

Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U.K. (Part II-1)

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I. Preface

In my preceding treatises “Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U.K. (Part I)”, the history of formation in 1855 of the first Protection Club in the U.K., The Shipowners' Mutual Protection Society (the predecessor of the present Britannia Steam Ship Insurance Association) up to the formation in 1874 of the first Protection and Indemnity Club in the U.K., The Steamship Owners' Mutual Protection and Indemnity Association (the predecessor of the present North of England Protecting and Indemnity Association) was discussed in relation to the transition of shipowners' liability laws.

The report entitled “The History and Development of Protecting and Indemnity Clubs” (1957) of the Advanced Study Group No. 109 of the Insurance Institute of London (hereinafter referred to as the A.S.G. Report) summarizes relevantly the subsequent kaleidoscopic and complicate changes of shipowners' liability Laws as follows (pp. 7-9):

Later, a more liberal attitude to human sufferings began to produce new statutes and new liabilities.

In 1894, 1898 and 1906 successive *Merchant Shipping Acts* made Shipowners responsible for the maintenance and repatriation of seamen discharged sick or injured abroad. Until then, they had usually been left on the beach, at the responsibility of the nearest British Consul, if he ever heard of their plight.

In 1897 the first *Workmen's Compensation Act* provided for payments by employers to men engaged in dangerous occupations who were injured in any manner whilst at work.

As a result of this Act the Liverpool & London Club agreed in 1898 to issue Letters of Indemnity to Stevedoring Contractors agreeing to indemnify them in respect of their liability for all accidents to their workmen whilst working on or about a vessel entered in that Club. In return for this the stevedoring firms did not include the cost of Employers' Liability Insurance in their charges to Shipowners. This practice is still followed by most of the Clubs to-day.

It is of interest to note that claims for Loss of Life and Personal Injury are probably the heaviest of the liabilities falling on the Clubs, and during a recent three-year period accounted for 40% of the amount paid out in claims by the Liverpool and London Club.

In 1901 the *Factory Act* provided for regulations to ensure the safety of workers. Fines on Shipowners under these regulations are covered by the Clubs, unless the fault is on the part of the Shipowners rather than their employees.

In 1906 the Workmen's Compensation Act of 1897 was extended to all workers, including seamen and stevedores.

In 1924 cargo claims were again in the picture, through the *Carriage of Goods by Sea Act*,

which put into effect the Hague Rules drawn up by a conference of Shipowners, Underwriters and Merchants, and accepted by many governments in the Brussels Convention on Bills of Lading of 1922. This was intended to provide a fair basis as to what cargo losses should be borne by a Shipowner, and what by the Owner of the goods and his Insurers.

In 1925 crew liabilities were again increased by the *Merchant Shipping (International Labour Conventions) Act*, which gave seamen up to two months' wages during unemployment after a shipwreck.

In 1926 the judgment in *Merchants Marine insurance Co. v. North of England P. and I. Association* established that a floating crane on a pontoon was not a "ship or vessel", so that damage done to it by a ship was payable by the Club, and not by Hull Underwriters under the Running Down Clause. This has thrown many such claims on to the P. & I. cover.

In 1936 it was decided in *Furness, Withy & Co. v. Duder* that liability for damage done in collision arising by reason of a towage contract (the insured ship being in collision with an attendant tug, and the contract making the tow responsible for all collisions), and not by reason of negligence on the part of the insured vessel, was not a liability "by way of damages". It was therefore not covered by the Running Down Clause, and such claims also were established as being for the P. & I. Club.

In 1943 the Judgment in *Polpen Shipping Co. v. Commercial Union* that a flying-boat was not a ship or vessel threw yet another type of collision liability in the P. & I. arena.

In 1946 the passing of the *Industrial Injuries Act* marked a further development in the law as regards responsibility for employed persons. By this Act, the compensation of workmen by the employers for all injuries suffered at work was transferred to a state insurance, and employers are only now liable in England in the case of injuries caused by negligence or other cause giving rise to an action for damages. However, certain features of the Act have resulted in a great increase in actions for damages, and the Clubs still find their hands very full with such claims.

These represent some of the changes of the law which have affected the Clubs in a greater or lesser degree. The Hague Rules were strongly supported by the Clubs. Acts of Parliament designed to give proper provision for the needs of workers have always been encouraged by the Clubs, as have also agreements between the Shipowners' Associations and the Trade Unions for the same purpose—though abuses have been resisted.

The same processes have operated abroad. The Clubs fully supported the introduction of a Federal Workmen's Compensation Law for dock workers in the United States, and a similar Act for seamen in Canada. They have also spent years of effort in propagating the Hague Rules, and encouraging the enactment of laws giving effect to the Rules in many countries. In the last year or two Club spokesmen have taken a leading part in the move towards an internationally agreed basis for the Limitation of Liability of Shipowners, a question on which uniformity is probably more needed than in any other part of the maritime sphere, and they will certainly use what influence they have in any such positive moves in the future.

As seen in the above summary, the biggest problem of P. & I. Clubs during the period from the end of the 19th century to the end of the second world war was that of the shipowners' liability for personal accident to crew, etc. covered by P. & I. Clubs.

In this treatise, therefore, discussion will be focused on this problem, and though the main point of discussion is shipowners' liability for labour accidents to crew, discussion will not be limited to this point but will include shipowners' liability for other accidents to crew, etc. also.

As the discussion of this problem requires many pages, my treatise is divided into Part II-1 concerning the transition of shipowners' liability laws which is discussed in this issue and Part II-2 dealing with the changes of P. & I. Clubs which will be discussed in a future issue.

II. Shipowners' liability for personal accident to crew, etc.

It was reiterated in my previous treatises that the main purpose of formation of Protection Clubs was for shipowners to mutually cover their liability for personal accident. It is of interest to note from the Original Deed of The Shipowners' Mutual Protection Society appearing on pages 17–19 of the A.S.G. Report that, at the start of the first Protection Club, the cover for shipowners' liability for personal accident was limited to that for personal accident to passengers either on board their own or other vessels only and was not extended to that for personal accident to crew.

The reason why the cover was not extended to shipowners' liability for personal accident to crew of their own vessels seems to be that the doctrines of common employment and contributory negligence stubbornly turned down crew's claims against shipowners at that time.

First, the doctrine of common employment was initiated in *Priestley v. Fowler* case, and was established in *Hutchinson v. York, Newcastle and Berwick Ry. Co.* case. According to this doctrine, any labourer could not claim against his employer compensation for his personal injury or any other loss caused by negligence of his fellow servants, and in the case of seamen, not only a crew but the captain also were included in the fellow servants (*Hedley v. Pinkney & Sons S.S. Co.* case).

Though this doctrine was subsequently alleviated for some or other reasons, the doctrine itself remained unchanged fundamentally and made the relief of labourers for their labour accidents considerably insufficient until it was abolished by the Law Reform (Personal Injuries) Act, 1948.

Secondly, the doctrine of contributory negligence existed since older age than the establishment of the doctrine of common employment. According to this doctrine, in case where the plaintiff and the defendant were both to blame for the injury suffered by the plaintiff, a reduction in damages according to the degree of the plaintiff's fault was not admitted but the party whose fault was the cause proxima of the injury suffered by the plaintiff, had to bear the whole loss. Therefore, even if there was a fault on the employer's side in the management of the facilities, the employer might be held not liable for accident caused to a labourer partly by the labourer's own fault.

It was by the Law Reform (contributory Negligence) Act, 1945 that this doctrine was abolished and the principle of a reduction in damages according to the degree of the victim's fault which was prevailing in the Continental law countries was, for the first time, introduced in the U.K.

In addition to the above two doctrines, there was the doctrine of "acceptance of risks" which also hindered the employees from filing claims against their employer for their personal accident. This doctrine was represented by the legal proverb "*Volenti non fit injuria*" (He who consents cannot receive an injury) which meant that since the victim braved the danger, the causer of the accident was not liable for the victim's loss. The defendant employer might, therefore, present the defence that the victim worked with full knowledge of the danger involved in his work. It is said, however, that fortunately this doctrine did not apply to seamen of the seagoing vessels (*Rothwell v. Hutchinson* case (1886)).

In spite of the establishment of the legal principle of vicarious liability in 1839 by *Duncan v. Finlater* Case (1839) and the enactment of Lord Campbell's Act (or the first Fatal Accidents Act) in 1846, the door was almost shut to seamen who wished to sue their employer for damages for their loss of life or personal injuries on account of the doctrines of common employment and contributory negligence. In particular, the doctrine of common employment seems to have been a serious obstacle to the relief of dead or injured seamen.

By subsequent legislations, however, the door was gradually opened for the relief of them by aggravation of shipowners' liability. These registrations can be divided into three categories, i. e. Merchant Shipping Acts, Workmen's Compensation Acts and other Acts, but in the following discussion, these legislations will be outlined in the order of the year of enactment without dividing them into three categories.

(1) Merchant Shipping Act, 1854

This Act which revised and consolidated the previous shipowners' liability laws had extensive provisions for protection of health and safety of seamen, as a part of the movement of legislations for protection of public health and safety inaugurated since around 1840 as represented by the Factory Act. Under the above provisions of this Act, a seaman who suffered illness, personal injury or death was relieved irrespective of whether there was negligence of his own or his fellow servant, thus the application of the doctrines of common employment and contributory negligence being eliminated.

Under this Act, in case of illness of, personal injury to or death of the master or any seaman in the service of the ship, the shipowner was liable for the expenses of medical attendance, subsistence, repatriation and of burial in case of death (Sections 228 and 229 as quoted below), and further, though the expenses of relief and repatriation of any distressed seaman found abroad should provisionally be covered by the public fund (Mercantile Marine Fund), the wages due to such seaman and all expenses of subsistence, necessary clothing, repatriation and of burial in case of death should finally be borne by the shipowner (Sections 211 and 213 as quoted below).

Merchant Shipping Act, 1854

Expense of medical attendance and subsistence in case of illness, and of burial in case of death, how to be defrayed.

228. The following rules shall be observed with respect to expenses attendant on illness and death; (that is to say,)

- (1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the U.K., if shipped in the U.K., or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice:
- (2.) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal, and of providing the necessary advice with attendance and medicines, and of his subsistence whilst away from the ship, shall be defrayed in like manner:
- (3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner:
- (4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice.

Expenses, if paid by consul, to be recoverable from owner.

229. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of H.M., or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions herein-before contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to H.M., and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

Distressed seamen found abroad may be relieved and sent home at the public expense.

211. The governors, consular officers, and other officers of her Majesty in foreign countries shall, and in places where there are no such governors or officers, any two resident British merchants may provide for the subsistence of all seamen or apprentices, being subjects of H.M., who have been shipwrecked, discharged, or left behind at any place abroad, whether from any ship employed in the merchant service or from any of H.M.'s ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress at any place abroad, until such time as they are able to provide them with a passage home, and for that purpose shall cause such seamen or apprentices to be put on board some ship belonging to any subject of H.M. bound to any port of the U.K., or to the British possession to which they belong (as the case requires), which is in want of men to make up its complement, and in default of any such ship shall provide them with a passage home as soon as possible in some ship belonging to a subject of H.M. so bound as aforesaid, and shall indorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and shall be allowed for the subsistence of any such seaman or apprentice such sum *per diem* as the Board of Trade from time to time appoints; and the amount due in respect of such allowance shall be paid out of any monies applicable to the relief of distressed British seamen, and granted by parliament for the purpose, on the production of the bills of the disbursements, with the proper vouchers.

Power to sue for the amount advanced for the relief of seamen left abroad.

213. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the U.K., without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed and is relieved under the provisions of this Act, or if any subject of H.M., after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the name of H.M. (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to Her Majesty, or in the same manner and by the

same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade, or by the paymaster-general, of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at H. M.'s expense.

In spite of the enactment of this Act, the shipowners' liabilities under the above provisions were not immediately covered by the Protection Clubs, and I wonder if the reason might possibly be that such liabilities were not heavy burden to the shipowners. Instead, the salvage of human life under Sections 458 and 459 of this Act as quoted below and Section 9 of the Admiralty Court Act, 1861 was covered by the Protection Clubs since earlier. Primarily, under the British law the Admiralty Court did not allow any reward to a salvor of human life only unless property was also salvaged by another salvor at the same time, but it was the practice of the Court to allow more reward to a salvor of both human life and property than that to a salvor of property only, and the owner of the property was liable to pay such reward. The salvage of human life mentioned here means the part of such reward corresponding to the saving of human life to be borne by the owner of the salvaged property. Though, in the case of full load passengers, such salvage of human life might reach a considerable amount, it does not seem to me that the liabilities under the Merchant Shipping Act, 1854 were generally not a heavy burden to shipowners, comparing with the salvage of human life and, therefore, I wonder why the above liabilities were not immediately covered by the Protection Clubs.

Merchant Shipping Act, 1854

Salvage in respect of services rendered in the United Kingdom.

458. In the following cases; (that is to say,)

Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the U.K., and services are rendered by any person,

(1.) In assisting such ship or boat;

(2.) In saving the lives of the persons belonging to such ship or boat;

(3.) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a receiver within the U.K.; There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined, in case of dispute, in manner hereinafter mentioned.

Salvage for life may be paid by Board of Trade out of Mercantile Marine Fund.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the mercantile marine fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

(2) Employers' Liability Act, 1880

This Act was enacted as the first workmen's accident compensation legislation for the purpose of relaxing the strict application of the doctrine of common employment in respect of personal accidents to workers of certain kinds of industry whilst at work. Though this Act applied to workers on land as well as crew of vessels operated in ports, rivers or lakes only, it did not apply to crew of sea-going vessels.

The extension of employers' liability by this Act was not so much as worried about by them at first, and their liability under this Act was covered by liability insurance which was gradually developed by commercial insurers on one hand, and the system of "contracting out" of the Act, i.e. insertion of a special agreement in service contract to eliminate the application of the Act was designed to protect the employers on the other hand.

As mentioned above, this Act applied also to crew of vessels operated in ports, rivers or lakes only, but it is doubtful whether many crew of such vessels brought lawsuits against shipowners for damages. One of the reasons is the problem of crew's capacity of bearing the costs of lawsuit and the another is the spirit of crew. In this respect, Sidney & Beatrice Webb mentioned in their book "Industrial Democracy" (London 1897) as follows:

Finally, such migratory workers as seamen find legal remedies against their employers absolutely illusory, owing to the impossibility of collecting and keeping together their witnesses, if these are fellow-seamen, during the law's delays.

It seems that crew of sea-going vessels were also in a similar situation to the above.

(3) Merchant Shipping Act, 1894

By this Act, the Merchant Shipping Act, 1854 mentioned in (1) above, its Amendment Acts and related legislations were consolidated, and the provisions of this Act for relief of crew who suffered personal accident or illness and of distressed seamen were almost same as those of the Act of 1854 (see Section 207 (Expense of medical attendance in case of illness), Section 208 (Recovery of expenses from owner), Section 191 (Provisions for maintenance of distressed seamen) and Section 193 (Recovery of expenses for relief of distressed seamen) corresponding to Sections 228, 229, 211 and 213 of the Act of 1854 as mentioned in (1) above respectively).

Merchant Shipping Act, 1894

Expenses of medical attendance in case of illness.

207.—(1.) If the master of, or a seaman or apprentice belonging to, a ship receives any hurt or injury in the service of the ship, the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master, seaman, or apprentice until he is cured, or dies, or is brought back, if shipped in the United Kingdom, to a port of the United Kingdom, or if shipped in a British possession to a port of that possession, and of his conveyance to the port, and in case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.

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

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

(4.) If a seaman or apprentice is ill and has, through the neglect of the master or owner of the ship, not been provided with proper provisions and water according to his agreement, or with such medicines, medical stores, anti-scorbutics, or accommodation, as are required by this Act, then the owner or master, unless it can be proved that the illness has been produced by other causes, shall be liable to pay all expenses (not exceeding on the whole three months wages) properly and necessarily incurred by reason of the illness either by the seaman himself or by the Crown or any parochial or local authority on his behalf, and those expenses may be recovered as if they were wages duly earned, but this provision shall not affect any further liability of the master or owner for the neglect, or any other remedies possessed by the seaman or apprentice.

(5.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, whall, if duly proved, be deducted from the wages of the seaman or apprentice.

Recovery of expenses from owner.

208.—(1.) If any of the expenses attendant on the illness, hurt, or injury of a seaman or apprentice, which are to be paid under this Act by the master or owner, are paid by any British consular officer or other person on behalf of the Crown, or if any other expenses in respect of the illness, hurt, or injury of any seaman or apprentice whose wages are not accounted for under this Act to that officer, are so paid, those expenses shall be repaid to the officer or other person by the master of the ship.

(2.) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the ship, and be recoverable from the master or from the owner of the ship for the time being, as a debt to the Crown, either by ordinary process of law or in the same court and manner as wages due to seamen.

(3.) In any proceeding for such recovery, a certificate of the facts, signed by the said officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by that officer or other person.

Provisions for maintenance and relief of distressed seamen.

191.—(1.) The following authorities, that is to say, Governors of British possessions, British consular officers, and other officers of her Majesty in foreign countries shall, and, in places where there are no such officers, any two resident British merchants, or if there is only one British merchant so resident that merchant, may in accordance with and on the conditions prescribed by the distressed seamen regulations, provide for the maintenance, until a passage home can be procured, of the following seamen and apprentices (who are in this Act included in the term distressed seamen);

namely,—

- (a.) Seamen and apprentices to the sea service, whether subjects of her Majesty or not, who by reason of having been discharged or left behind abroad or shipwrecked from any British ship, or any of her Majesty's ships, are in distress in any place abroad; and
- (b.) Seamen and apprentices to the sea service, being subjects of her Majesty, who have been engaged by any person acting either as principal or agent to serve in a ship belonging to the Government or to a subject or citizen of a foreign country, and are in distress in any place abroad.

(2.) For the purpose of providing a distressed seaman with a passage home, the authority shall put him on board a British ship bound either to the United Kingdom or to the British possession to which the seaman belongs (as the case requires), which is in want of men to make up its complement; or if there is no such ship, then the authority shall provide the seaman with a passage home as soon as possible in any ship, British or foreign, bound as aforesaid.

(3.) The authority shall endorse on the agreement with the crew of the ship, if a British ship,

on board of which a distressed seaman is placed, the name of every person so placed on board with any particulars directed by the distressed seamen regulations to be endorsed.

(4.) The authority shall be paid in respect of the expenses of the maintenance and conveyance of distressed seamen such sums as the Board of Trade may allow, and those sums shall, on the production of the bills of disbursements, with the proper vouchers, be paid as herein-after provided.

Recovery of expenses of relief of distressed seamen.

193.—(1.) Where any expenses on account of any distressed seaman or apprentice,... either for his maintenance, necessary clothing, conveyance home, or, in case of death, for his burial, or otherwise in accordance with this Act are incurred by or on behalf of the Crown, or are incurred by the Government of a foreign country, and repaid to that Government by or on behalf of the Crown, those expenses, together with the wages, if any, due to the seaman or apprentice, shall be a charge upon the ship, whether British or foreign, to which such distressed seaman or apprentice belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman or apprentice for service for service in the ship.

(2.) The debt, in addition to any fines which may have been incurred, may be recovered by the Board of Trade on behalf of the Crown either by ordinary process of law, or in the court and manner in which wages may be recovered by seamen.

(3.) In any proceeding for such recovery the production of the account (if any) of the expenses furnished in accordance with this Act or the distressed seamen regulations, and proof of payment of the expenses by or on behalf of the Board of Trade, shall be sufficient evidence that the expenses were incurred or repaid under this Act or on behalf of the Crown.

(4) Workmen's Compensation Act, 1897

This Act was the first Workmen's Compensation Act in the U.K. Under this Act, when workmen engaged in dangerous occupations such as works on or in or about a railway, factory, mine, etc. as provided in Section 7 of the Act were injured whilst at work, the employer was liable to pay compensation for their injuries unless he proved that there was no negligence or wilful act on his part, and in case where the employer was liable for their injuries, they might, at their option, claim against the employer compensation under this Act or under the common law.

As, in the definition of the word "factory", dock, wharf, quay, etc. were included, the P. & I. Clubs were indirectly affected by this Act as stated in page 8 of the A.S.G. Report.

Workmen's Compensation Act, 1897

Liability of certain employers to workmen for injuries.

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, 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 workman for a period of at least two weeks from earning full wages at the work at which he was employed;

(b.) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings, as were

open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

(c.) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(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 employment is one to which 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.

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Application of Act and definitions.

7.—(1.) This Act shall apply only to employment by the undertakers as herein-after defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

.....
 "Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

The aim of this Act was, irrespective of workers' own or their fellow servants' negligence, to give relief to them who were injured whilst at work, and, therefore, under this Act the employer was not permitted to raise against workers any defence of acceptance of risk, contributory negligence or common employment.

This Act did not, however, apply to sea service until it was replaced by the Workmen's Compensation Act, 1906 to be explained in (6) below.

(5) Merchant Shipping Act, 1906

Section 34 (Expenses of medical attendance in case of injury or illness), Section 35 (Recovery of

expenses from owner), Section 41 (Provisions for relief and maintenance of distressed seamen) and Section 42 (Recovery of expenses of relief of distressed seamen) of this Act were, in substance, almost same as Sections 207, 208, 191 and 193 of Merchant Shipping Act, 1894 as mentioned in (3) above respectively.

Merchang Shipping Act, 1906

Expenses of medical attendance in case of injury or illness.

34.—(1.) If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default or to his own misbehaviour), the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port, and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.

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

(3.) The expense of all medicines, surgical and medical advice, and attendance, given to a master or seaman whilst on board his ship shall be defrayed in like manner.

(4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman.

Recovery of expenses from owner.

35.—(1.) If any of the expenses attendant on the illness, hurt, or injury of a seaman, which are to be paid under the Merchant Shipping Acts by the master or owner, are paid by any authority on behalf of the Crown, or if any other expenses in respect of the illness, hurt, or injury of any seaman whose wages are not accounted for under the Merchant Shipping Acts to that authority, are so paid, those expenses shall be repaid to the authority by the master or owner of the ship.

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

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

Provisions for relief and maintenance of distressed seamen.

41.—(1.) Where either—

(a.) any seamen, whether subjects of His Majesty or not, are found in any place out of the United Kingdom, and have been shipwrecked from any British ship or any of His Majesty's ships, or by reason of having been discharged or left behind from any such ship in any place out of the United Kingdom, are in distress in that place, or

(b.) any seamen, being subjects of His Majesty, who have been engaged by any person acting either as principal or agent to serve in a ship belonging to the government or to a subject or citizen of a foreign country, are in distress in any place out of the United Kingdom, the proper authority as defined for the purpose in this Part of this Act may, and, if not a merchant, shall, in accordance with and on the conditions prescribed by the distressed seaman regulations, provide in accordance with this Act for the return of those seamen (who are in this Act included in the term distressed seamen) to a proper return port, and also provide for their necessary clothing and their maintenance until their departure for such a port, and, in addition, in the case of shipwrecked seamen for the repayment of any expenses incurred in their conveyance to port after their shipwreck, and their maintenance while being so conveyed.

(2.) The authority shall be paid in respect of the expenses incurred under this section on behalf of distressed seamen such sums as the Board of Trade may allow, and those sums shall, on the production of the bills of disbursements, with the proper vouchers, be paid as provided by this Part of this Act.

Recovery of expenses of relief of distressed seamen.

42.—(1.) Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Crown, or are incurred by the government of a foreign country, and repaid to that government by or on behalf of the Crown, on account of a distressed seaman, either for his maintenance, necessary clothing, conveyance to a proper return port, or in case of death for his burial, or otherwise in accordance with this Act, those expenses (together with the wages, if any, due to the seaman) shall be a charge upon the ship, whether British or foreign, to which the distressed seaman belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, or, where the ship has been lost, from the person who was owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman for service in the ship.

(2.) The debt, in addition to any fines which may have been incurred, may be recovered by the Board of Trade, on behalf of the Crown, either by ordinary process of law or in the court and manner in which wages may be recovered by seamen.

(3.) In any proceeding for such recovery the production of the account (if any) of the expenses furnished in accordance with this Act or the distressed seaman regulations, and proof of payment of the expenses by or on behalf of the Board of Trade, shall be *prima facie* evidence that the expenses were incurred or repaid under this Act by or on behalf of the Crown.

(4.) For the purpose of this section, excepted expenses are expenses incurred in cases where the certificate of the proper authority obtained on leaving a seaman behind states, or the Board of Trade are otherwise satisfied, that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge from his ship by a naval court on the ground of misconduct, and expenses incurred on account of the return to a proper return port of a distressed seaman who has been discharged at the port at which he was shipped, or at some neighbouring port.

(6) Workmen's Compensation Act, 1906

This Act which replaced Workmen's Compensation Act, 1897 as mentioned in (4) above extended to apply to seamen of seagoing vessels (Section 7). Different from the Act of 1897, this Act gave a workman the right of claim against his employer for compensation even if the injury to him was attributable to his serious and wilful misconduct, provided that the injury resulted in death or serious and permanent disablement (Section 1 (2) (c)), and it imposed strict restrictions on

inserting exclusion provisions in service contracts (Section 3). It is of interest to note that, different from the case of the Act of 1897, the Rules of The Britannia Steam Ship Insurance Association were not affected by this Act.

Workmen's Compensation Act, 1906

Liability of employers to workmen for injuries.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, 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 workman for a period of at least one week from earning full wages at the work at which he was employed:

(b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid:

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(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 workman 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.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

Application of Act to seamen

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

- (a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:
- (b) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:
- (c) Where an injured master, seaman, or apprentice 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, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly:
- (d) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial:
- (e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice:
- (f) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section 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:
- (g) Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands:
- (2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.
- (3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

(7) Maritime Convention Act, 1911

As regards the apportionment of a loss caused by collision for which both vessels were to blame, this Act adopted the principle of apportionment of the loss according to the degree of the fault of each vessel (Section 1) in place of the principle of apportionment of one half of the loss to each vessel as before, and it was provided in Section 2 of this Act that in the case of loss of life or personal injury suffered by crew in consequence of collision for which both vessels were to blame, the liability of the owners of both vessels should be joint and several; provided that this Act did not deprive the shipowner of the right of defence of common employment and the right to limit his liability (Section

2). Further, this Act did not apply to claims for compensation under the Workmen's Compensation Act.

The Rules of P. & I. clubs were also not affected by this Act.

Maritime Conventions Act, 1911

Damages for personal injuries.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

(8) Merchant Shipping (International Labour Conventions) Act, 1925

The shipowners' liability was extended by this Act. While, under Section 185 of Merchant Shipping Act, 1854 and Section 158 of Merchant Shipping Act, 1894, the shipowner's obligation to pay wages to the crew terminated at the time of wreck or loss of the vessel, under Section 1 of this Act, the crew were entitled to receive wages for unemployed period of two months from the date of the wreck or loss of the vessel. As stated above, in so far as compensation to crew for their loss of life or personal injury whilst at work under the Merchant Shipping Acts and the Workmen's Compensation Acts was concerned, they were greatly relieved from suffering by the abandonment of the doctrines of common employment and contributory negligence. The compensation under the above Acts was not, however, necessarily sufficient, and when a crew claimed sufficient compensation against the shipowner under the common law, the above doctrines still stood in his way.

Since around the time when the second world war broke out, however, the study of comprehensive social security system from a new point of view was made as one of the wartime measures, and after the war, as a result of the above study the problem of compensation for labour accidents became no longer that only between the employer and his employees but has become to be solved by a social security system as mentioned below.

First of all, by the Law Reform (Contributory Negligence) Act, 1945, the doctrine of contributory negligence was completely abandoned and the principle of a reduction in damages according to the degree of the victim's fault has been established (Section 1 as quoted below).

1.—(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section six of the Law Reform (Married Women and Tortfeasors) Act, 1935 (which relates to proceedings against, and contribution between, joint and several tortfeasors), shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Law Reform (Miscellaneous Provisions) Act, 1934, the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Accidents Acts, 1846 to 1959, shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation Act, 1939, or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

(7) [Carriage by Air Act, Sched. 1.]

Secondly, by the Law Reform (Personal Injuries) Act, 1948, the Employers' Liability Act, 1880 as mentioned in (2) above was repealed and the defence of common employment was abolished. Under this Act, any provision contained in a service contract became void in so far as it had the effect of excluding or limiting any employer's liability in respect of personal injuries caused to an employee by the negligence of persons in common employment with him (Preamble and Section 1 as quoted below).

An Act to abolish the defence of common employment, to amend the law relating to the measure of damages for personal injury or death, and for purposes connected therewith.

1. Common employment.—(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured.

(2) Accordingly the Employers' Liability Act, 1880, shall cease to have effect, and is hereby repealed.

(3) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act) shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

Thirdly, the National Insurance (Industrial Injuries) Act, 1946 adopted, in substitute for the Workmen's Compensation Acts, 1925 to 1945, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment (Preamble). Under this Act, every insured employee and every employer of him were compelled to pay weekly contributions to the

Industrial Injuries Fund at the respective rates, and the Government had to give a subsidy to the above Fund of one-fifth of the aggregate amount of the above contributions (Section 2).

While, under the Workmen's Compensation Acts, the burden of proof that the accident had arisen out of and in the course of employment had been imposed on the employee, under this Act an accident arising in the course of employment was deemed, in the absence of evidence to the contrary, also to have arisen out of the employment (paragraph 4 of Section 7), and this transfer of burden of proof from the employee to the employer much contributed to the relief of injured employees. Moreover, the injured person who was given the payment of benefit under this Act was not prevented from filing a claim for compensation against the employer, under the common law in the case of injury caused by the employer's negligence.

It was provided in paragraph 3 of Section 7 of this Act that, subject to the provisions of Part VI of this Act relating to persons on ships and aircraft, benefit was not payable in respect of an accident happening while the insured person was outside Great Britain, and by Section 77 of Part VI of this Act the Minister of National Insurance was empowered to make regulations modifying the provisions of this Act in respect of mariners and airmen. A number of such regulations were actually made, and it seems that, in so far as personal injuries suffered by seamen for which the shipowner was liable under the Merchant Shipping Act were concerned, the benefit under this Act was, in principle, not paid.

As stated above, the first legislation for relief to seamen who suffered personal injuries whilst at work was the Merchant Shipping Act, 1854, and after much meandering for about a century, the compensation for seamen's personal injuries was switched from the private one by shipowners over to the state insurance.

National Insurance (Industrial Injuries) Act, 1946

An Act to substitute for the Workmen's Compensation Acts, 1925 to 1945, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment, and for purposes connected therewith.

Persons to be insured.

1. (1) Subject to the provisions of this Act, all persons employed in insurable employment shall be insured in manner provided by this Act against personal injury caused on or after the appointed day by accident arising out of and in the course of such employment.

(2) For the purposes of this Act, every employment specified in Part I of the First Schedule to this Act is an insurable employment unless it is an excepted employment, that is to say, an employment specified in Part II of that Schedule:

Provided that Parts I and II of that Schedule shall effect subject to the provision made by Part III thereof for preventing anomalies.

Source of funds.

2. For the purpose of providing the funds required for paying benefit, and for making any other payments which under this Act are to be made out of the Industrial Injuries Fund established under this Act, contributions shall, subject to the provisions of this Act, be payable as follows—

(a) every insured person of the classes set out in the first column of Part I of the Second Schedule to this Act and every employer of any such person shall be liable as from the appointed day to pay weekly contributions at the respective rates set out in the second and third columns of that Part of that Schedule, unless exempted from that liability as

provided in Part II of that Schedule ; and

- (b) there shall be paid out of moneys provided by Parliament, in such manner and at such times as the Treasury may determine, sums estimated in manner aforesaid to be equal to one-fifth of the aggregate amount of contributions paid under the foregoing paragraph.

Description of benefit and general conditions thereof.

Right to and description of benefit.

7.—(1) Subject to the provisions of this Act, where an insured person suffers personal injury caused on or after the appointed day by accident arising out of and in the course of his employment, being insurable employment, then—

- (a) industrial injury benefit (in this Act referred to as “injury benefit”) shall be payable to the insured person if during such period as is hereinafter provided he is, as the result of the injury, incapable of work;
- (b) industrial disablement benefit (in this Act referred to as “disablement benefit”) shall be payable to the insured person if at a time not falling within the said period he suffers, as the result of the injury, from such loss of physical or mental faculty as is hereinafter provided;
- (c) industrial death benefit (in this Act referred to as “death benefit”) shall be payable to such persons as are hereinafter provided if the death of the insured person results from the injury.

(2) In this Act references to loss of physical faculty shall be construed as including references to disfigurement, whether or not accompanied by any actual loss of faculty.

(3) Subject to the provisions of Part VI of this Act relating to persons on ships and aircraft, benefit shall not be payable in respect of an accident happening while the insured person is outside Great Britain.

(4) For the purposes of this Act, an accident arising in the course of an insured person’s employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment.

Mariners and airmen.

77.—(1) The Minister may make regulations modifying in such manner as he thinks proper the provisions of this Act in their application in relation to—

- (a) persons who are insured persons by virtue of paragraphs 2, 3 and 4 of Part I of the First Schedule to this Act (hereafter in this section referred to as “mariners”);
- (b) persons who are insured persons by virtue of paragraph 5 of the said Part I (hereafter so referred to as “airmen”).

(2) Any such regulations may in particular, without prejudice to the generality of the foregoing subsection, provide—

- (a) for excepting from insurance mariners or airmen who neither are domiciled nor have a place of residence in the United Kingdom or for exempting from payment of contributions any such mariner or airman, and for excluding from benefit any mariner or airman who is so exempted;
- (b) in the case of a mariner who is employed as master or a member of the crew of a fishing vessel and is remunerated in whole or in part by a share in the profits or gross earnings of the fishing vessel, for the removal of the restriction of the right of deducting or otherwise recovering the employer’s contribution in respect of him;
- (c) for the payment of benefit to mariners and airmen in respect of accidents happening, and prescribed diseases and injuries contracted or received, while they are outside Great Britain;
- (d) for treating as accidents arising out of and in the course of the employment of a mariner or airman accidents happening while he is proceeding to or from his ship, vessel, or aircraft or in any other prescribed circumstances;
- (e) for the taking of evidence, for the purpose of any claim by a mariner or airman to benefit—

- (i) in any part of His Majesty's dominions, before a judge or magistrate or by a superintendent within the meaning of the Merchant Shipping Act, 1894;
 - (ii) in a foreign country, by a British consular officer;
 - (f) for withholding any benefit that may be payable to a mariner for any period during which the owner of his ship or vessel is under a statutory obligation to pay him wages;
 - (g) for enabling a mariner or airman to authorise the payment of the whole or any part of any benefit to which he is or may become entitled to such of his dependants as may be prescribed.
- (3) Where a mariner is exempt from payment of contributions by virtue of this section, the contributions payable in respect of him by his employer—
- (a) shall not be taken into account for the purpose of estimating the contributions to be paid out of moneys provided by Parliament;
 - (b) shall be administered and applied in such manner and for such purposes as may be prescribed;
- and regulations made for the purposes of paragraph (b) of this subsection may provide for applying, with or without modifications, to any fund into which those contributions are to be paid any provisions of Part V of this Act relating to the recovery of contributions as they apply to the Industrial Injuries Fund.
- (4) Any regulations making the provision mentioned in paragraph (c) of subsection (2) of this section may be extended—
- (a) so far as they relate to mariners, to any person who, in the course of his employment as an apprentice pilot, is on board any ship or vessel, whether or not he is a mariner within the meaning of this section;
 - (b) so far as they relate to airmen, to any person who, in the course of insurable employment, is on board an aircraft on a test flight starting in Great Britain, whether or not he is an airman within the meaning of this section.

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