THE U.K. MARINER'S CONTRACT

> Now when you sign the Articles, you have to hear them read;
> They tell you of your pork and beef, your water and your bread;
> Your coffee, tea and butter, and everything exact;
> Your lime juice and your vinegar—according to the Act.[1]

And indeed 'according to the Act' has been essentially a way of life for the British merchant seaman for at least 116 years, during which time the Merchant Shipping Acts of 1854[2] and 1894[3] have cared for and cosseted him, albeit at times to his own discomfort. The nature of his contract, his engagement, discharge and payment of wages all fell to be minutely directed by the enactment of 1894. This Act, interminable of length, inflexible since origin and grown progessively more unwieldy with age, became a victim of official euphoria. Time was found occasionally to alter certain parts of the Act in order to conform with international conventions but the laws relating to seamen remained largely untouched, as though none dared lay hands on the monument to Victoriana. Only after the seaman in rebellion had forsaken the sea and the United Kingdom had come close to losing her economic sanity was the actuality of reform forced upon Parliament.

The seamen's strike of May 1966[4] forced the Ministry of Labour to set up a Court of Inquiry to investigate the nature of the dispute between the shipowners and the National Union of Seamen and, inter alia, to consider the terms and conditions of service of seamen. The Court of Inquiry, under the chairmanship of Lord Pearson, took eight months to complete its report on all that was wrong with the merchant service;[5] it has taken Parliament two Bills and three years to finally

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1 Sea shanty—traditional.

2 17 & 18 Vict., c. 104.

3 57 & 58 Vict., c. 60. The Merchant Shipping Acts are hereafter referred to as M.S.A. followed by the year of the particular Act being cited.

4 The strike commenced on the 17th May 1966 and came to an end on the 4th July 1966.

5 THE FINAL REPORT OF THE COURT OF INQUIRY INTO CERTAIN MATTERS CONCERNING THE SHIPPING INDUSTRY, (1967) Cmnd. 3211. This Report is more generally referred to as the PEARSON REPORT ON SEAMEN and references to it are hereafter cited under the abbreviation P.R. followed by the particular paragraph to which reference is being made.

proceed to an Act which hopefully brings the United Kingdom mariner into the twentieth century and in so doing provides a complete reformation of the basic legislative conditions surrounding his contract of service.

Before proceeding to look at those recommended changes which have now become part of the Merchant Shipping Act of 1970 certain fundamentals of the Act must be explained. This Act, unlike its predecessors, makes no attempt to legislate fully for all the factors which may affect a seaman's life; instead the pattern of the Act is to lay down very general principles, leaving it to the Board of Trade to complete the technical details by way of statutory instrument. It was considered that in this manner the door for subsequent change would always be open and there would be no need to wait upon Parliamentary time in order to achieve it. The other important feature to emerge from the Act is its insistence that there be full consultation between the Board of Trade and all interested parties before statutory instruments be drafted.[6] By passing an Act which seeks to enforce only certain minimum restrictions and by making consultation a condition precedent to future regulations it is hoped to heavily restrict the occasions for open confrontation between the British Shipping Federation and the National Union of Seamen. Unfortunately the Act does not provide for the setting up of a constant consultative body comprising the Board of Trade, the British Shipping Federation and the National Union of Seamen, and once the initial flurry of delegated legislation has gone on its way there is no created machinery whereby all parties will be regularly brought together to discuss emerging difficulties.[7] This is to be regretted, for it is not possible, as yet, to view the Board of Trade as the most keen and eager of reformers hell-bent on keeping abreast of changing conditions at sea.

The Act does not come into force immediately, but is to be brought into force in parts during the coming months, after the Board of Trade has completed its consultations with the employers' and seafarers' organisations in respect of the many regulations which have to be made under its provisions. For the purposes of the Act a seaman is defined as including every person (excepting masters and pilots) employed or engaged in any capacity on board any ship. The changes

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[6] s. 99 M.S.A. 1970.

[7] It is true that there is in existence the National Maritime Board, but the Board of Trade is not a member of this body. The committees or "panels", consisting of employers and seafarers, meet only when one side or the other actually demands a meeting.

to be discussed relate to contracts entered into by seamen in the United Kingdom aboard United Kingdom registered ships and are dealt with as follows: Crew Agreements, Engagement, Termination, Payment of Wages.

CREW AGREEMENTS

The seaman took his first step towards acquiring 'a rare category of service agreement' in 1729[8] when perhaps his exploitation was more advanced than in other fields of employment and the need for written evidence of the basic terms under which he had been engaged was already apparent. Between that time and 1894 successive Merchant Shipping Acts strove to out-do each other in the details that might be found within the "Articles of Agreement" so that by the turn of the last century the majority of the manifold matters which might affect the seaman during the course of his service at sea had come to find expression in this document. The articles became a tome of twelve pages in length, each page measuring approximately 11½ inches by 17½ inches, whose contents complete with many 'extraneous encrustations' were specified and sanctified by the Board of Trade.[9] Each ship had to have her articles of agreement duly signed by each member of the crew and carried with her at all times.[10]

In its deliberations on the future of the articles of agreement the Inquiry tolled magnificently that '[t]he system of articles of agreement, however ancient and well-established it may be, is not part of the unchangeable order of nature'. Unfortunately the knell became somewhat muted when followed by the qualification that such an established system could not be abandoned without much thought and preparation.[11] The Act of 1970 respects this concern with the past but makes rather more satisfactory provision for the future.

The first alteration, following a twentieth century malaise, is to change the name of the contract, hereafter to be known as a "crew agreement".[12] Its form, to be approved by the Board of Trade, will depend upon the circumstances which it is to cover, and many different forms may be given approval in order to cater for the varying demands of the service. It will continue to be signed by every person

8 2 Geo. II, c. 36.
9 See P.R., 241.
10 See ss. 113 and 114 M.S.A. 1894.
11 P.R., 226.
12 s. 1 M.S.A. 1970. Under s. 113 M.S.A. 1894 the "Articles" were referred to as 'the agreement with the crew'.

employed in the ship to which it relates and by the person employing him, but approval may be given for more than one agreement to exist in respect of the persons employed in one ship or for one crew agreement to relate to more than one ship. So far the changes may seem slight, but it is possible for the section concerned to become more beset by exceptions than by general rule, since the Board of Trade is given power to make regulations granting exemption from the necessity of formal crew agreements to:[13]

(a) such descriptions of ships;
(b) voyages in such areas;
(c) such descriptions of voyages; or
(d) such descriptions of seamen

as may be specified by them. More particularly, in those cases where the Board of Trade are satisfied that the seamen to be employed other than under a crew agreement will be adequately protected, they may grant exemption in respect of:[14]

(a) particular seamen;
(b) seamen employed by a specified person;
(c) seamen employed in a particular ship; or
(d) seamen employed in the ships of a specified person.

The manner in which this umbrella exemptive power of the Board of Trade will be exercised has not yet been revealed, but if it serves to bring stability to the man-power situation within the Industry through the introduction of service agreements which give security of employment to the seaman whilst making proper provision for his advancement within the service, then the Industry will benefit far in excess of anything achieved in the past.[15]

ENGAGEMENT

Whatever glamour may have surrounded slipping aboard a schooner and sailing on the dawn tide in the very distant past, there are certain rather mundane difficulties about running away to sea at the present day. It is required that the would-be seaman become a member of the Established Service Scheme, thus ensuring for him possession of

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13 s. 1 (5) M.S.A. 1970.

14 Ibid. Where such exemptions are granted by the Board of Trade then the ship is to carry such document evidencing the exemption as the Board of Trade may direct: id., s. 1 (6).

15 One of the major concerns of the Inquiry was to ensure that as a result of the recommendations put forward the Industry might cease to suffer from its rather drastic turnover in manpower.

a seaman's card,[16] and for this to be permitted it is required he become a member of the National Union of Seamen. It is to the Established Service Scheme, controlled by "The Administration"—a nom de plume for the British Shipping Federation operating strictly after consultation with the National Union of Seamen—that there falls the task of registering and supplying seamen to ships entering into crew agreements in the United Kingdom, a "closed shop" procedure which ensures that there is no trading in the provision of seamen. This actual state of affairs, however, receives no recognition by the new Act, any more than it did by the old, which provides that only persons licensed by the Board of Trade may for reward seek to supply seamen to those requiring them.[17] Under the Act of 1894[18] exceptions to the need for such a licence existed in the case of the shipowner, a bona fide servant in his constant employ or the master or mate of the ship or a marine superintendent. This particular provision was thought unduly restrictive in that it mentioned only the owner of the ship, who might not necessarily be the person wishing to employ the seamen, and it did not enable such a person as the chief engineer to recruit for himself in respect of the engineroom.[19] The defect has been remedied by providing that an exception from holding a licence shall exist in favour of the master of the ship seeking to employ the seamen, or an officer acting under his authority, or persons who are in the regular employment of those who seek to employ the seamen or who are acting as ships' agents for such persons.[20] The fact remains, however, that the provision is likely to remain as negative as its forbear since the Board of Trade appear to have no intention of entering upon a general licensing scheme.

Until the present suggested reforms, the engagement of the seaman took place at the signing-on ceremony conducted before a marine superintendent,[21] a worthy whose presence was generally required also at the seaman's discharge and payment of wages and who has until now acted as a Board of Trade-created father figure for seamen. At his engagement the seaman was asked if he fully understood the nature of the agreement he was about to sign and a complete reading over

16 In future British Seamen's Cards are to be subject to Regulations to be made by the Board of Trade which will provide for all matters pertaining to them: s. 70 M.S.A. 1970.

17 Id., s. 6—formerly s. 110 M.S.A. 1894.

18 s. 111 M.S.A. 1894.

19 P.R., 224.

20 s. 6 M.S.A. 1970.

21 ss. 115 and 115A M.S.A. 1894.

of the articles might be the lot of a superintendent faced with a particularly uncomprehending seaman.[22] The historical reason for the slightly complex and rigorously ordered procedure stems from the endeavours of another age to safeguard the seaman from signing a document which it was felt he might well not understand. The existence of the National Union of Seamen, possibly more than the advances in education, rendered it unnecessary for this form of supervision to continue, involving as it did a very great time-wasting element.

The procedure set down in the 1970 Act is that the Board of Trade shall make regulations whereby superintendents shall be notified of the intention of a master to enter into a crew agreement or of adding persons to a crew agreement already in existence.[23] Further regulations will ensure the forwarding of crew agreements or copies to the superintendent or to the Registrar General of Shipping and Seamen; there is also provision for the appearance of copies of the agreement or extracts therefrom to be placed on the ship's notice-board and for the availability of copies or extracts for the seamen themselves should they so require.[24]

With the removal of the superintendent from the immediate engagement scene one interesting change in the law in respect of the engagement of foreigners became necessary. Formerly it was the duty of this officer to refuse to sign on a seaman who, in his opinion, did not possess a sufficient knowledge of the English language to understand the necessary orders that might be given to him in the course of the performance of his duties.[25] In place of this the superintendent is now given somewhat wider powers whereby he may inform the master, at any time, that in his opinion the crew consists of or includes persons who may not understand orders given to them in the course of their duty due to insufficient knowledge of English and that there are no adequate arrangements for transmitting the orders into a language which they will understand.[26] When a master is so informed then he may not proceed to sea and where the ship is in the United Kingdom

22 Id., ss. 115 (2) and 115A (2).
23 s. 2 (1) (a) M.S.A. 1970.
24 Id., s. 2 (1) (b) - (d).
25 s. 12 M.S.A. 1906. This provision only applied where a seaman was engaged on board a British ship at any port in the British Islands or on the continent of Europe between the River Elbe and Brest inclusive. It did not apply in the case of any British subject or to the inhabitant of a British Protectorate or to any lascar.
26 s. 48 M.S.A. 1970.

she may be detained. The drawing of a superintendent's attention to the existence of such a state of affairs on board seems to be left to the initiative of members of the crew or their union liaison representative, for the Act is silent on the matter.[27]

TERMINATION

Up until the present the discharge of the seaman, on the expiration of the period agreed under the articles, would normally take place before a superintendent.[28] The Inquiry accepted that a formal signing-off would continue to be necessary where crew agreements were entered into but felt that this should only require the presence of a superintendent in special cases.[29] With the new crew agreements the seaman's contract will come to an end on the discharge of the seaman from the ship on the termination of the engagement as set out in the agreement itself.[30] Regulations are to be made to provide for the form and manner of discharge, for the notification of superintendents and for the recording of such discharge.[31]

Apart from the natural termination of the contract by completion of the engagement the new Act specifically recognises three particular circumstances whereby the seaman's contract may be prematurely ended:

(1) *Vessels ceasing to be registered in the United Kingdom*

Where a vessel registered in the United Kingdom ceases to be so registered, then the seaman is to be discharged from his employment in the ship from that time unless he makes a written consent to continue his employment.[32]

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27 s. 23 M.S.A. 1970 does in fact provide a complaints procedure whereby members of the crew may make complaint to the master of the vessel where they feel they have cause for complaint about the master or any other seaman employed in the ship or about the conditions on board. Where the ship is outside the United Kingdom the seaman complaining may appeal to a 'proper officer' if he feels that nothing has been done about his complaint, but there is no such appeal machinery where the ship is within the United Kingdom.

28 s. 127 M.S.A. 1894 (as amended).

29 P.R., 247, 248.

30 See s. 97 (3) M.S.A. 1970.

31 Id., s. 3. Further regulations are to provide for those special cases where a a seaman may be discharged outside the United Kingdom from ships registered in the United Kingdom: id., s. 3 (3).

32 s. 5 M.S.A. 1970—formerly dealt with by s. 33 M.S.A. 1906.

(2) *Wreck or loss of a vessel*

Wreck or loss of the vessel is recognised as necessarily terminating the seaman's contract as evidenced in the crew agreement but special provisions are made in respect of his wages in such a case.[33]

(3) *Strike*

The right of the seaman to withdraw his labour has at last been recognised by the Merchant Shipping Acts, but in view of the somewhat hazardous nature of his calling it has been necessary to lay down a comprehensive procedure for such cases. By section 42 of the Act of 1970 it is provided that, notwithstanding anything in *any* agreement to the contrary, a seaman may terminate his employment in a United Kingdom registered ship by leaving the ship in the contemplation or furtherance of a trade dispute after having given the master of the ship forty-eight hours notice of his intention so to do. To be effective the forty-eight hour notice must be given at a time when the ship is in the United Kingdom and securely moored at a safe berth. Where the seaman has complied with the above procedure he cannot be forced to go to sea in the time of the running of the notice unless he otherwise agrees. Whether any sole seaman will seek to use this provision as a means of terminating his suddenly undesirable contract is perhaps open to doubt, but the wording of the Act is quite clear as to its availability.

One factor upon which the Inquiry placed a particular degree of emphasis (and which is not directly reflected in the Act), was the use of "break clauses" in both crew agreements and such other contracts of service as may be permitted by the Board of Trade.[34] The ideal which led the Inquiry to propose the use of break clauses stemmed from its desire to reduce the incidence of going absent without leave. It was felt that a dissatisfied seaman might more readily serve out a particular period of notice in order to obtain his discharge than he would be prepared to fulfil his commitments where no relief existed until the end of the agreed engagement. To the extent that future crew agreement regulations may provide for break clauses it will be necessary to make special provisions as to the manner of discharge upon this premature termination of the contract.

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33 See s. 15 (1) M.S.A. 1970.

34 P.R., 233. The use of "break clauses" is not new; they have been in use in contracts signed between individual seamen and shipping companies and in the case of seamen entering into "General Service Contracts" with the Established Service Scheme. See the NATIONAL MARITIME BOARD YEAR BOOK (1969), 27, paragraphs (i) and (ii) respectively.

In general, the Act does not seek to interfere with the rights of employer or employee where one of the parties alleges that the other is in breach of contract and as a result the complainant can no longer be expected to fulfil his part. This has been left to be fought over at common law, save in respect of the isolated case of the seaman who is absent without leave at a time when he is required to be on board ship but who nevertheless manages to join or rejoin his ship before she sails. In such a case it is provided that the seaman's action shall not be treated as a breach of contract if the seaman can show that such absence was due to an accident or to a mistake or to some other cause beyond his control and that he took all reasonable precautions to avoid being absent.[35] When the seaman fails to join or rejoin his ship before she sails it appears he may still use the above excuse to avoid an action for damages for breach of contract being brought by his employer but there can be little doubt that regardless of this the engagement must be treated as being at an end.

The Discharge Book

At the time of his discharge from his ship the seaman has always taken with him a continuous discharge book which, until the coming into force of the 1970 Act at least, has contained not only a record of all his previous service but also an amassed collection of various masters' comments and signatures bearing witness to his successful or otherwise adaption to the service of the sea. The system has been for the master to make an entry in the discharge book as to the seaman's conduct on the particular voyage which has just come to an end.[36] This entry was somewhat terse consisting of the initials V.G., or D.R., V.G. meaning Very Good and covering anything short of Very Bad, and D.R. meaning Declines to Report which presumably covers the downright horrible or worse. G. for Good is apparently the kiss of death and is not used. The grievance with this practice, which was forcibly stressed before the Inquiry, was that these comments, although supportable in their use for other masters, might in some cases prove powerful deterrents when produced to possible civilian

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35 s. 39(2) M.S.A. 1970. The section provides that where a seaman is unable to prove such a reason for his absence then he will be liable to the employer for £10 general damages or, in cases of special damage, for a sum not exceeding £100.

36 The Certificate of Discharge and the Conduct Report were in fact separately provided for in the M.S.A. 1894, but they early on became fused into one document despite the attempts of the National Union of Seamen to prevent this—see ss. 128 and 129 M.S.A. 1894.

employers. The Inquiry accepted that this was a relevant consideration and made the recommendation that the discharge book of the future should cease to carry such indictments, although it was thought that adverse comments from The Administration under the Established Service Scheme might still appear as long as they were capable of being erased at a later date should it be considered desirable.[37] The present Act gives the Board of Trade wide powers over the making of regulations as to what shall appear in the discharge book,[38] but an undertaking given on behalf of the Board of Trade at the time of the progress of the Bill through Parliament shows that the days of the V.G. and D.R. are at an end, no doubt as much to the relief of masters as to that of seamen.[39]

WAGES

In 1851 Admiral Dundas remarked that 'there was nothing a sailor was so sensitive about as his pay'.[40] In this respect nothing has changed and the seaman's pay remains a delicate subject. The Act of 1894 surrounded the payment of wages with many safeguards which if they reflected a servitudinous approach nevertheless ensured that the time and place of payment were certain and the right to contest the amounts paid was immediate. Payment of wages came at the time of discharge thus generally ensuring that payment was made before a superintendent.[41] Before the making of such payment it was the duty of the master to make a "full and true" account of all that might be called in question in relation to wages between the seaman and his employer.[42] In the case of discharge before a superintendent this account had then to be delivered to the seaman as he left the ship or to the superintendent twenty-four hours prior to the seaman being discharged or paid off; otherwise the account had to be presented to the seaman not less than twenty-four hours before his time of discharge or payment-off.[43]

The actual time by which the payment of wages had to be made to the seaman was provided for without qualification and a failure to

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37 P.R., 267.

38 s. 71 M.S.A. 1970.

39 The Times, December 3rd, 1969, 4; an assurance given by Mr. Goronwy Roberts, Minister of State, Board of Trade.

40 118 HANSARD, col. 1051 (July 19th, 1851).

41 See s. 131 M.S.A. 1894.

42 Id., s. 132 (1).

43 Id., s. 132 (2). There was a £5 penalty for each offence where a master unreasonably failed to comply with the requirements of the section.

comply might involve the employer in the payment of compensation to the seaman for the delay.[44] At the time of receiving his money the seaman was expected to sign a full release in respect of all claims appertaining to the terminating voyage or engagement, although to the extent that he was able to discern such at the time, the seaman might except specific issues from his release.[45]

The Inquiry reviewed the whole of this procedure and condemned it as far too laborious and impractical under present day conditions. The fact that the master might be in a position of having to worry about "full and true" accounts when he ought possibly to be at his most seamanlike called for special castigation as did the requirement that the seaman should sign a final release at the time of his payment.[46]

The new law is a fluent translation of the Inquiry's recommendations. The account has still to be delivered, but it is no longer seen as absolute; instead an initial account is to be presented to the seaman not later than twenty-four hours before the time of his discharge, or at the time of discharge in the event of the seaman being discharged without notice or with less than twenty-four hours notice.[47] The account will contain details of all money earned and deductions to be made and will further indicate that it is subject to any later adjustments which may be found necessary.[48] When a supplementary account is required this must be delivered to the seaman within seven days of the time of his discharge. The time for payment becomes the time of the seaman leaving the ship on being discharged from her.[49] Basically the seaman is to be paid his wages in full at that time, but when the amount to be paid is more than £50 *and* it is not practical to pay the entire sum then the seaman is to be paid the sum of £50 or one quarter of the sum shown to be due under the account, whichever is the greater. The remainder of the monies due or any further monies found to be owing under the supplementary account must be paid to the seaman within seven days of the time of his discharge. Where an employer fails to make proper payment to the seaman in the manner set out then the seaman continues to be entitled to be paid at the rate last payable under the crew agreement for each day that he remains unpaid up to a limit of 56 days from the time of

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44 See ss. 134 and 135 M.S.A. 1894.
45 Id., s. 136.
46 P.R., 360, 370 respectively.
47 s. 8 M.S.A. 1970.
48 Id., s. 8 (2).
49 Id., s. 7.

discharge. Whatever sums remain unpaid at this time, including those accruing due by virtue of the 56 day period, are then to carry interest at the rate of 20% per annum until paid. This compensation clause does not operate at all when the employer fails to make proper payment due to:[50]

(a) a mistake;
(b) a reasonable dispute as to liability;
(c) the act or default of the seaman;
(d) any other cause not being the wrongful act or default of the persons liable to pay the wages or their servants or agents.

To the extent that interest may be payable under the 56 day rule, a court may, in the course of proceedings before it, direct that such interest shall not be payable.[51]

In order to avoid unnecessary actions before the courts in respect of disputes over the amount payable to the seaman, the parties may submit any dispute to a superintendent, who to this extent may still be required to attend at the signing-off of seamen.[52] The superintendent is given liberty to refuse to accept the reference or he may, having accepted it, refuse to give a decision, in which case he is not required to give a reason for so refusing. When the superintendent does accept the case and gives a decision then that decision is declared to be binding upon the parties.[53]

There are two particular occasions when the seaman continues to receive wages for a specific time even though the contract of service has in effect come to an end. These arise in the case of termination brought about through wreck or loss of the vessel (a re-enactment of a previous right), and those cases where the seaman's contract comes to an end due to the sale of a United Kingdom ship whilst outside the United Kingdom or when a ship ceases to have United Kingdom registration. The latter provision is novel and comes about as a result of recommendations made during the Inquiry.

(1) *Wreck or loss of the ship*

Under the above circumstances the seaman continues to be entitled to receive his wages at the rate payable under the contract at the time of the incident, for every day on which he is unemployed up to a

50 Id., s. 7 (4).
51 Ibid.
52 Previously disputes might be referred to superintendents under s. 137 M.S.A. 1894.
53 s. 10 M.S.A. 1970.

maximum of two months from the date of the wreck or loss. This right is forfeit if it is proved that the seaman did not make reasonable efforts to save the ship and persons and property carried in it.[54]

(2) *Sales outside the United Kingdom or loss of United Kingdom registration*

When as a result of one of the above incidents the seaman's contract is terminated, he is nevertheless entitled to receive wages at the rate last payable under his contract for every day on which he is unemployed following the incident, up to a maximum of two months from that time. This provision is only effective, however, where it is not provided otherwise in the agreement.[55]

The right to wages as set out in either (1) or (2) above, is lost if it can be shown for the shipowner:[56]

(a) that the unemployment did not come about as a result of the circumstances alleged to have caused the termination of the agreement; or
(b) that the seaman was able to obtain suitable employment at a particular day but unreasonably refused or failed to take it.

Whilst relaxing the general procedure to be followed in respect of the payment of wages, the new Act does not seek to lessen those important safeguards which previously existed in order to prevent the seaman being parted from his money even before it reached his hand. Thus it continues to be provided that a seaman's lien, his remedies for the recovery of wages, his right to wages in the case of wreck or loss of his ship and any rights he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.[57] The seaman's wages may not be subject to attachment or arrest, no power of attorney or authority for the receipt of wages shall be irrevocable and any assignment by him of his wages prior to the time of payment is declared to be invalid.[58]

Axed from general usage is all legislation relating to advance notes and no longer does there appear the hallowed phrase 'the right to wages shall not depend on the earning of freight'. Prior to its first

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54 Id., s. 15 (1).
55 Id., s. 15 (2).
56 Id., s. 15 (3).
57 Id., s. 16 (1). This provision does not affect special agreements made between the employers and crews of salvage vessels: id., s. 16 (2).
58 Id., s. 11. This does not affect the rights of seamen in respect of allotment notes: ibid.

enactment in 1854[59] freight as the "mother of wages" had given great comfort to the shipowner and life was never quite the same for him after that time. Any thoughts, however, that this now ageing mother may again conceive should remain but visionary; there can be no doubt that the sanctioning power of the Board of Trade would stifle any such attempt.

CONCLUSION

Underlying the Inquiry's recommendations for the future of the seaman's contract there is one unbroken thread. It is that whilst the seaman of yesterday may have suffered at the hands of the law immutable yet the time is not yet sufficiently advanced for him to be set completely free from statutory environs.

Undoubtedly today it can be argued that the presence of a strong union ensures that there can never be a return to those earlier conditions which bear comparison to signed-on periods of self-inflicted slavery. If further safeguard be needed there is the dualism of the Established Service Scheme, not to mention the existence of the National Maritime Board, to which all seafarers are parties for the purpose of requesting consultation and the curing of dispute.[60]

But to view the matter in this manner is to sit more upon the tail than the horns of the dilemma. For who is in fact now the more protected and for whose benefit do the "protective" provisions of the Act exist? The new Act sweeps away many petty irritations, it removes a whole host of jumbly procedure which has ceased to be explicable to enlightened participants, but it does not radically propose to alter the determined outside perimeter by one degree, a perimeter which contains the seaman perhaps more than it safeguards him. The illusion of granting freedom is not difficult to create in an arena where the past has been substantially cast in gloom.

The Act of 1970 is wide enough in its concept to permit the indulgence in many forms of contract, other than the strictly approved "crew agreements", but will a shipowner wish to move away from the outline form of the legislative contract with its emphasis on completion of engagement prior to payment and provision for punishment or penalty for indiscipline or fugitivism? Unlikely, for shipowners are

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59 s. 157 (1) M.S.A. 1894, re-enacting s. 183 M.S.A. 1854.

60 Of the inability to prevent the seamen's strike in 1966 the Inquiry stated 'both sides tended to judge industrial relations in terms of the absence of overt conflict': P.R., 10.

not charitable institutions for the relief of wavering seamen, nor can the state afford the luxury of a "free" mercantile mariner as long as it remains reliant upon his existence as a second arm of defence and his endeavours for the continuance of its economic survival.

F. J. J. CADWALLADER*

* *LL.M. (Lond.), Ph.D. Lecturer on Maritime Law, University College London.*