



Fisheries: 3

Statutes in Force

Official Revised Edition

Behring Sea Award Act 1894

(57 and 58 Vict. c. 2)

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BEHRING SEA AWARD ACT 1894 (c. 2)

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An Act to provide for carrying into effect the Award of the Tribunal of Arbitration constituted under a Treaty between Her Majesty the Queen and the United States of America.
[23rd April 1894.]

Act saved by Merchant Shipping Act 1894 (c. 60), s. 745(1)(f)

Whereas by a treaty between Her Majesty the Queen and the Government of the United States of America various questions which had arisen respecting the taking and preservation of the fur seal in the North Pacific were referred to Arbitrators as mentioned in the treaty:

And whereas the award of such arbitrators (in this Act referred to as the Behring Sea Arbitration Award) dated the fifteenth day of August one thousand eight hundred and ninety-three, contained the provisions set out in the First Schedule to this Act:

1.—(1) The provisions of the Behring Sea Arbitration Award set out in the First Schedule to this Act shall have effect as if those provisions (in this Act referred to as the scheduled provisions) were enacted by this Act, and the acts directed by Articles one and two thereof to be forbidden were expressly forbidden by this Act.

Enactment of articles of arbitrators' award respecting the fur seal.

(2) If there is any contravention of this Act, any person committing, procuring, aiding, or abetting such contravention shall be guilty of a misdemeanor within the meaning of the Merchant Shipping Act 1854, and the ship employed in such contravention and her equipment, and everything on board thereof, shall be liable to be forfeited to Her Majesty as if an offence had been committed under section one hundred and three of the said Act: Provided that the court, without prejudice to any other power, may release the ship, equipment, or thing, on payment of a fine not exceeding five hundred pounds.

1854 c. 104.

(3) The provisions of the Merchant Shipping Act 1854, with respect to official logs (including the penal provisions) shall apply to every vessel engaged in fur seal fishing.

(4) Every person who forges or fraudulently alters any licence or other document issued for the purpose of Article four or of Article seven in the First Schedule to this Act, or who procures any such licence or document to be forged or fraudulently altered, or who knowing any such licence or document to be forged or fraudulently altered uses the same, or who aids in forging or fraudulently altering any such licence or document, shall be guilty of a misdemeanor within the meaning of the Merchant Shipping Act 1854.

(5) Subject to this Act, the provisions of sections one hundred and three and one hundred and four and Part Ten of the Merchant

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1854 c. 104. Shipping Act 1854, and of section thirty-four of the Merchant
1876 c. 80. Shipping Act 1876, which are set out in the Second Schedule to this
Act, shall apply as if they were herein re-enacted, and in terms made
applicable to an offence and forfeiture under this Act; and any
commissioned officer on full pay in the naval service of Her Majesty
the Queen may seize the ship's certificate of registry.

Provisions as to ship's papers. 2.—(1) Where an officer seizes, under this Act, a ship's certificate
of registry, he shall either retain the certificate and give a provisional
certificate in lieu thereof, or return the certificate with an indorse-
ment of the grounds on which it was seized, and in either case shall
direct the ship, by an addition to the provisional certificate or to the
indorsement, to proceed forthwith to a specified port, being a port
where there is a British court having authority to adjudicate in the
matter, and if this direction is not complied with, the owner and
master of the ship shall, without prejudice to any other liability, each
be liable to a fine not exceeding one hundred pounds.

(2) Where in pursuance of this section a provisional certificate is
given to a ship, or the ship's certificate is indorsed, any officer of
customs in Her Majesty's dominions or British consular officer may
detain the ship until satisfactory security is given for her appearance
in any legal proceedings which may be taken against her in pursuance
of this Act.

Orders in Council. 3.—(1) Her Majesty the Queen in Council may make, revoke, and
alter Orders for carrying into effect the scheduled provisions, and
this Act and every such Order shall be forthwith laid before both
Houses of Parliament and published in the London Gazette, and shall
have effect as if enacted in this Act.

(2) If there is any contravention of any regulation made by any such
Order, any person committing, procuring, aiding, or abetting such
contravention shall be liable to a penalty not exceeding one hundred
pounds.

(3) An Order in Council under this Act may provide, that such
officers of the United States of America as are specified in the Order
may, in respect of offences under this Act, exercise the like powers
under this Act as may be exercised by a commissioned officer of
Her Majesty in relation to a British ship, and the equipment and
certificate thereof, or such of those powers as appear to Her Majesty
in Council to be exercisable under the law of the United States of
America against ships of the United States; and that such British
officers as are specified in the Order may exercise the powers
conferred by this Act, with any necessary modifications specified in
the Order, in relation to a ship of the United States of America, and
the equipment and certificate thereof.

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4.—(1) Where any offence under this Act has been committed by some person belonging to a ship, or by means of a ship, or the equipment of a ship, the master of the ship shall be deemed guilty of such offence, and the ship and her equipment shall be liable to forfeiture under this Act;

Liability of master to punishment.

(2) Provided that if it is proved that the master issued proper orders for the observance, and used due diligence to enforce the observance of this Act, and the regulations in force thereunder, and that the offence in question was actually committed by some other person without his connivance, and that the actual offender has been convicted, or that he has taken all proper means in his power to prosecute such offender, if alive, to conviction, the master or the ship shall not be liable to any penalty or forfeiture other than such sum as will prevent any profit accruing by reason of the offence to the master or crew or owner of the ship.

5. The expression "equipment" in this Act includes any boat, tackle, fishing or shooting instruments, and other things belonging to a ship.

Definitions.

6. This Act may be cited as the Behring Sea Award Act 1894.

Short title.

7.—(1) . . .¹ Her Majesty in Council, if at any time it appears expedient so to do, having regard to the circumstances which have then arisen in relation to the scheduled provisions or to the enforcement thereof, may suspend the operation of this Act or any part thereof during the period mentioned in the Order, and the same shall be suspended accordingly.

[†]Commencement of Act.

(2) Where on any proceeding in any court against a person or ship in respect of any offence under this Act it is proved that the ship sailed from its port of departure before the provisions of the award mentioned in the First Schedule to this Act were known there, and that such person or the master of the ship did not, after such sailing and before the alleged offence, become aware of those provisions, such person shall be acquitted, and the ship shall be released and not forfeited.

8. This Act shall remain in force so long as the scheduled provisions remain in force and no longer;

Duration of Act.

Provided that if by agreement between Her Majesty the Queen and the Government of the United States of America, the scheduled provisions are modified, then Her Majesty in Council may order that this Act shall, subject to any modifications specified in the order, apply, and the same shall accordingly apply, to the modified provisions in like manner as if they were set out in the First Schedule to this Act.

¹Words repealed by Statute Law Revision Act 1908 (c. 49)

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SCHEDULES

FIRST SCHEDULE

PROVISIONS in AWARD of the TRIBUNAL of ARBITRATION constituted under the Treaty concluded at Washington on the 29th of February 1892, between HER MAJESTY THE QUEEN and the UNITED STATES OF AMERICA.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI. leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea, the Tribunal having decided by a majority as to each Article of the following Regulations, we the said Baron de Courcel, Lord Hannen, Marquis Visconti Venosta, and Mr. Gregers Gram, assenting to the whole of the nine Articles of the following Regulations, and being a majority of the said arbitrators, do decide and determine in the mode provided by the Treaty that the following concurrent regulations outside the jurisdictional limits of the respective Governments are necessary, and that they should extend over the waters herein-after mentioned; that is to say:—

Article 1. The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively to kill, capture or pursue at any time and in any manner whatever, the animals commonly called fur-seals, within a zone of 60 miles around the Pribiloff Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of 60 to a degree of latitude.

Article 2. The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending each year from the 1st May to the 31st July, both inclusive, the fur-seals on the high sea in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of north latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

Article 3. During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

Article 4. Each sailing vessel authorised to fish for fur-seals must be provided with a special licence issued for that purpose by its Government, and shall be required to carry a distinguishing flag to be prescribed by its Government.

Article 5. The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log-book the date and place of each fur-seal fishing

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operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

Article 6. The use of nets, fire-arms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shot guns when such fishing takes place outside of Behring's Sea during the season when it may be lawfully carried on.

Article 7. The two Governments shall take measures to control the fitness of the men authorised to engage in fur-seal fishing. These men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

Article 8. The Regulations contained in the preceding Articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connexion with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur-seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea, or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connexion with fur-sealing vessels as heretofore.

Article 9. The concurrent regulations hereby determined with a view to the protection and preservation of the fur-seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether in the light of past experience, there is occasion for any modification thereof.

SECOND SCHEDULE

ENACTMENTS OF MERCHANT SHIPPING ACT (17 & 18
VICT. c. 104) APPLIED

SECTION 103

And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the

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military or naval service of Her Majesty, or any British [¹Officer of Customs and Excise], or any British Consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the [²High Court in England or Northern Ireland], or any court having Admiralty jurisdiction in Her Majesty's dominions; and such court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

SECTION 104

Officer not liable for any seizure made on reasonable grounds.

No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such judge or court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

PART X

LEGAL PROCEDURE

Application

SECTION 517

Application of Part X. of the Act.

The Tenth Part of this Act shall in all cases where no particular country is mentioned, apply to the whole of Her Majesty's dominions.

Legal Procedure (General)

SECTION 518

Punishment of offences, and recovery of penalties.

In all places within Her Majesty's dominions except Scotland, the offences herein-after mentioned shall be punished and penalties recovered in manner following; (that is to say,)—

¹Words substituted by virtue of Customs and Excise Act 1952 (c. 44), Sch. 10 Pt. 1

²Words substituted by virtue of (E.W.) Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 224(1) and (N.I.) Supreme Court of Judicature Act (Ireland) 1877 (c. 57), s. 71 and S.R. & O. 1921/1802 (Rev. XVI, p. 954; 1921, p. 1332), art. 2

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- (1) Every offence by this Act declared to be a misdemeanor shall be punishable by fine or imprisonment . . .¹, and the court before which such offence is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the [²Costs in Criminal Cases Act 1973], or any other Act that may be passed for the like purpose, and may in any other part of Her Majesty's dominions make such allowances and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing Act or Ordinance or as may be payable or allowable under any Act or law for the time being in force therein: 1973 c. 14.
- (2) Every offence declared by this Act to be a misdemeanor shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, . . .¹, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner, instead of being prosecuted as a misdemeanor:
- (3) Every offence hereby made punishable by imprisonment for any period not exceeding six months, . . .¹, or by any penalty not exceeding one hundred pounds, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the [²Magistrates' Courts Act 1952], and as to Ireland in the manner directed by the Petty Sessions (Ireland) Act 1851, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes: And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order: 1952 c. 55.
1851 c. 93.
- (4) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the [³Crown Court]:
- (5) All offences under this Act shall in any British possession be punishable in any court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other courts, justices, or magistrates, as may from time to time be determined by any Act or Ordinance duly made in such possession in such manner as Acts and Ordinances in such possession are required to be made in order to have the force of law.

References to Ireland to be construed as exclusive of Republic of Ireland: S. R. & O. 1923/405 (Rev. X, p. 298; 1923, p. 400), art. 2

SECTION 519

Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this Act authorised to do.

Stipendiary
magistrate to have
same power as two
justices.

¹Words omitted (E.W.) by virtue of Criminal Justice Act 1948 (c. 58), s. 1(2) and repealed (N.I.) by Criminal Justice Act (Northern Ireland) 1953 (c. 14), s. 1(2)

²Words substituted by virtue of Interpretation Act 1889 (c. 63), s. 38(1)

³Words substituted by Courts Act 1971 (c. 23), Sch. 8 para. 2

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SECTION 520

Offence where deemed to have been committed.

For the purpose of giving jurisdiction under this Act, 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.

SECTION 521

Jurisdiction over ships lying off the coasts.

In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction, either under this Act or under any other Act or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate.

SECTION 522

Service to be good if made personally, or on board ship.

Service of any summons or other matter in any legal proceeding under this Act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

SECTION 523

Sums ordered to be paid leviable by distress on ship.

In all cases where any court, justice or justices of the peace, or other magistrate has or have power to make an order directing payment to be made of any seaman's wages, penalties, 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 and in manner prescribed in the order, the court, justice or justices, or other magistrate, who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or pouncing and sale of the said ship, her tackle, furniture, and apparel.

SECTION 524

Application of penalties.

Any court, justice, or magistrate imposing any penalty under this Act, for which no specific application is herein provided, may, if it or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions

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or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

SECTION 525

The time for instituting summary proceedings under this Act shall be limited as follows; (that is to say,)

Limitation of time in summary proceedings.

- (1) No conviction for any offence shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or, if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same:
- (2) No conviction for any offence shall be made under this Act in any proceeding instituted in any British possession, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive or to be at one time within such jurisdiction:
- (3) No order for the payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same:
- (4) No order for the payment of money shall be made under this Act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within six months after they both first happen to arrive or be at one time within such jurisdiction.

And no provision contained in any other Act or Acts, Ordinance or Ordinances for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.

SECTION 526

Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of

Document proved without calling attesting witness.

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any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them.

SECTION 527

Power of judge of court of record or Admiralty to arrest foreign ship that has occasioned damage.

Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be lawful for the judge of any court of record in the United Kingdom, or for [1a judge of the High Court,] or in Scotland the Court of Session, or the sheriff of the [2sheriffdom] within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any [3officer of Customs and Excise] or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any [3officer of Customs and Excise] or other officer to whom such order is directed shall detain such ship accordingly.

SECTION 528

Power in certain cases to detain ship before application made to judge.

In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British [3officer of Customs and Excise] or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

SECTION 529

Who to be defendant to suit in such cases.

In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding.

¹Words substituted by virtue of Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 224(1)

²Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 1 para. 1

³Words substituted by virtue of Customs and Excise Act 1952 (c. 44), Sch. 10 Pt. 1

Legal Procedure (Scotland)

SECTION 530

In Scotland every offence which by this Act is described as a felony or misdemeanor may be prosecuted by indictment or criminal letters at the instance of Her Majesty's Advocate before the High Court of Justiciary, or by criminal liab at the instance of the procurator fiscal of the [sheriffdom] before the sheriff, and shall be punishable with fine and with imprisonment, . . .² in default of payment, or with imprisonment, . . .² or with both, as the court may think fit, or in the case of felony with penal servitude, where the court is competent thereto; and such court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

Offences punishable as misdemeanors.

Reference to penal servitude to be construed as reference to imprisonment: Criminal Procedure (Scotland) Act 1975 (c. 21), s. 221(1)

SECTION 531

In Scotland all prosecutions, complaints, actions, or proceedings under this Act, other than prosecutions for felonies or misdemeanors, may be brought in a summary form before the sheriff of the [sheriffdom], or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature or for penalties, at the instance of the procurator fiscal of court, or at the instance of any party aggrieved, with concurrence of the procurator fiscal of court; and the court may, if it think fit, order payment by the offender or defender of the costs of the prosecution or action.

Summary proceedings.

SECTION 532

In Scotland all prosecutions, complaints, actions, or other proceedings under this Act may be brought either in a written or printed form, or partly written and partly printed, and where such proceedings are brought in a summary form it shall not be necessary in the complaint to recite or set forth the clause or clauses of the Act on which such proceeding is founded, but it shall be sufficient to specify or refer to such clause or clauses, and to set forth shortly the cause of complaint or action, and the remedy sought; and when such complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand the complaint may contain a prayer for warrant to arrest upon the dependence.

Form of complaint.

SECTION 533

In Scotland, on any complaint or other proceeding brought in a summary form under this Act being presented to the sheriff clerk or clerk of the peace, he shall grant warrant to cite the defender to appear personally before the said sheriff or justices of the peace on a day fixed, and at the same time shall appoint a copy of the same to be delivered to him by a sheriff officer or

Mode of requiring appearance of defender and witnesses.

¹Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 1 para. 1

²Words omitted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), s. 221(2)

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constable, as the case may be, along with the citation; and such deliverance shall also contain a warrant for citing witnesses and havers to compare at the same time and place to give evidence and produce such writs as may be specified in their citation; and where such warrant has been prayed for in the complaint or other proceeding, the deliverance of the sheriff clerk or clerk of the peace shall also contain warrant to arrest upon the dependence in common form: Provided always, that where the apprehension of any party, with or without a warrant, is authorised by this Act, such party may be detained in custody until he can be brought at the earliest opportunity before any two justices, or the sheriff who may have jurisdiction in the place, to be dealt with as this Act directs, and no citation or induciæ shall in such case be necessary.

SECTION 534

Backing arrestments. When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within Scotland, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being indorsed by the sheriff clerk or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed.

Reference to sheriff clerk of county to be construed as reference to sheriff clerk of sheriff court district concerned: Local Government (Scotland) Act 1973 (c. 65), Sch. 27 Pt. 1 para. 1(3)

SECTION 535

Compelling attendance of witnesses. In all proceedings under this Act in Scotland the sheriff or justices of the peace shall have the same power of compelling attendance of witnesses and havers as in cases falling under their ordinary jurisdiction.

SECTION 536

Provisions to be viva voce. The whole procedure in cases brought in a summary form before the sheriff or justices of the peace in Scotland shall be conducted viva voce, without written pleadings, and without taking down the evidence in writing, and no record shall be kept of the proceedings other than the complaint, and the sentence or decree pronounced thereon.

SECTION 537

Power to adjourn. It shall be in the power of the sheriff or justices of the peace in Scotland to adjourn the proceedings from time to time to any day or days to be fixed by them, in the event of absence of witnesses or of any other cause which shall appear to them to render such adjournment necessary.

SECTION 538

Sentence to be in writing. In Scotland all sentences and decrees to be pronounced by the sheriff or justices of the peace upon such summary complaints shall be in writing; and where there is a decree for payment of any sum or sums of money against a defender, such decree shall contain warrant for arrestment, poinding, and

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imprisonment in default of payment, such arrestment, poinding, or imprisonment to be carried into effect by sheriffs officers or constables, as the case may be, in the same manner as in cases arising under the ordinary jurisdiction in the sheriff or justices: Provided always, that nothing herein contained shall be taken or construed to repeal or affect an Act of the fifth and sixth years of William the Fourth, intituled "An Act for abolishing, in Scotland, imprisonment for civil debts of small amount."

Imprisonment to be inflicted in default of payment.

1835 c. 70.

SECTION 539

In all summary complaints and proceedings for recovery of any penalty or sum of money in Scotland, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the complaint, with such costs and expenses as to the court shall seem fit: Provided always, that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the court, and on the same day delivering or transmitting through the post to the pursuer or his agent a copy of such reponing note; and a certificate by the clerk of court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the court, or on any day to which the court shall then adjourn it.

Sentence and penalties in default of defender's appearance.

SECTION 540

In all summary complaints or other proceedings not brought for the recovery of any penalty or sum of money in Scotland, if a defender, being duly cited, shall fail to appear, the sheriff or justices may grant warrant to apprehend and bring him before the court.

Warrant to apprehend in default of appearance.

SECTION 541

In all cases where decrees or sentences of the sheriff or justices require to be enforced within Scotland, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same being indorsed by the sheriff clerk or clerk of the peace of the county or burgh within which such execution is to take place.

Backing sentences or decrees.

Reference to sheriff clerk of county to be construed as reference to sheriff clerk of sheriff court district concerned: Local Government (Scotland) Act 1973 (c. 65), Sch. 27 Pt. 1 para. 1(3)

SECTION 542

No order, decree, or sentence pronounced by any sheriff or justice of the peace in Scotland under the authority of this Act shall be quashed or vacated for any misnomer, informality, or defect of form; and all orders, decrees, and

Orders not to be quashed for want of form; and to be final.

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sentences so pronounced shall be final and conclusive, and not subject to suspension, advocacy, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, advocacy, or reduction must be brought within fourteen days of the date of the order, decree, or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree, or sentence.

SECTION 543

General rules, so far as applicable, to extend to penalties and proceedings in Scotland.

Such of the general provisions with respect to jurisdiction, procedure and penalties contained in this Act as are not inconsistent with the special rules herein-before laid down for the conduct of legal proceedings and the recovery of penalties in Scotland, shall, so far as the same are applicable, extend to such last-mentioned proceedings and penalties: Provided always, that nothing in this Act contained shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offences at the instance or by the direction of the Lord Advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the [¹High Court in England] any jurisdiction in respect of salvage in Scotland which it has not heretofore had or exercised.

ENACTMENT OF MERCHANT SHIPPING ACT 1876 (39 & 40 VICT. c. 80.), APPLIED

SECTION 34

Enforcing detention of ship.

Where under the Merchant Shipping Acts 1854 to 1876, or any of them a ship is authorised or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade or [²Customs and Excise], or any British consular officer may detain the ship, and if the ship after such detention or after service on the master of any notice of or order for such 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 such owner or person be party or privy to the offence, shall forfeit and pay to Her Majesty a penalty not exceeding one hundred pounds.

Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or [²Customs and Excise], 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 also a penalty not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or

¹Words substituted by virtue of Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 224(1)

²Words substituted by virtue of Customs and Excise Act 1952 (c. 44), Sch. 10 Pt. I

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surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and such expenses may be recovered in like manner as the penalty.

Functions of Board of Trade now exercisable concurrently by Secretary of State: S.I. 1970/1537, art. 2(1)