

SEAMEN'S COMPENSATION.

No. 13 of 1911.

An Act relating to compensation to Seamen for injuries suffered in the course of their employment.

[Assented to 18th December, 1911.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Seamen's Compensation Act* 1911. Short title.
2. This Act shall commence on a day to be fixed by proclamation. Commencement.
- 3.—(1.) In this Act, unless the contrary intention appears— Definitions.
 - “The Comptroller-General” means the Comptroller-General of Customs : Cf. 6 Edw. 7, c. 58, s. 13.
 - “County Court” means a County Court, District Court, or Local Court of any State, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a Judge or a Police, Stipendiary, or Special Magistrate :
 - “Dependants” means such of the members of the seaman's family as were wholly or in part dependent upon the earnings of the seaman at the time of his death, or who would, but for the incapacity due to the accident, have been so dependent; and where the seaman—
 - (a) being the parent or grandparent of an illegitimate child, leaves the child so dependent upon his earnings, or
 - (b) being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings,
 includes such an illegitimate child and parent or grandparent respectively :
 - “Employer” includes any body of persons corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a seaman are temporarily lent or let on hire to another person by the person with whom the seaman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the seaman whilst he is working for that other person :

"Judge of a County Court" includes the Judge of a County Court, District Court, or Local Court, and also any Police, Stipendiary, or Special Magistrate presiding or having jurisdiction to preside over a County Court as defined by this Act :

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister :

"Port" includes place and harbor :

"Seaman" includes master, officer, apprentice, pilot, or other person employed or engaged in any capacity on board a ship in connexion with the navigation or working of the ship :

"Ship" includes every vessel used in navigation not ordinarily propelled by oars :

"Vessel" means any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation.

(2.) Any reference to a seaman who has been injured shall, where the seaman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

Application of
Act.

4.—(1.) Subject to sub-section (2.) of this section, this Act shall apply to the employment of seamen on any of the following ships:—

- (a) ships in the service of the Commonwealth, other than the Naval or Military Service ;
- (b) ships trading with Australia, or engaging in any occupation in Australian waters, and being in the territorial waters of any Territory which is part of the Commonwealth ; and
- (c) ships engaged in trade and commerce with other countries or among the States.

(2.) In the case of ships not registered in Australia, this Act shall, as regards paragraphs (b) and (c), of sub-section (1.) of this section, only apply in relation to seamen shipped under articles of agreement entered into in Australia, and then only while the ships are subject to the law of the Commonwealth.

Compensation
for personal
injuries to
seamen.
Cf. 6 Edw. 7,
ch. 53, s. 1.

5.—(1.) If personal injury by accident arising out of and in the course of the employment is caused to a seaman, his employer shall, subject to this Act, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that—

- (a) the employer shall not be liable under this Act in respect of any injury which does not disable the seaman, for a period of at least one week, from earning full wages :
- (b) a seaman shall not be entitled to recover compensation both independently of and also under this Act ; but subject to this paragraph this Act shall not affect any civil liability of an employer under any other law :

- (c) if it is proved that the injury to a seaman is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed :
- (d) in the case of the death of a seaman leaving no dependants, no compensation shall be payable under this Act if the owner of the ship is under any Act, Imperial Act, or State Act liable to pay the expenses of burial : Cf. 6 Edw. 7,
ch. 58, s. 7 (1)
(*h*).
- (e) if it appears that the claimant has a claim for compensation for the injury under any law of the United Kingdom or of any other part of the King's Dominions or of any foreign country, compensation under this Act shall only be allowed upon the claimant undertaking not to claim compensation for the injury under any such law.

(3.) If any question arises, in any proceedings under this Act, as to the liability to pay compensation under this Act (including any question as to whether the person injured is a seaman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act, or by proceedings in a County Court.

(4.) Any undertaking given in pursuance of paragraph (e) of sub-section (2.) of this section shall have effect as a contract between the claimant and the person from whom the compensation is claimed.

6.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after it has happened, and before the seaman has voluntarily left the employment in which he was injured, and unless the claim for compensation has been made—

Time for taking
proceedings.
Ib. s. 2.

- (a) within six months from the occurrence of the accident, or,
- (b) in case of death—within six months after news of the death has been received by the claimant, or,
- (c) in the case of a ship lost with all hands—within eighteen months after the date when she is deemed under section twelve of this Act to have been lost with all hands.

Provided always that—

- (a) where the accident happened and the incapacity commenced on board the ship, it shall not be necessary to give any notice of the accident ; Ib. s. 7 (1) (a).
- (b) the want of or any defect or inaccuracy in the notice shall not be a bar to the maintenance of proceedings if it is found, in the proceedings for settling the claim, that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in

his defence by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, absence from Australia, or other reasonable cause; and

- (c) the failure to make a claim within the period above specified shall not be a bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from Australia, or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of the employers.

(3.) The notice may be served by delivering it to the person on whom it is to be served, or by sending it by post in a registered letter addressed to him at his residence or place of business.

(4.) Where the employer is a body of persons, corporate or unincorporate, the notice may be served by delivering it at the office or one of the offices of the employer, or by sending it by post in a registered letter addressed to the employer at one of the offices of the employer.

*Cf. 6 Edw. 7
ch. 58, s. 7 (1)
(a).*

(5.) Except where the person injured is the master, the notice of accident and the claim for compensation may be served on the master, as if he were the employer.

*Sub-
contracting.
Ib. s. 4.*

7.—(1.) Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any seaman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that seaman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the seaman under the employer by whom he is immediately employed.

(2.) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the seaman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act, or by action in any County Court.

(3.) Nothing in this section shall be construed as preventing a seaman recovering compensation under this Act from the contractor instead of the principal.

*Provisions as
to cases of
insolvency
of employer.
Ib. s. 5.*

8.—(1.) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any seaman, then, in the event of the employer becoming bankrupt, or making a

composition or arrangement with his creditors, or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the laws relating to bankruptcy, and the winding up of companies, be transferred to and vested in the seaman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, but so that the insurers shall not be under any greater liability to the seaman than they would have been under to the employer.

(2.) If the liability of the insurers to the seaman is less than the liability of the employer to the seaman, the seaman may prove for the balance in the bankruptcy or liquidation.

(3.) There shall be included among the debts which are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the sequestration order (or any other order corresponding thereto or having the like effect) or the date of the commencement of the winding up and the provisions of any laws relating to preferential payments in relation to bankruptcy and the winding up of companies shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

(4.) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(5.) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

9. Subject to this Act, compensation shall be paid in full in all cases, notwithstanding any limitation of liability in any other law; but any limitation of a shipowner's liability imposed by any other law shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury.

Compensation to be paid in full.
Cf. 6 Edw. 7, ch. 58, s. 7 (1) (7).

10. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person, other than the employer, to pay damages in respect thereof—

Remedies both against employer and a stranger.
Ib. s. 6.

(a) the seaman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

- (b) if the seaman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action or, by consent of the parties, by arbitration under this Act.

Depositions
where injured
seaman left
behind.
Cf. 6 Edw. 7,
ch. 58, s. 7 (c).

11.—(1.) Where an injured seaman is discharged or left behind in a British Possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any Judge or Magistrate in the British Possession or by any British Consular Officer in the foreign country.

(2.) Depositions taken in pursuance of this section shall be transmitted by the person by whom they are taken to the Comptroller-General.

(3.) Depositions taken in pursuance of this section or certified copies of them shall be admissible in evidence in proceedings for compensation under this Act.

Evidence of loss
of ship.
Cf. M. S. A.
1894, s. 174 (2).
(3).

12.—(1.) In any proceeding for compensation under this Act, if it is shown by some official return produced out of official custody, or by other evidence, that the ship on which the seaman in respect of whom the compensation is claimed was employed 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 she was last heard of or at such later time as the Court or arbitrator thinks probable.

(2.) A duplicate agreement or list of the crew made out or a statement of a change in the crew delivered under any Act, Imperial Act, or State Act relating to navigation or shipping at the time of the last departure of the ship from Australia, or a certificate purporting to be a certificate from a Consular or other public officer at any port out of Australia, stating that certain seamen were shipped in the ship from the said port, shall, if produced out of official custody, be, in the absence of proof to the contrary, sufficient proof that the seamen therein named as belonging to the ship were on board at the time of the loss.

Detention of
ship.
Cf. 6 Edw. 7,
ch. 58, s. 11.
M. S. A. 1894,
s. 692.

13.—(1.) If it is alleged that the owner of any ship is liable as such to pay compensation under this Act, and the ship is at any time found in any port or river in Australia or within any territorial waters thereof, a Justice of the High Court or a Judge of the Supreme Court of a State may, upon its being shown to him by any person applying that the owner is probably liable as such to pay compensation under this Act and that the owner does not reside in Australia, issue an

order, directed to any officer of the Department of Trade and Customs or other officer named in the order, requiring him to detain the ship until such time as the owner agent master or consignee thereof has paid the compensation, or has given security to be approved by the Justice or Judge to abide the event of any proceedings that may be instituted to recover compensation under this Act and to pay such compensation and costs (if any) as are awarded.

(2.) The officer to whom the order is directed may detain the ship in accordance with the order.

(3.) In any legal proceeding to recover the compensation, the person giving security may be made the defendant, and the production of the order of the Justice or Judge made in relation to the security shall be conclusive evidence of the liability of the defendant.

(4.) Where the owner of a ship is a corporation, it shall for the purpose of this section be deemed to reside in Australia if it has an office in Australia at which service of process can be effected.

(5.) The master of a ship, after detention in pursuance of this section, or after service on him of any notice of or order for detention, shall not proceed to sea with the ship before she is released by competent authority.

Penalty : One hundred pounds.

(6.) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person authorized to detain the ship, the owner and master of the ship shall each be liable to pay a further penalty at the rate of Ten pounds per day until the person returns or such time as would enable him after leaving the ship to return to the place from which he was taken.

(7.) An Officer of Customs shall refuse to grant a certificate of clearance to any ship while under detention in pursuance of this section, and may refuse to grant such a certificate if he has had notice that an order for the detention of the ship has been made, or that an application for an order for the detention of the ship is about to be made.

14.—(1.) The Minister may appoint any duly qualified medical practitioners to be medical referees for the purposes of this Act.

Medical referees.
Cf. 6 Edw. 7,
ch. 58, s. 10 (1).

(2.) Medical referees shall be paid such fees as are provided by the regulations.

(3.) The fees of medical referees shall be paid out of moneys provided by Parliament for the purpose.

(4.) A medical referee who has been employed as a medical practitioner in connexion with any case by or on behalf of an employer or seaman, or by any insurers interested, shall not act as a medical referee in that case.

15. Where an arbitrator is appointed by a County Court under this Act, the remuneration of the arbitrator shall be paid out of moneys provided by Parliament for the purpose.

Remuneration of arbitrator appointed by County Court.
Ib. s. 1 (2).

Returns as to
compensation.
Cf. 6 Edw. 7,
ch. 58, s. 12.

16. The owner or master of every ship on which seamen to which this Act applies are employed shall, as prescribed, furnish to the Comptroller-General correct returns specifying—

- (a) the number of injuries in respect of which compensation has been paid under this Act during the previous year, or in respect of any period specified by the Comptroller-General;
- (b) the amount of compensation paid during that year, or period, and
- (c) such other particulars as are prescribed or as the Comptroller-General requires.

Penalty : Five pounds.

Regulations.

17. The Governor-General may make Regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and in particular for modifying, altering or repealing any of the provisions of the Second Schedule to this Act or adding any additional provisions to that Schedule.

18. The *Seamen's Compensation Act* 1909 is repealed.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

- (1.) The amount of compensation under this Act shall be—
 - (a) where death results from the injury—
 - (i.) if the seaman leaves any dependants wholly dependent upon his earnings a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of Two hundred pounds, whichever of those sums is the larger, but not exceeding in any case Five hundred pounds:
 - Provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the seaman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;
 - (ii.) if the seaman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration or proceedings under this Act, to be reasonable and proportionate to the injury to the said dependants; and
 - (iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding Thirty pounds;
 - (b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of the seaman's average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during

which he has been in the employment of the same employer, such weekly payment not to exceed Thirty shillings, and, if at any time the seaman is entitled to an old-age pension from the Commonwealth, not to exceed during that time an amount which together with the weekly rate of the pension will make up Thirty shillings. For the purposes of the grant of an old-age pension, compensation under this Act shall not be taken to be income :

Provided that—

- (a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week ; and
 - (b) as respects the weekly payments during total incapacity of a seaman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Twenty shillings, one hundred per centum shall be substituted for fifty per centum of his average weekly earnings, but the weekly payment shall in no case exceed Ten shillings.
- (2.) For the purposes of the provisions of this Schedule relating to "earnings" and "average weekly earnings" of a seaman, the following rules shall be observed :—
- (a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the seaman was being remunerated. Provided that where by reason of the shortness of the time during which the seaman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment ;
 - (b) where the seaman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;
 - (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the seaman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;
 - (d) where the employer has been accustomed to pay to the seaman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.
- (3.) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the seaman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the seaman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.
- (4.) No weekly payment shall be payable in respect of any period during which the owner of the ship is under any Act, Imperial Act, or State Act liable to defray the expenses of maintenance of the injured seaman.
- (5.) Where a seaman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.
- (6.) The payment in the case of death shall, unless otherwise provided in this Schedule or by the regulations, be paid to a prescribed authority, and the sum so paid shall be dealt with as prescribed for the benefit of the persons entitled thereto.
- Provided that, if so agreed, the payment in case of death shall, if the seaman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(7.) Where a weekly payment is payable under this Act to a person under any legal disability, the weekly payment shall be paid during the disability to a prescribed authority, and dealt with as prescribed for the benefit of the person entitled thereto.

(8.) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or by a County Court, and the amount payable to each dependant shall be settled by arbitration under this Act, or by a County Court.

(9.) Where there are both total and partial dependants, nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(10.) Where, on application being made to a prescribed authority that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of any of the dependants, or for any other sufficient cause, an order of the Court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any dependant is to be dealt with, ought to be varied, the prescribed authority may make an application to a County Court for the variation of the order or the award, and the County Court may make such order thereon as it thinks just.

(11.) Any seaman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the seaman refuses to submit himself to such examination, or in any way obstructs the examination, his right to the weekly payments shall be suspended until the examination has taken place.

(12.) A seaman shall not be required to submit himself for examination by a medical practitioner under the provisions of this Schedule otherwise than in accordance with the regulations, or at more frequent intervals than is prescribed by those regulations.

(13.) Where a seaman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or seaman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the seaman's condition, then, in the event of no agreement being come to between the employer and the seaman as to the seaman's condition or fitness for employment, the prescribed authority, on application being made to him by both parties, may, on payment by the applicants of such fee, not exceeding Two pounds, as is prescribed, refer the matter to a medical referee.

(14.) The medical referee to whom the matter is referred shall examine the seaman, and shall, in accordance with the regulations, give a certificate as to the condition of the seaman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(15.) Where no agreement can be come to between the employer and the seaman as to whether or to what extent the incapacity of the seaman is due to the accident, the provisions of this Schedule relating to reference to and examination and certificate by a medical referee shall, subject to the regulations, apply as if the question were a question as to the condition of the seaman.

(16.) If a seaman refuses to submit himself for examination by a medical referee, as provided in this Schedule, or in any way obstructs the examination, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation, or, in the case of a seaman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until the examination has taken place.

(17.) Any weekly payment may be reviewed in the prescribed manner at the request either of the employer or of the seaman, and on such review may be ended, diminished, or increased, subject to the maximum above provided:

Provided that where the seaman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the seaman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding One pound.

(18.) Where any weekly payment has been continued for not less than six months, the liability therefor may, at the option of the employer, but subject to the regulations, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity, purchase an annuity for the seaman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case is settled by arbitra-

tion under this Act, or by a County Court, and such lump sum may be ordered by the committee or arbitrator or Judge of the County Court to be paid to a prescribed authority to be invested or otherwise applied for the benefit of the person entitled thereto :

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(19.) If a seaman receiving a weekly payment ceases to reside in Australia, he shall cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the seaman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(20.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.

(21.) Where under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

SECOND SCHEDULE.

PROCEEDINGS FOR COMPENSATION.

(1.) For the purpose of settling any matter which under this Act may be settled by arbitration, if any committee, representative of an employer and his seamen, exists with power to settle matters under this Act in the case of the employer and seamen, the matter may, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of the committee, or be referred by it to arbitration as hereinafter provided.

(2.) If there is no such committee, or if either party objects to the settlement of the matter by the committee, or if the committee refers the matter to arbitration or fails to settle it within six months from the making of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or, in the absence of agreement, appointed by a County Court.

(3.) The provisions of any Act or State Act relating to arbitration shall not apply to any arbitration under this Act ; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of a County Court, and the decision of the County Court on any question of law, either on such submission, or in any case where a County Court settles the matter under this Act, or where it gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by the regulations either party appeals to the High Court or to the Supreme Court of the State in which the County Court is situated.

(4.) Any arbitrator appointed by a County Court shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings before him were an action in the County Court.

(5.) In any arbitration under this Act, any party to the proceedings may appear personally or by any other person appointed to represent him.

(6.) The costs of and incidental to the arbitration and proceedings connected therewith shall, subject to the regulations, be in the discretion of the committee or arbitrator. The costs, whether before a committee or an arbitrator, shall not exceed the limit prescribed by the regulations.

(7.) In the case of the death or refusal or inability to act of an arbitrator, the County Court may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by the regulations, by the committee or arbitrator, or by any party interested, to the prescribed authority, who shall, subject to the regulations, on being satisfied as to its genuineness, record the memorandum, and thereupon the memorandum shall for all purposes be enforceable as if it were a judgment of a County Court :

Provided that—

- (a) no such memorandum shall be recorded before seven days after the despatch by the prescribed authority of notice to the parties interested ;
- (b) where a seaman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with the regulations, objects to the recording of the memorandum, and proves that the seaman has in fact returned to work and is earning the same wages as he did before the accident, the memorandum shall only be recorded, if at all, on such terms as the prescribed authority, under the circumstances, thinks just ;
- (c) a County Court may at any time make such order in relation to the recording of the memorandum, including the removal of such record, as it thinks just ;
- (d) where it appears to a prescribed authority, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be recorded by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement, and refer the matter to a County Court, which may, in accordance with the regulations, make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just ;
- (e) a County Court may, within six months after the recording of a memorandum of an agreement as to the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability or to dependants, order that the record be removed on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just.

(9.) An agreement as to the redemption of a weekly payment by a lump sum, if not recorded in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so recorded, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(10.) Where any matter under this Act is to be done in a County Court, it may be done in any County Court, but if the Judge of the County Court in which the proceedings are taken, is satisfied that the matter can be more conveniently dealt with in some other County Court, he may order the transfer of the proceedings to that Court, and upon such transfer that Court shall have the like jurisdiction in relation to the proceedings as if they had been commenced in that Court.

(11.) Any sum awarded as compensation shall, unless paid to a prescribed authority, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation.

(12.) Any committee, arbitrator, or County Court may, subject to the regulations, submit to a medical referee for report any matter which seems material to any question arising in the proceedings.

(13.) The Minister may, by order, either unconditionally or subject to such conditions or modifications as he thinks fit, confer on any committee representative of an employer and his seamen, as respects any matter in which the committee acts as arbitrator, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act on a County Court, and may by the order modify any of the provisions of this Schedule, and may provide for such incidental, consequential, or supplemental provisions as may appear to the Minister to be necessary or proper for the purposes of the order.

(14.) A Judge of a County Court may, in relation to any proceedings in the Court, exercise all the jurisdiction and powers of a County Court under this Schedule.