

(a) it may remove the master of any ship if that removal is shown to the satisfaction of the Court by evidence on oath to be necessary; and such removal may be made upon the application of any owner of the ship or his agent, or of the charterer, or of any certificated mate, or of one-third or more of the crew of the ship;

(b) it may appoint a new master instead of the one removed:

Provided that, where the owner, agent or charterer of the ship is within the jurisdiction of the Marine Court, such an appointment shall not be made without the consent of that owner, agent or charterer;

(c) it may make such order as it thinks fit respecting the costs of the investigation, or any part thereof; and such order shall be enforced by the Marine Court in the same way as an order for costs made by a Magistrate Court.

(2) Each member of the Marine Court shall either sign the report made on any investigation under this Chapter, or report to the Governor his reasons for dissent therefrom,

(3) Every investigation under this Chapter (other than an inquiry under section 206) shall be conducted in such manner that, if charge is made against any person, he shall have an opportunity of making a defence.

Chapter 33 COURTS OF SURVEY

Courts of Survey.

212. (1) The Governor whenever occasion may arise may appoint a Court of Survey in the same manner and composed of the same persons as in the case of a Marine Court; and, in such case, the following provisions shall have effect –

- (a) the case shall be heard in open court;
- (b) each member of the Court may survey the ship, and shall have for such purpose all the powers of an inspector under this Ordinance;
- (c) the Court may order the ship to be surveyed and may appoint any competent person to survey the ship and report thereon to the Court and such person may in case of disagreement be appointed by a majority of the members;
- (d) the Court shall have the same power as the Governor has to order the ship to be released or finally detained, but unless a majority of the members concur in an order for the detention of a ship the ship shall be released; and
- (e) the owner or agent and the master of the ship and any person appointed by the owner, agent or master, may attend at any inspection or survey made in pursuance of this section.

(2) The Court may make such order with respect to the costs of any enquiry or investigation under this Chapter as it may think fit, and such costs shall be recoverable in the same manner as a civil debt.

(3) Nothing in this Part shall be deemed to affect in any way the admiralty jurisdiction of the High Court.

Chapter 34
SCIENTIFIC REFEREES

Reference in difficult cases to scientific persons.

213. (1) If the Governor is of the opinion that an appeal to the Court of Survey involves a question of construction or design or of scientific difficulty or important principle, he may refer the matter to such one or more scientific referees as may appear to him to possess the special qualifications necessary for the particular case; and such referees may be selected by agreement between the Governor and the appellant, or, in default of any such agreement, by the Governor, and thereupon the appeal shall be determined by the referees, instead of the Court of Survey.

(2) The Governor, if the appellant in any appeal so requires, and gives security to the satisfaction of the Governor to pay the costs of, and incidental to, the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

(3) The referee or referees shall have the same power as a member of a Marine Court.

PART VII
WRECK AND SALVAGE
Chapter 35
VESSELS IN DISTRESS

Definition.

214. In this Part –

“owner”, in relation to a vessel, means the persons who was the owner of the vessel at the time of the sinking, stranding or abandoning thereof;

“salvage” includes all expenses properly incurred by the salvor in the performance of the salvage services;

“vehicle” includes any vehicle of any description, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise;

“wreck” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

Duty of Receiver where vessel in distress.

215. (1) Where a British, North Borneo or foreign vessel is wrecked, stranded, or in distress at any place on or near the coasts of North Borneo or any tidal water within North Borneo, the Receiver of Wreck shall, upon being made acquainted with the circumstances, forthwith proceed thereto, and, upon his arrival, shall take the command of all persons present, and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel, and of the lives of the persons belonging to the vessel (in this Part referred to as “shipwrecked persons”), and of the cargo and apparel of the vessel:

Provided that the Receiver of Wreck shall not interfere between the master and the crew of the vessel in reference to the management thereof, unless he is requested to do so by the master.

(2) If any person wilfully disobeys any lawful directions of the Receiver of Wreck such person shall be guilty of an offence and shall be liable to a fine of one thousand dollars.

Powers of the Receiver in case of vessels in distress.

216. (1) The Receiver of Wreck may, with a view to such preservation as aforesaid of shipwrecked persons, or of the vessel, cargo, or apparel –

- (a) require such persons as he thinks necessary to assist him;
- (b) require the master, or other person having charge, of any vessel near at hand to give such aid with his men or vessel as may be in his power; and

- (c) demand the use of any vehicle or of any draught animal that may be near at hand.

(2) If any person refuses without reasonable cause to comply with any such requisition or demand, that person shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

Power to pass over adjoining lands.

217. (1) Whenever a vessel is wrecked, stranded or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel, or of saving the lives of the shipwrecked persons, or of saving the cargo or apparel of the vessel, unless there is some public road equally convenient, pass and repass, either with or without vehicles or draught animals, over any adjoining lands without being subject to interruption by the owner or occupier, so, however, that they do as little damage as possible, and may, also, on the like condition, deposit on those lands any cargo or other article recovered from the vessel.

(2) Any damage sustained by an owner or occupier of adjoining lands in consequence of the exercise of the rights given by this section shall be a charge on the vessel, cargo, or articles in respect of or by which the damage is occasioned, and the amount payable in respect of the damage shall in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is under this Part determined or recoverable.

- (3) If the owner or occupier of any land –
 - (a) impedes or hinders any person in the exercise of the rights given by this section by locking his gates or refusing, upon request, to open the same, or otherwise;
 - (b) impedes or hinders the deposit of any cargo or other article recovered from the vessel as aforesaid on the land; or
 - (c) prevents or endeavours to prevent any cargo or other article from remaining deposited on the land for a reasonable time, until it can be removed to a safe place of public deposit;

he shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

Power of Receiver to suppress plunder and disorder by force.

218. (1) Whenever a vessel is wrecked, stranded or in distress as aforesaid, and any person plunders, creates disorder or obstructs the preservation of the vessel, or of the shipwrecked person, or of the cargo or apparel of the vessel, the Receiver of Wreck may cause that person to be apprehended.

(2) The Receiver of Wreck may use force for the suppression of any such plundering, disorder or obstruction, and may command all Her Majesty's subjects to assist him in so using force.

(3) If any person is killed, maimed or hurt by reason of his resisting the Receiver of Wreck or any person acting under the orders of the Receiver of Wreck in the execution of the duties by this Part committed to the Receiver of Wreck, neither the Receiver of Wreck nor the person acting under his orders shall be liable to any punishment, or to pay any damages, by reason of the person being so killed, maimed or hurt.

Exercise of powers of Receiver in his absence.

219. (1) Where the Receiver of Wreck is not present, the following officers in succession (each in the absence of the other, in the order in which they are named), namely, the Commissioner of Police, the Deputy Commissioner of Police any gazetted police officer, any magistrate, any commissioned officer on full pay in the naval service of Her Majesty or commissioned officer on full pay in the military or air force service of Her Majesty, may do everything by this Part authorized to be done by the Receiver of Wreck.

(2) An officer acting under this section for the Receiver of Wreck shall, with respect to any goods or articles belonging to a vessel the delivery of which to the Receiver of Wreck is required by the Ordinance, be considered as the agent of the Receiver of Wreck, and shall place such goods or articles in the custody of the Receiver of Wreck; but he shall not be entitled to any fees payable to the Receiver of Wreck, or be deprived, by reason of his so acting, of any right to salvage to which he would otherwise be entitled.

Examination in respect of ships in distress.

220. (1) Where any ship, British, North Borneo or foreign, is or has been in distress on the coasts of North Borneo, the Receiver of Wreck, or in the absence of the Receiver of Wreck a Magistrate, shall, as soon as conveniently may be, examine on oath (and they are hereby respectively empowered to administer the oath) any person belonging to the ship, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters, that is to say –

- (a) the name and description of the ship;
- (b) the name of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the ports from and to which the ship was bound;
- (e) the occasion of the distress of the ship;
- (f) the services rendered;
- (g) such other matters or circumstances relating to the ship, or the cargo on board the same, as the person holding the examination thinks necessary.

(2) The person holding the examination shall take the same down in writing and shall send two copies thereof to the Director; and the Director shall cause one of those copies to be placed in some conspicuous place for the inspection of persons desirous of examining the same, and, shall otherwise give such publicity thereto as he considers necessary, and shall transmit the other copy to the secretary of Lloyd's in London.

(3) The person holding the examination shall, for the purposes thereof have all the powers of an inspector under this Ordinance.

Chapter 36
DEALING WITH WRECK

Rules to be observed by persons finding wreck.

221. Where any person finds or takes possession of any wreck within North Borneo, or finds or takes possession of any wreck outside those limits and brings it within those limits, he shall

—

- (a) if he is the owner of the wreck, give notice to the Receiver of Wreck, stating that he has found or taken possession of the same, and describing the marks by which the same may be recognised; or
- (b) if he is not the owner of the wreck, as soon as possible deliver it to the Receiver of Wreck;

and, if any person fails, without reasonable cause, to comply with this section, he shall be guilty of an offence and shall be liable to a fine of two thousand dollars; and shall in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or if it is unclaimed to the Governor, double the value thereof:

Provided that this section shall have no application to the salvage, under the authority of the Chief Secretary, of any war time wreck lying in North Borneo at the commencement of this Ordinance.

Penalty for taking wreck at time of casualty.

222. (1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coasts of North Borneo or any tidal water within North Borneo, any cargo or other articles belonging to, or separated from, the vessel which may be washed on shore, or otherwise lost or taken from the vessel, shall be delivered to the Receiver of Wreck.

(2) If any person, whether the owner or not, secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the Receiver of Wreck, or to any person authorized by the Receiver of Wreck to demand the same, that person shall be guilty of an offence and shall be liable to a fine of two thousand dollars.

(3) The Receiver of Wreck or any person authorized as aforesaid may take any such cargo or article by force from the person so refusing to deliver the same.

Notice of wreck to be given by Receiver.

223. (1) Where the Receiver of Wreck takes possession of any wreck, he shall within forty-eight hours –

- (a) cause to be posted at the nearest Police Station and otherwise publish in such manner as he may deem fit, a description of the wreck and of any marks by which it is distinguished; and
- (b) if in his opinion the value of the wreck exceeds two hundred dollars, send a copy of such description to the Director.

(2) The Director shall transmit to the secretary of Lloyd's in London any copy of any description of any wreck sent to him by the Receiver of Wreck under subsection (1).

Claims of owners to wreck.

224. (1) The owner of any wreck in the possession of the Receiver of Wreck upon establishing his claim to the same to the satisfaction of the Receiver of Wreck within one month from the time when the wreck came into the possession of the Receiver of Wreck shall, upon paying the salvage, fees and expenses due, be entitled to have the wreck or the proceeds thereof delivered up to him.

(2) Where any articles belonging to, or forming part of, a foreign ship which has been wrecked on or near the coasts of North Borneo, or belonging to, and forming part of, the cargo of any such ship, are found on or near those coasts or are brought into any port within North Borneo, the consular officer of the country to which the ship, or, in the case of cargo, to which the owner of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner so far as relates to the custody and disposal of the articles.

Immediate sale of wreck by Receiver in certain cases.

225. The Receiver of Wreck may at any time sell any wreck in his custody, if in his opinion –

- (a) it is under the value of fifty dollars;
- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value to pay for warehousing;

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the Receiver of Wreck for the same purposes, and subject to the same claims, rights, and liabilities, as if the wreck had remained unsold.

Chapter 37
UNCLAIMED WRECK

Unclaimed wreck to be sold and proceeds paid into general revenue.

226. Where no owner establishes a claim to any wreck which –

- (a) has been found in North Borneo, or found or taken possession of outside North Borneo and brought into North Borneo; and
- (b) has been in the possession of the Receiver of Wreck for one month;

the Receiver of Wreck shall sell such wreck and shall pay into the general revenue the proceeds of the sale after deducting therefrom the expenses of sale and any other expenses incurred by and the fees payable to him, in respect thereof, and paying thereout to the salvors such amount of salvage as the Governor may, by special or general directions, specify.

Delivery of unclaimed wreck by Receiver not to prejudice title.

227. Upon delivery of wreck or payment of the proceeds of sale of wreck by the Receiver of Wreck in pursuance of the provisions of this Part, the Receiver of Wreck shall be discharged

from all liability in respect thereof, but the delivery thereof shall not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

Chapter 38
REMOVAL OF WRECKS

Removal of wreck by Director.

228. (1) Subject to the provisions of any written law relating to ports, where any vessel is sunk, stranded, or abandoned in any port, navigable river or tidal water within North Borneo or in or near any approach to any such port, navigable river or tidal water, in such a manner as, in the opinion of the Receiver of Wreck to be, or to be likely to become, an obstruction or danger to navigation, the Receiver of Wreck –

- (a) may take possession of, and raise, remove or destroy, the whole or any part of the vessel;
- (b) may light or buoy any such vessel, or part of any such vessel, until the raising, removal or destruction thereof; and
- (c) subject to the provisions of subsections (2) and (3), may sell, in such manner as he thinks fit, any vessel or part so raised or removed, and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale reimburse himself for the expenses incurred by him under this section in relation to such vessel, or part of a vessel, or other property, and shall hold the surplus, if any, of the said proceeds in deposit for payment to the person thereafter establishing his right thereto:

Provided that the deposit shall be paid into general revenue unless such person makes his claim within three years of the sale.

(2) A sale shall not, except in the case of property which is of a perishable nature or which would deteriorate in value by delay, be made under this section until at least seven clear days' notice of the intended sale has been given in the *Gazette*.

(3) At any time before any property is sold under this section, the owner thereof shall be entitled to have the same delivered to him on payment to the Receiver of Wreck of fair market value thereof, to be ascertained by agreement between the Receiver of Wreck and the owner, or failing such agreement by some person to be named for the purpose by the Governor, and the sum paid to the Receiver of Wreck as the value of any property under this subsection, shall, for the purposes of this section, be deemed to be the proceeds of sale of that property.

(4) If the proceeds of sale of any such property as is mentioned in this section is less than the costs incurred by the Receiver of Wreck under this section, he may recover such difference from the owner of the vessel by civil action.

Breaking and removal of wrecks.

229. (1) If any person being the owner of any vessel or any wrecked, submerged, sunken or stranded vessel, or the duly authorized agent or servant of such owner, is desirous of breaking up such vessel prior to removal thereof from North Borneo, such person shall, before commencing salvage or breaking up operations, obtain the written permission of the Receiver of Wreck who shall be entitled to grant such permission and in his discretion to require security in such reasonable amount as he may consider necessary to ensure the effective removal of such vessel, or any portion thereof, from North Borneo.

(2) Any person who, without the previous written permission of the Receiver of Wreck, does or causes to be done any salvage or breaking up operations of any vessel or any wrecked, submerged, sunken or stranded vessel lying within North Borneo shall be guilty of an offence and shall be liable to imprisonment for six months and a fine of one thousand dollars.

Powers of removal to extend to tackle, cargo, etc.

230. The provisions of this Part relating to removal of wrecks shall apply to every article or thing or collection of things being or forming part of the tackle, equipments, cargo, stores or ballast of a vessel in the same manner as if it were included in the word "vessel"; and, for the purposes of these provisions, any proceeds of sale arising from a vessel and from the cargo thereof, or any other property recovered therefrom, shall be regarded as a common fund.

Interfering with wrecked vessel.

231. A person shall not, without the leave of the master, board or endeavour to board any vessel which is wrecked, stranded or in distress unless that person is, or acts by command of, the Receiver of Wreck or a person lawfully acting as such; and, if any person acts in contravention of this section, he shall be guilty of an offence and shall be liable to a fine of one thousand dollars, and the master of the vessel may repel him by force.

Summary procedure for concealment of wreck.

232. (1) Where the Receiver of Wreck suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or that any wreck is otherwise improperly dealt with, he may apply to any Magistrate for a search warrant; and that Magistrate shall have power to grant such a warrant; and the Receiver of Wreck, by virtue of such warrant, may enter any house or other place, wherever situate, and also any vessel, and search for such wreck, and seize and detain any such wreck there found.

(2) If any such seizure of wreck is made in consequence of information given by any person to the Receiver of Wreck, on the warrant being issued under this section, the informer shall be entitled, by way of salvage, to such sum, not exceeding in any case one hundred dollars, as the Receiver of Wreck may allow.

Chapter 39

SALVAGE

Salvage of cargo or wreck within North Borneo.

233. Where any vessel is wrecked, stranded or in distress at any place on or near the coasts of North Borneo or any tidal water within North Borneo, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel, or any part thereof, and where services are rendered by any person other than the Receiver of Wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel or wreck a reasonable amount of salvage, to be determined in case of dispute in the manner hereinafter mentioned.

Determination of salvage disputes.

234. (1) A dispute as to the amount of salvage, whether of life or property and whether the services for which it is claimed have been rendered within or without North Borneo, arising between the salvor and the owner of any vessel, cargo, apparel or wreck shall, if not settled by agreement, arbitration or otherwise, in the following cases, namely –

- (a) in any case where the parties in the dispute consent;
- (b) in any case where the amount claimed does not exceed one thousand dollars;
- (c) in any case where the value of the property saved does not exceed one thousand dollars;

be referred to and determined by a Court of a Magistrate of the First Class.

(2) Subject as aforesaid, any dispute as to salvage shall be determined by the High Court but, if the claimant does not recover in that Court more than one thousand dollars, he shall not be entitled to recover any costs, charges, or expenses incurred by him in the prosecution of his claim, unless that Court certifies that the case was a fit one to be tried otherwise than under the provisions of subsection (1).

(3) A dispute relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

Determination of disputes as to salvage summarily.

235. (1) Disputes as to salvage which are to be determined under the provisions of subsection (1) of section 234 shall –

- (a) where the dispute relates to the salvage of wreck, be referred to a Court of a Magistrate of the First Class having jurisdiction at or near the place where the wreck is found; or
- (b) where the dispute relates to salvage in the case of services rendered to any vessel or to the cargo or apparel thereof or in saving life therefrom, be referred to a Court of a Magistrate of the First Class having jurisdiction at

or near the port in North Borneo into which the vessel is first brought after the occurrence by reason whereof the claim of salvage arises.

(2) Such Court may, for the purpose of determining any such dispute, call in to its assistance any person conversant with maritime affairs as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum as the Governor may direct.

Valuation of property by Receiver.

236. (1) Where any dispute as to salvage arises, the Receiver of Wreck may, on the application of either party, appoint a valuer to value that property, and shall give copies of the valuation to both parties.

(2) Any copy of the valuation purporting to be signed by the valuer and to be certified as a true copy by the Receiver of Wreck, shall be admissible as evidence in any subsequent proceeding.

(3) There shall be paid in respect of the valuation by the person applying for the same such fee as the Governor may direct.

Detention of property liable for salvage by the Receiver.

237. (1) Where salvage is due to any person under the provisions of this Part, the Receiver of Wreck shall –

- (a) if the salvage is due in respect of services rendered in assisting any vessel, or in saving life therefrom, or in saving the cargo or apparel thereof, detain the vessel and cargo or apparel; and
- (b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Part, detain the wreck.

(2) Subject as hereinafter mentioned, the Receiver of Wreck shall detain the vessel and the cargo and the apparel or the wreck (in this Part referred to as “detained property”) until payment is made for salvage or process is issued for the arrest or detention of the detained property by the High Court.

(3) The Receiver of Wreck may release any detained property if security is given to his satisfaction, or, if the claim for salvage exceeds one thousand dollars and any question is raised as to the sufficiency of the security, to the satisfaction of the High Court.

(4) Any security given for salvage in pursuance of this section to an amount exceeding one thousand dollars may be enforced by the High Court in the same manner as if bail had been given in that Court.

Sale of detained property by Receiver.

238. (1) The Receiver of Wreck may sell any detained property, if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases, namely –

- (a) where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due;
- (b) where the amount is disputed, but no appeal lies from the decision of the first Court to which the dispute is referred and payment is not made within twenty days after the decision of the first Court; or
- (c) where the amount is disputed and an appeal lies from the decision of the first Court to which the dispute is referred to some other Court, and within thirty days after the decision of the first Court neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal or of obtaining leave to appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver of Wreck in payment of the expenses, fees and salvage incurred and payable in respect of such property, and so far as not required for that purpose, shall be paid to the owners of the property or any other persons entitled to receive the same.

Apportionment of salvage under \$2,000 by Receiver.

239. (1) Where the aggregate amount of salvage payable in respect of salvage services rendered within North Borneo has been finally determined, either summarily in the manner provided by this Ordinance or by agreement, and does not exceed two thousand dollars, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the Receiver of Wreck for liberty to pay the same to him; and the Receiver of Wreck shall, if he thinks fit, receive the same accordingly, and shall grant to the person paying the amount a certificate of the amount paid and of the services in respect of which it is paid; and that certificate shall be a full discharge and indemnity to the person by whom the money is paid and to his vessel, cargo, apparel and effects against the claims of all persons whomsoever in respect of the services mentioned in the certificate.

(2) The Receiver of Wreck shall, with all convenient speed, distribute any amount received by him under this section among the persons entitled to the same on such evidence, and in such shares and proportions, as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

(3) A distribution made by the Receiver of Wreck in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Apportionment of salvage by Court.

240. Whenever the aggregate amount of salvage payable in respect of salvage service rendered within North Borneo has been finally ascertained and exceeds two thousand dollars and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever that amount may be, then, if any delay or dispute arises as to the apportionment thereof, the High Court may cause the aggregate amount of salvage payable to be apportioned among the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it thinks fit, appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be to distribute the same or to bring the same into Court to be there dealt with as the Court may direct, and may for the purposes aforesaid issue such processes as it thinks fit.

Chapter 40

APPOINTMENT OF RECEIVERS OF WRECK

Director to be Receiver of Wreck.

241. (1) The Director shall be the Receiver of Wreck for North Borneo.

(2) The Governor may appoint any person to be a Deputy Receiver of Wreck for any part of North Borneo, and any such Deputy Receiver of Wreck shall exercise such of the powers as are conferred by this Part on the Receiver of Wreck and may perform such of the duties as are imposed by this Part on the Receiver of Wreck as may be delegated to him by the Receiver of Wreck.

Chapter 41

FEES OF RECEIVER OF WRECK

Receiver's fees.

242. (1) There shall be paid to the Receiver of Wreck and every Deputy Receiver of Wreck the expenses properly incurred by them in the performance of their duties and also, in respect of such other matters as may be prescribed such fees, as may be prescribed, but the Receiver of Wreck and the Deputy Receiver of Wreck shall not be entitled to any remuneration other than those payments.

(2) The Receiver of Wreck and every Deputy Receiver of Wreck shall, in addition to all other rights and remedies for the recovery of the expenses and fees aforesaid, have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him.

(3) Whenever any dispute arises as to the amount payable to the Receiver of wreck or any Deputy Receiver of Wreck in respect of expenses or fees, that dispute shall be determined by the Governor, and the Governor's decision shall be final.

(4) All fees received by the Receiver of Wreck or any Deputy Receiver of Wreck in respect of any services performed by him as the Receiver of Wreck or the Deputy Receiver of Wreck, as the case may be, shall be paid into the general revenue.

PART VIII

Chapter 42

LIGHTHOUSES, BUOYS AND BEACONS

Definitions.

243. In this Part, “buoy” and “beacon” include all other marks and signs of the sea, and “lighthouse” includes lightships and all floating and other lights and any other aids to navigation established for the guidance of ships.

Exemption from certain dues.

244. There shall be exempted from the payment of any dues which may be imposed by regulations made under paragraph (h) of subsection (1) of section 277 –

- (a) ships belonging to Her Majesty or to a Commonwealth or foreign Government unless carrying cargo or passengers for freight or fares;
- (b) sailing ships, not being pleasure yachts, of less than one hundred tons, and all ships of less than five tons;
- (c) yachts and pleasure boats of under twenty tons;
- (d) any other vessel or class of vessels which the Governor in Council may, by order, declare to be exempted for the purposes of this section.

Injury to lighthouses, etc.

245. Any person who wilfully or negligently –

- (a) injures or obscures any lighthouse or the lights exhibited therein, or any buoy, beacon or navigational aid, or any cables, wires or other apparatus, either in connection therewith or otherwise;
- (b) removes, alters, injures or destroys any lightship, buoy, beacon or navigational aid, or any cables, wires or other apparatus, either in connection therewith or otherwise; or

- (c) rides by, make fast to, or runs foul of any lightship, buoy, beacon or navigational aid;

shall, in addition to the expenses of making good any damage so occasioned, be guilty of an offence and shall be liable to a fine of two thousand dollars.

Prevention of false lights.

246. (1) Whenever any fire or light is burnt or exhibited at such place or in such manner, as to be liable to be mistaken for or affect the visibility or character of a light proceeding from a lighthouse, the Director may serve a notice on the owner of the place where the fire or light is burnt or exhibited, or on the person having charge of such fire or light either personally or by delivery at the place of abode of such owner or person, or by affixing the same in some conspicuous spot near to such fire or light; and may by such notice direct such owner or person, within a reasonable time to be therein specified, to take effectual means for extinguishing or effectually screening such existing fire or light.

(2) Any owner or person who fails, without reasonable cause, to comply with a notice under subsection (1) shall be deemed guilty of an offence and shall be liable, in addition to any other penalties or liabilities of any kind thereby incurred, to imprisonment for six months and a fine of one thousand dollars.

(3) If any owner or person fails to comply with a notice under subsection (1), the Director, may, by his servants or workmen, enter into the place wherein the same may be, and forthwith extinguish such fire or light, doing no unnecessary damage and all expenses incurred by the Director in so doing may be recovered from such owner or person as a civil debt.

PART IX

Chapter 43

NORTH BORNEO LICENSED SHIPS

North Borneo licensed ships.

247. (1) Every North Borneo licensed ship shall be licensed in such manner and subject to such conditions as may be prescribed.

(2) It shall be a condition in every licence in respect of a North Borneo licensed ship that the ship is owned by a person or body corporate ordinarily resident in North Borneo, Sarawak or Brunei that the licence shall become void if the ship or any share therein is transferred, mortgaged or charged to any person or body without the written permission of the Director.

(3) No North Borneo licensed ship shall, unless express provision to the contrary is contained in her licence or unless such action is necessary due to stress of weather or other cause beyond the control of the master, proceed outside North Borneo.

(4) Any master contravening subsection (3), and any person aiding or abetting such master, shall be guilty of an offence and shall be liable to a fine of five thousand dollars, and, in addition the licence of the ship may be revoked by the Director.

PART X

LEGAL PROCEEDINGS

Chapter 44

PROSECUTION OF OFFENCES

Prosecutions, by whom to be instituted etc.

248. No person shall be charged with any offence under this Ordinance, other than an offence relating to discipline or order on board a ship, except on the complaint of the Director or any person authorized in writing in that behalf; in respect of matters under the jurisdiction of the Director, of the State Director or any person authorized in writing in that behalf in respect of matters under the jurisdiction of the State Director and, in the case where section 4

of the Territorial Waters Jurisdiction Act, 1878, applies, no charge shall, save to the extent mentioned in section 5 of that Act, be proceeded with except with the leave of the Governor.

Legal proceedings under the Merchant Shipping Acts in North Borneo.

249. (1) Where a person is charged in North Borneo with any offence under the Merchant Shipping Acts, such offence shall be triable in the following manner –

- (a) if under those Acts the offence is triable summarily, it shall be triable by any Magistrate;
- (b) if the offence is declared by those Acts to be a misdemeanour, it shall be triable by any Magistrate of the First Class.

(2) For the purposes of this section, any provision of those Acts empowering a Court to impose a sentence of penal servitude, or of imprisonment with hard labour, or of simple imprisonment, shall be construed as a provision empowering such Court to impose a sentence of imprisonment.

(3) Notwithstanding the provisions of section 280, such of the provisions of Part XIII of the Principal Act as are applicable shall, subject to subsections (1) and (2) continue to apply to legal proceedings brought in North Borneo under or by virtue of the Merchant Shipping Acts.

Chapter 45
JURISDICTION

Provision as to jurisdiction in case of offences.

250. For the purpose of giving jurisdiction under this Ordinance, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Jurisdiction over ships lying off the coasts.

251. The Governor in Council may, by order, prescribe the limits, either by area or destruction of vessels, of the jurisdiction of any Courts over vessels in North Borneo but subject to any such order where any area within which any Court has jurisdiction under this Ordinance for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, or other navigable water, such Court shall have jurisdiction for the purposes of this Ordinance over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, or navigable water, and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the Court.

Chapter 46

INQUIRES INTO DEATHS

Inquiry into cause of death on board ship.

252. Where a case of death has happened on board any British or North Borneo ship arriving at any port in North Borneo, other than a ship to which section 690 of the Principal Act applies, the Port Officer shall inquire into the cause of the death, and shall make in the official log book an endorsement to the effect, either that the statement of the cause of death in the log is in his opinion true, or the contrary, according to the result of the inquiry.

Powers of Port Officer in case of enquires with death.

253. The Port Officer shall, for the purpose of an inquiry under section 252, have the powers of an inspector under this Ordinance; and, if in the course of any such inquiry, it appears to the Port Officer that any such death has been caused on board the ship by violence or other improper means, he shall either report the matter to the Attorney-General, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.

Chapter 47
DEPOSITIONS

Depositions to be received in evidence when witness cannot be produced.

254. (1) Whenever in the course of any legal proceeding instituted under this Ordinance before any Court, or before any person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of that proceeding, then, upon due proof that the witness cannot be found in North Borneo, any deposition that the witness may have previously made on oath in relation to the same subject matter before any Judge or Magistrate in any part of the Commonwealth other than North Borneo, or before any British consular officer in any place not within the Commonwealth, shall be admissible in evidence:

Provided that –

- (a) if the proceeding is criminal, a deposition so made shall not be admissible, unless it was made in the presence of the person accused; and
 - (b) no deposition so made shall be admissible, unless it is authenticated by the signature of the Judge, Magistrate or consular officer before whom it was made, and unless such Judge, Magistrate, or consular officer has certified, if the fact is so, that the accused was present at the taking thereof.
- (2) A deposition so made shall be deemed to be duly authenticated if it purports to have been signed by the Judge, Magistrate or consular officer before whom it was made.
- (3) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and, in any criminal proceeding, a certificate purporting to have been signed by the Judge, Magistrate or consular officer before whom the deposition was made, that the accused was present at the taking of the deposition, shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner hereby certified.
- (4) Nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any other written law.

Chapter 48

DETENTION OF SHIP AND DISTRESS ON SHIP

Enforcing detention of ship.

255. (1) Where under this Ordinance a ship is to be or may be detained, any commissioned officer on full pay in the naval, military or air force service of Her Majesty, or any person thereto generally or specially authorized by the Governor or the Director may detain the ship; and, if the ship after detention or after service on the master of any notice or order for detention, proceeds to sea before it is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the master's offence, shall be guilty of an offence and shall be liable to a fine of five thousand dollars.

(2) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorized to detain the ship, or any government surveyor or officer appointed under this Ordinance or any officer of Customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and they shall each also be guilty of an offence and shall be liable to a fine of one thousand dollars or one hundred dollars for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, whichever is the greater; and the expenses ordered to be paid may be recovered in like manner as the fine.

(3) Where under this Ordinance a ship is to be detained the Port Officer shall, and where under this Ordinance a ship may be detained the Port Officer may, refuse to grant port clearance.

Notice to be given to consular officer where proceedings taken in respect of foreign ships.

256. Where any foreign ship is detained under this Ordinance, and where any proceedings are taken under this Ordinance against the master or owner of any such ship, notice shall forthwith be given to the consular officer, for the country to which the ship belongs at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

Cost of detaining ship.

257. Where a ship is detained in pursuance of any provision of this Ordinance which provides for the detention of a ship until a certain event occurs, subsection (2) of section 199 shall apply as if the ship has been finally detained within the meaning of that subsection.

Sums ordered to be paid leviable by distress on ship.

258. Where any Court has power under this Ordinance to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time or in the manner prescribed in the order, the Court which made the order may, in addition to any other powers it may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

Chapter 49

EVIDENCE AND SERVICE OF DOCUMENTS

Proof of attestation not required.

259. Notwithstanding anything in the Evidence Ordinance [Cap. 43.], where any document is required by this Ordinance to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or attesting witnesses or any of them.

Admissibility of documents in evidence.

260. (1) Where a document is by this Ordinance declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any Court or before any person having by law or the consent of the parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Ordinance or by any officer in pursuance of his duties as such officer.

(2) A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be a copy or extract made from or compared with the original, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted.

(3) Any person having by law, or the consent of the parties, authority to receive evidence shall have the same powers as a Court to impound any document to which this section applies which has a false or counterfeit seal, stamp, or signature affixed thereto.

Service of document.

261. (1) Where, for the purpose of this Ordinance, any document is to be served on any person, that document may be served –

- (a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode;
- (b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being or appearing to be in command or charge of the ship; and
- (c) if the document is to be served on the master of a ship, where there is no master, and the ship is within North Borneo, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in North Borneo, or where no such agent is known or can be found, by affixing a copy thereof in some conspicuous place in the ship.

(2) If any person obstructs the service on the master of a ship of any document under the provisions of this Ordinance relating to the detention of ships as unseaworthy, that person shall be guilty of an offence and shall be liable to a fine of two hundred dollars; and, if the owner or master of the ship is party or privy to the obstruction he shall be guilty of an offence, and shall be liable to imprisonment for two years and a fine of five thousand dollars.

Chapter 50
PROTECTION OF OFFICERS, ETC

All officers, etc., to be public servants.

262. Every Officer appointed under this Ordinance, and every person appointed or authorized under this Ordinance, for any purpose of this Ordinance when acting in pursuance of such purpose, shall be deemed to be a public servant within the meaning of the Penal Code [Ordinance No. 3 of 1959.].

Protection of public servants.

263. No suit shall be maintained against any public servant within the meaning of the Penal Code [Ordinance No. 3 of 1959.] for or in respect of anything done or omitted to be done by him in good faith in the exercise or performance or in the purported exercise or performance of any power, authority or duty conferred or imposed on him under this Ordinance.

PART XI
SUPPLEMENTAL

Chapter 51
GENERAL CONTROL BY THE DIRECTOR

Administration of the Ordinance.

264. (1) Except as provided in subsection (2), the Director shall be the officer having the general superintendence of the administration of this Ordinance and authorized to carry the provisions of this Ordinance into execution.

(2) The State Director shall be the officer having the general superintendence of the administration of the provisions of the Ordinance relating to the following matters:

- (i) shipping under fifteen registered tons, including the carriage of the passengers and goods by such shipping;
- (ii) ports and harbour, other than those declared to be federal by or under federal law; and

- (iii) regulation of traffic by water in ports and harbours (except traffic in federal ports or harbours) and on rivers wholly within the State.

Chapter 52

APPOINTMENT OF OFFICERS, ETC.

Appointment of officers.

265. The Governor may appoint such officers in addition to any officers whom he is by the provisions of this Ordinance especially empowered to appoint, as may from time to time in his opinion be required for the purpose of giving effect to the provisions of this Ordinance.

Power for seeing that Ordinance is complied with.

266. (1) Where any of the following officers, namely –

- (a) the Director;
- (b) any commissioned officer of any of Her Majesty's ships on full pay;
- (c) a Superintendent;
- (d) a Port Officer

has reason to suspect that any provisions of this Ordinance, or any law for the time being in force relating to merchant seamen or navigation, is not complied with, that officer may –

- (i) require the owner, master or any of the crew of any British or North Borneo ship to produce an official log book or other document relating to the crew or any member thereof in their respective possession or control;
- (ii) require any such master to produce a list of all persons on board his ship, and to take copies of any official log books, or documents, or of any part thereof;
- (iii) muster the crew of any such ship; and

- (iv) summon the master to appear and give any explanation concerning the ship or her crew or the official log books or documents produced or required to be produced.

(2) If any person, on being duly required by an officer authorized under this section, fails without reasonable cause to produce to that officer any such official log book or document as he is required to produce under this section, or refuses to allow the same to be inspected or copied, or impedes any muster of the crew required under this section, or refuses or neglects to give any explanation which he is required under this section to give, or knowingly misleads or deceives any officer authorized under this section to demand any such explanation, that person shall be guilty of an offence and shall be liable to a fine of five hundred dollars.

Chapter 53 **INSPECTORS**

Appointment of inspectors to report on accidents, etc.

267. The Governor may as and when he thinks fit appoint any person as an inspector to report to the Director –

- (a) upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused;
- (b) whether the provisions of this Ordinance, or any subsidiary legislation made or deemed to have been made under or by virtue of this Ordinance, have been complied with; or
- (c) whether the hull and machinery of any ship are sufficient and in good condition.

Powers of inspectors.

268. (1) An inspector so appointed and any person having the powers of such an inspector –

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

which the provisions of this Ordinance apply, not unnecessarily detaining or delaying her from proceeding on any voyage;

- (b) may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purposes of the report which he is directed to make;
- (c) may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for the purpose of his report, and may require answers or returns to any inquiries he thinks fit to make;
- (d) may require and enforce the production of all books, papers, or documents which he considers important for the purpose of his report; and
- (e) may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration (which shall be free from stamp duty) of the truth of the statements made by him in his examination.

(2) Every witness summoned under this section shall be allowed such expenses as would be allowed to a witness attending on summons to give evidence before the High Court; and in the case of any dispute as to the amount of those expenses, the same shall be referred to a Registrar of the High Court and the Registrar shall, on request made to him for that purpose under the hand of the inspector or person having the powers of an inspector, ascertain and certify the proper amount of those expenses.

(3) If any person refuses to attend as a witness before an inspector or before any person having the powers of an inspector, after having been required to do so in the manner provided by this section and after having had a tender made to him of the expenses, if any, to which he is entitled under this section, or refuses or neglects to make any answer, or to give any return, or to produce any document in his possession or to make or subscribe any declaration which an inspector or person having the powers of an inspector is hereby empowered to require, that person shall be guilty of an offence and shall be liable to a fine of two hundred dollars.

Penalty for obstructing inspectors in the execution of their duty.

269. If any person wilfully impedes an inspector or any person having the powers of an inspector in the execution of his duty, whether on board a ship or elsewhere, that person shall be guilty of an offence and shall be liable to a fine of five hundred dollars; and any such person may be seized and detained by the inspector or person having the powers of an inspector, or by any person or persons whom that inspector or person may call to his assistance, until he can be conveniently taken before a Magistrate.

Chapter 54

TRANSMISSION OF DOCUMENTS

Notices, etc. to be in writing and provision as to sending by post.

270. (1) Where by this Ordinance any notice, authority, order, direction or other communication is required or authorized to be given or made by the Governor or the Director to any person not being an officer appointed under this Ordinance, the same shall be given or made in writing.

(2) Where any notice or document is by this Ordinance required to be transmitted or sent, the same may be transmitted or sent by post.

Chapter 55

EXEMPTION OF HER MAJESTY'S SHIPS

Exemption of Her Majesty's ships.

271. Subject to the provisions of any regulations made under section 277 this Ordinance shall not, except where otherwise specially provided, apply to ships belonging to Her Majesty.

Chapter 56
EXEMPTION OF OTHER SHIPS FROM PROVISIONS OF THE
ORDINANCE

Exemption of certain foreign ships.

272. Where Her Majesty has by Order in Council under section 1 or section 2 of the Merchant Shipping (Equivalent Provisions) Act, 1925, directed that any provisions of the Merchant Shipping Acts which apply to foreign ships, or to British ships registered in any part of the Commonwealth outside the United Kingdom, or to ships registered in a port of a territory over which Her Majesty exercises jurisdiction, while such ships are in port of the United Kingdom, but not otherwise, shall not apply to the ships of any foreign country, or to ships registered in any part of the Commonwealth, or to ships registered in any territory as aforesaid, which is specified in such Order in Council, while such ships are within any part of the United Kingdom, if it is proved in respect of any such ship that it complies with the corresponding provisions of the law of such foreign country or part of the Commonwealth or territory applicable to it, no provisions of this Ordinance corresponding to any such provisions of the Merchant Shipping Acts as aforesaid shall apply to any ship of such foreign country or to any ship registered in such part of the Commonwealth, or territory while it is within any port in North Borneo, if it is proved that such ship complies with the corresponding provisions of the law of that foreign country or of that part of the Commonwealth or territory, applicable to it.

Governor may exempt.

***273.** Subject to section 128 and 183 the Governor may, in his discretion and subject to such conditions as he may think fit to impose, exempt any vessel or class of vessel from all or any of the provisions of this Ordinance or of any subsidiary legislation made or deemed to have been made hereunder.

* Powers delegated to Director of Marine. G.N.S. 41 of 1961.

Chapter 57

SPECIAL PROVISIONS FOR COASTAL TRADE SHIPS

Special provisions for coastal ships.

274. The provisions of this Ordinance or of any subsidiary legislation made or deemed have been made hereunder may be modified in their application to coastal trade ships in such manner and to such extent as the Governor in Council may by order provide.

Chapter 58

MISCELLANEOUS PROVISIONS

Port clearance.

275. If any person takes any ship to sea from any port in North Borneo without having first obtained port clearance, he shall be guilty of an offence and, except for an offence under sections 10, 145 or 174, shall be liable to imprisonment for three months and a fine of five hundred dollars.

Tonnage of foreign ships.

276. (1) The tonnage of a foreign ship belonging to a foreign country in respect of which an Order in Council has been made under section 84 of the Principal Act shall, for the purposes of this Ordinance, be the tonnage denoted in such ship's certificate of registry or other national papers.

(2) Where for any purpose of this Ordinance it is required to ascertain the tonnage of any foreign ship to which the provisions of subsection (1) do not apply, such tonnage shall be ascertained in accordance with the tonnage regulations of the Principal Act, as though such ship were a British ship requiring to be registered.

Chapter 59
SUBSIDIARY LEGISLATION

Regulations.

- 277.** (1) The Governor in Council may make regulations generally for carrying this Ordinance into effect, and, in particular, such regulations may provide for –
- (a) anything which is required to be, or may be, prescribed under this Ordinance;
 - (b) the construction of ships and the carriage of passengers and cargo;
 - (c) the control of ports, harbours and wharves including without prejudice to the generality of the foregoing –
 - (i) the imposition of dues, including the exemption of any class of ship from the payment of all or any dues, and the distraint of the equipment and other things of or belonging to any ship for non-payment of such dues; and
 - (ii) the loading, unloading and delivery of cargo and the exercise of a right of lien over cargo for freight, dues or other charges unpaid in respect thereof;
 - (iii) the expenditure (capital and recurrent) and revenues of any port or part thereof;
 - (d) the establishment of optional pilot areas, the establishment of pilotage authorities and, if considered desirable, their incorporation, the examination and licensing of pilots and their rights, duties and liabilities, pilotage dues, the liability of masters and others when employing a pilot and all other matters relating to pilotage;
 - (e) subject to the prior approval of the Secretary of State, the implementation, in whole or in part, of any international convention relating to Merchant Shipping or to any matter incidental thereto or connected therewith;

- (f) the control of vessels operating within North Borneo (other than naval vessels of Her Majesty, or of the Government of any part of the Commonwealth, or of a foreign Government) for which no other provision has been made in this Ordinance or by any other enactment, or which has been generally or partially exempted from the provisions of this Ordinance;
- (g) the procedure to be followed in proceedings under Part VI;
- (h) the imposition of buoys and light dues, the establishment of a buoys and lights fund and the administration thereof;
- (i) the relief and return of distressed seamen; and the recovery of expenses incurred in connection therewith;
- (j) the classification of coastal trade ships, either in relation to the seaworthiness of such ships or the manning thereof, and restricting the area of the coastal trade limits within which any class of such ships may ply;
- (k) fees and charges including fees and charges related to or connected with the registration of British ship in North Borneo; and
- (l) documents and forms, their admissibility in evidence and their exemption from stamp duty.

(2) Any such regulations may provide a penalty for the breach or contravention thereof not exceeding imprisonment for one month or a fine of one thousand dollars.

Application of subsidiary legislation.

278. Where the Governor in Council is empowered to make any subsidiary legislation under any of the provisions of this Ordinance such subsidiary legislation may be made by applying, *mutatis mutandis*, any subsidiary legislation made from time to time under the Merchant Shipping Acts or under the Merchant Shipping Ordinance, 1960 of the Colony of Sarawak.

Amendment of Cap. 16.

279. The Boats and Fisheries Ordinance is amended –

- (a) by deleting the words “Boats and” where they appear in capital letters or otherwise, in the title, the long title and section 1 thereof;
- (b) by deleting the definition of “boat” and “Registrar” in section 2 thereof;
- (c) by repealing sections 3, 4, 5, 6 and 7 thereof; and
- (d) by re-numbering sections 8, 9, 10 and 11 as 3, 4, 5 and 6 respectively.

Repeals.

280. (1) The Carriage of Goods by Sea Ordinance [*Cap. 20.*], the Ports and Harbours Ordinance [*Cap. 103*] and Shipping Ordinance [*Cap. 135.*], together with all subsidiary legislation made under these Ordinances, are hereby repealed.

(2) The Merchant Shipping Acts, 1894 to 1958 (save the provisions specified in the second Schedule) to the extent to which these Acts apply to North Borneo ships when in North Borneo are repealed.

Consequential provisions.

281. References in any other written law to a ship registered in North Borneo shall be deemed to include a reference to a North Borneo licensed ship and to a vessel licensed in Sabah under section 475 of the Merchant Shipping Ordinance 1952 of the Federation of Malaya.

FIRST SCHEDULE

(Section 2)

TRADE LIMITS

In this Schedule “coast” includes all waters connected therewith navigable by sea-going vessels.

PART A
COASTAL TRADE LIMITS

The limits bound by a line drawn from a position with Tanjong Datu lighthouse bearing 180° distance 10 miles thence to a position with Tanjong Po lighthouse bearing 180° distance 10 miles thence to a position with Tanjong Sirik lighthouse bearing 180° distance 20 miles thence to a position with Tanjong Kedurang lighthouse bearing 180° distance 20 miles thence to a position with Tanjong Baram lighthouse bearing 180° distance 20 miles thence to a position in latitude 07° 40' North, longitude 117° 00' East thence to a position in latitude 07° 24' 45" North, longitude 117° 25' 30" East, thence to a position in latitude 05° 16' North, longitude 119° 35' East, thence to a position in latitude 04° 42', longitude 119° 00' East, thence to a position in latitude 04° 00' North, longitude 119° 00' East, thence to a position in latitude 04° 00' North, longitude 118° 00' East, thence to the territory boundary stone on the eastern end of Sibatik Island and thence following the coast of North Borneo, Sarawak, Brunei and Sarawak in that order, back to the starting point north of Tanjong Datu lighthouse.

PART B
HOME TRADE LIMITS

The limits bound by a line drawn from a position in the Gulf of Martaban in latitude 16° 15' North, longitude 96° 00' East in a south-easterly direction to a position in latitude 15° 00' North, longitude 97° 00' East, thence due South to a position in latitude 19° 00' North, longitude 97° 00' East, thence in a south-easterly direction to a position in latitude 6° 00' North, longitude 94° East, thence due South to a position in 4° 00' North, longitude 94° 00' East, thence in a south-easterly direction to a position in 8° 00' South, longitude 104° 00' East, thence in an easterly direction to a

position in latitude $10^{\circ} 00'$ South, longitude $120^{\circ} 00'$ East, thence due East to a position in latitude $10^{\circ} 00'$ South, longitude $125^{\circ} 00'$ East, thence due North to a position in latitude $8^{\circ} 00'$ North, longitude $125^{\circ} 00'$ East, thence due West to a position in latitude $8^{\circ} 00'$ North, longitude $110^{\circ} 00'$ East, thence in a 315 direction (N.W. true) to the coast of Vietnam, thence initially westward following the coasts of Vietnam, Cambodia, Thailand, the Malayan Peninsula and Burma to the starting point.

Provided that those waters which include the West and South-West coasts of Sumatra, the South coast of Java and the South coasts of the islands lying due East of Java (namely Bali, Lombok, Sumbawa, Flores and other islands) shall be excluded from these limits between the 15th day of April and the 15th day of October in each year.

PART C LOCAL TRADE LIMITS

The limits bound by a line drawn from the North point of Junk Ceylon to the North-West point of Pulo Web, thence to the North point of Pulo Bras, thence following the East coasts of Pulo Bras and Pulo Nasi Besar to Acheen Head on the North coast of Sumatra, thence along the North and East coasts of Sumatra to the southern entrance of Banka Strait, thence in an easterly direction to Cape Sambar off the South-West corner of Indonesian Borneo (Kalimatan Barat) thence following the coast of Indonesian Borneo, Sarawak, Brunei and North Borneo in an approximately northerly, north-easterly and south-easterly direction to the territorial boundary stone on the eastern end of Sibatik Island in a position latitude $4^{\circ} 10'$ North, longitude $117^{\circ} 54' 14''$ East, thence in a south-easterly direction for a distance of thirty miles to a position in latitude $3^{\circ} 45'$ North, longitude $118^{\circ} 20'$ East and returning in the reserve direction with the line forming an imaginary

thirty mile-wide corridor along the coast to a position latitude 3° 13' North, longitude 11° 16' East, thence in a West-North-westerly direction to Cape Datu (Great Natuna Island) in a position latitude 4° 16' North, longitude 108° 11' East, thence in a north-westerly direction to a position on the Malayan coast where it is intersected by the eighth parallel of North latitude thence, initially, in a southerly direction following the coast of the Malayan Peninsular back to the starting point.

SECOND SCHEDULE

(Section 280)

PROVISIONS OF MERCHANT SHIPPING ACTS

SAVED FROM

REPEAL IN RESPECT OF NORTH BORNEO SHIPS

<i>Act</i>	<i>Provisions</i>
Merchant Shipping Act, 1894 (57 and 58 Vict. C. 60)	Part I (except section 85) [<i>Deleted ACT A 603/84</i>].
Merchant Shipping Act, 1894 (57 and 58 Vict. C. 60)	Sections 289 to 368 inclusive.
Merchant Shipping Act, 1894 (57 and 58 Vict. C. 60)	Sections 418 and 419.
Merchant Shipping Act, 1894 (57 and 58 Vict. C. 60)	Sections 421 to 424 inclusive.
Merchant Shipping Act, 1894 (57 and 58 Vict. C. 60)	Section 474

Merchant Shipping Act, 1894
(57 and 58 Vict. C. 60)

Sections 727, 735 and 736.

Merchant Shipping Act, 1894
(57 and 58 Vict. C. 60)

Section 742 in its application to the Merchant Shipping Acts which have been saved from repeal.

Merchant Shipping Act, 1894
(57 and 58 Vict. C. 60)

The First and Second Schedules.

Merchant Shipping Act, 1894
(57 and 58 Vict. C. 60)

The sixth Schedule, but so that reference in paragraph (1) thereof to “the Second Part of this Act” shall be construed as a reference to this Ordinance and reference in paragraph (5) thereof to “the chief officer of customs at the port where the ship is registered” shall be construed as a reference to the Director.

Merchant Shipping Act, 1906
(6 Edw. 7. C. 48)

Sections 50 to 55 inclusive.

Merchant Shipping Act, 1906
(6 Edw. 7. C. 48)

Section 80.

Merchant Shipping Act, 1907
(7 Edw. 7. C. 52)

The whole.

FOR REFERENCE ONLY (March 2023)

Maritime Conventions Act, 1911

(1 and 2 Geo. 5. C. 57)

The whole.

Merchant Shipping Act, 1954

(2 and 3 Eliz. 2. C. 18)

The whole.

Passed this 27th day of July, 1960.

R. A. LIND,

Clerk of Legislative Council.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the Legislative Council and found by me to be a true and correct copy of the said Bill.

R. A. LIND,

Clerk of Legislative Council.