

MAINE STATE LEGISLATURE

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Chapter 99.

Pilots. Ship Owners. Port Wardens. Lighters and Harbors.

Sections 1- 4. Pilots.

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Pilots.

Sec. 1. Appointment and bond of pilots.—The governor, with the advice and consent of the council, may appoint pilots for any port in which a majority of the ship owners and masters apply in writing therefor and recommend suitable persons; and shall give to each of them branches or warrants for the execution of the duties of his office; and such pilots shall, before entering upon said duties, give bond to the treasurer of state. (R. S. c. 87, § 1.)

See Me. Const., Art. 9, § 1, re oath.

Sec. 2. Duties.—Such pilots shall take charge of all vessels drawing 9 feet of water and upwards, bound into, and of all such vessels, except coasting and fishing vessels, bound to sea out of any of said ports, and shall pilot them into or out of the port assigned them, first showing to the masters thereof their branches and informing them of their fees; but any master may pilot his own vessel without being subject to pay therefor. (R. S. c. 87, § 2.)

Sec. 3. Governor and council to fix fees, hear complaints, suspend or remove pilots. — The governor and council may fix the fees of pilotage; specify the same in the branch of each pilot; transmit to each collector of customs in said ports a schedule thereof, to be hung up by him for public inspection; hear and determine all complaints against such pilots for misconduct; and suspend or remove them and appoint others in their places. (R. S. c. 87, § 3.)

Sec. 4. Liability for damage.—If any vessel, while under the charge of such pilot, is lost, run aground or cast away, through his fault, he is liable to pay the owner or insurer a just compensation for any damage thereby sustained. (R. S. c. 87, § 4.)

Ship Owners.

Sec. 5. Ship owner's liability to freighters.—No ship owner is answerable beyond the amount of his interest in the vessel and freight for the embezzlement, loss or destruction, by the master and mariners, of any property put on board of such vessel; nor for any act of theirs without his privity or knowledge; but if several owners of property on the same voyage suffer damage as aforesaid, and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may prosecute a bill in equity for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto. (R. S. c. 87, § 5.)

Where a vessel is sailed on shares, and the master has control of her, he is pro hac vice owner, and is alone responsible for loss of freight. *Bonzey v. Hodgkins*, 55 Me. 98; *Somes v. White*, 65 Me. 542.

And is not agent of general owners.—A personal liability of owners of a vessel for the master's defaults, certainly must de-

pend upon the fact, whether the relation of master and servant (or principal and agent) exists between themselves and the master. The liability must arise under the maxim respondeat superior if at all. But where the master is owner pro hac vice, no such relation exists. *Somes v. White*, 65 Me. 542.

But the mere fact that the vessel was taken on shares alone does not discharge the owners for loss of freight. To discharge them their control must cease, as it does, when it is transferred to the master. In such case the master is liable, and the owners are not. *Bonzey v. Hodgkins*, 55 Me. 98.

For their responsibility depends on possession and control.—In cases where the responsibility of the owners is sought to be maintained, the inquiry must be whether, under the contract of letting, the master or the owners had the possession, command and navigation of the ship. There can be no difference in this respect between a ship and any other species of personal property. The law of principal and agent cannot be applied where no agency exists. *Somes v. White*, 65 Me. 542.

And the owners of a vessel, not in possession and control should not be liable for injuries caused by collision. *Somes v. White*, 65 Me. 542.

Nor for contracts and torts of character.—General owners out of possession are not liable for supplies purchased by the master for the vessel; nor for repairs ordered by him without their authority; nor for his neglects in the performance or nonperformance of his charter parties; nor for his embezzlements of the cargo of shippers. *Somes v. White*, 65 Me. 542.

When a vessel was sailed on shares, it was held that the general owner was not liable to the owners of a cargo of lumber shipped on board for a part of it used for fuel during the voyage. *Somes v. White*, 65 Me. 542.

Sec. 6. Charterer deemed owner, and responsible to real owner.—For the purposes of the preceding section the charterer of any vessel, navigating the same at his own expense, shall be deemed the owner; and if loss happens to any person from the causes therein mentioned, and it is compensated from the freight or vessel, the owner thereof may recover the amount from the charterer. (R. S. c. 87, § 6.)

Vessel is surety against negligence of charterer.—By the maritime law, the vessel is made a surety for the protection of all persons against the negligence of the mas-

ter while conducting the vessel, when he is the charterer thereof. *Somes v. White*, 65 Me. 542.

Port Wardens.

Sec. 7. Port wardens, election; qualification and term of office; removal; vacancies; record.—Port wardens shall be elected in any city or town situated on navigable waters upon the petition of 10 or more citizens engaged in commercial pursuits therein.

If in such city or town there is a board of trade duly incorporated, said board shall annually elect the port warden; otherwise the municipal officers thereof shall annually elect him.

Port wardens shall be men of commercial or nautical experience, and shall hold office 1 year from each election and until others are qualified in their stead, except when removed for cause or when elected to serve out an unexpired term; and they shall be sworn faithfully to perform their duties.

Said boards of trade, by their managers, or said municipal officers shall forthwith on complaint of any person aggrieved, after hearing, remove for cause any port warden by them elected, and all vacancies shall be filled by said authorities.

Port wardens shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein. (R. S. c. 87, § 7.)

See c. 98, § 1, re appointment of harbor masters.

Sec. 8. Duty on arrival of vessel.—When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port and survey her hatches and notice if they are properly caulked and secured; and if they have been opened by some person not a port warden, that fact shall also be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall also examine the condition and stowage of the

cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office; and for the purpose of ascertaining the extent of said damage, they shall examine goods, wares or merchandise of any description in any warehouse or store, or on any wharf or at any place where the same are; provided that said goods, wares or merchandise are part of the cargo and are claimed to be damaged; and they shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office. (R. S. c. 87, § 8.)

Sec. 9. Duty if vessel arriving in distress.—When requested in writing by any person interested, port wardens shall also survey the cargo of any vessel arriving in port in distress; and shall make and record in the books of their office, a full and particular report of the condition of said cargo, and of their recommendations in relation to the disposal of such portions of the same as in their judgment may not be in condition for reshipment, reference being had to the best interests of all concerned. (R. S. c. 87, § 9.)

Sec. 10. Duty if wrecked or damaged vessel. — When requested in writing by any person interested, port wardens shall also survey any vessel which may have suffered wreck or damage, or which may be deemed unseaworthy; and such port wardens shall call to their assistance 1 merchant and 1 shipwright, both of whom shall be competent and disinterested persons and shall be sworn faithfully to perform their duties in the examination and survey; and said surveyors and port wardens shall examine the hull, spars, sails, rigging and all the appurtenances of said vessel, and make and record in the books of the port wardens' office a full and particular report of all the surveys by them held on said vessel, specifying what damage she has sustained and what repairs in their opinion are necessary to render her again seaworthy; and the aforesaid report shall be presumptive evidence of the necessity of such repairs and of the sufficiency of the same when made. (R. S. c. 87, § 10.)

Sec. 11. Fees.—Port wardens shall be allowed fees to be paid by the person requesting their services, as follows: for survey of hatches, \$2; for each survey of cargo on shipboard, \$1; for certificate of stowage of cargo, \$2; for each subsequent certificate, \$1; for each survey to ascertain extent of damage, \$2; for each certificate thereof, \$2; for each survey required by the provisions of section 9, \$4; for each certificate thereof, \$2; on each survey as required by the provisions of section 10 for each person, \$2; for each certificate thereof, \$2. (R. S. c. 87, § 11.)

Sec. 12. Jurisdiction; performing duties of port wardens without authority. — In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this chapter; and any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden forfeits for each offense \$100, to be recovered in an action of debt by any prosecutor. (R. S. c. 87, § 12.)

Lighters and Harbors.

Sec. 13. Lighters marked; marks inspected and renewed. — Every boat or lighter employed in carrying stones, sand or gravel shall be marked at light-water mark, and at least 5 other places, with the figures 4, 12, 16, 24 and 30, legibly made on the stem and sternpost thereof; expressing the weight which such boat or lighter is capable of carrying, when the lower part of the respective numbers touches the water in which it floats; and such marks shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed. (R. S. c. 87, § 13.)

Sec. 14. Using lighters without marks and for falsely marking.—The master or owner who uses his craft without such marks prescribed in the preceding section and any person who falsely marks any such boat or lighter forfeits \$50 to be recovered by any prosecutor in an action of debt. (R. S. c. 87, § 14.)

Sec. 15. Municipal officers to appoint inspectors and regulate fees; boats remarked.—The municipal officers of every town where boats and lighters are employed for the purposes set forth in section 13 shall annually, in April or May, appoint some suitable person who shall be sworn to examine and ascertain the capacities of all such boats and lighters, and mark them as above prescribed; and said officers shall establish and regulate the fees therefor.

When such inspector thinks that the burden or capacity of any such boat or lighter is altered by repairs or otherwise, he shall forthwith ascertain the same anew and mark it accordingly. (R. S. c. 87, § 15.)

Sec. 16. Throwing ballast into roadstead, port or harbor; or taking stone from shore or island without consent.—No master of any vessel shall throw overboard ballast in any road, port or harbor, under penalty of \$60, and no person shall take any stone or other ballast from any island, beach or other land, without consent of the owner, under a penalty of not more than \$7 for each offense, to be recovered in an action of debt by any prosecutor, $\frac{1}{2}$ for himself and $\frac{1}{2}$ for the town where the offense is committed. (R. S. c. 87, § 16.)