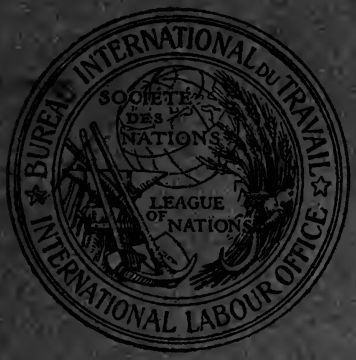
International Seamen's Code

Note addressed to the Governments of the States Members of the International Labour Organisation by the International Labour Office.



Two Shillings and Sixpence.

GENEVA:
INTERNATIONAL LABOUR OFFICE.
1921.

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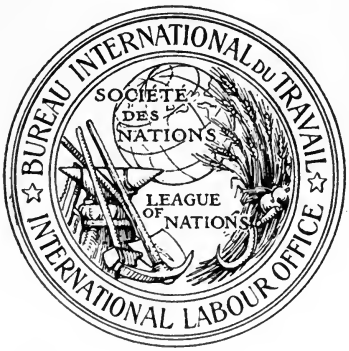

GENEVA:
INTERNATIONAL LABOUR OFFICE.
1921.

CONTENTS.

INTRODUCTION.

At the Second Session of the International Labour Conference held at Genoa, 15th June to 10th July, 1920, a Resolution was adopted requesting the International Labour Office to undertake the necessary investigations for establishing an International Seamen's Code.

The same Session of the Conference also adopted a Recommendation requesting each of the Members of the International Labour Organisation to embody in a Seamen's Code all its laws and regulations relating to seamen in their activities as such.

It is in order to facilitate the accomplishment of these two tasks that the present volume has been prepared.

Its object, firstly, is to inform Governments of the progress which the International Labour Office has already made in the prosecution of the investigations entrusted to it, and in the systematic preparation of a draft International Seamen's Code. Secondly, it puts at the disposal of Governments, in the most convenient form, all the information collected up to the present, which may be useful to them in the codification of all their national laws or regulations relating to seamen.

With this object in view, all the documents bearing on the question of establishing an International Seamen's Code have been collected in this volume in chronological order, as follows :—

(1) The *questionnaire* addressed to Governments before the Genoa Session of the International Labour Conference.

(2) The opinions expressed by Governments as to the possibility of drawing up an International Seamen's Code and the principles upon which it should be constructed.

(3) The Report of the Commission set up by the Conference to study this question.

(4) A précis of the record of the discussion which took place at the plenary meeting of the Conference and the definite texts of the Resolution and Recommendation adopted.

(5) The record of the first session of the Joint Maritime Commission, at which the procedure to be followed by the International Labour Office in the preparation of a draft Code was discussed.

To this series of documents has been added an appendix containing :—

(1) The report and draft code prepared by the Commission which held meetings in France from 1913–1914. This document may prove of use to the various Governments in the preparation of their national Maritime Codes according to the Genoa Recommendation ;

(2) A historical note on former maritime codes.

Governments will thus be informed of all the preparatory work which has been done by the Office.

As is indicated in a short conclusion on pages 82-83, Governments are requested to assist the Office to carry out the work thus begun, in conformity with the Resolution adopted by the Genoa Conference. In

particular, it is requested that, with a view to facilitating the preparation by the Office of the report required by the Genoa Conference, and which ought to be laid before the next Session of the General Conference in October, 1921, the Office may be informed of the measures which have already been taken or are to be taken by Governments for the purpose of drawing up national Seamen's Codes.

It is also requested that the Office may be informed of the opinions and observations of Governments on the scheme of work which the International Labour Office has adopted.

Finally, a request is made that any suggestions which Governments may think suitable to make in this matter may be communicated to the Office.

It should be clearly stated that though it has been thought desirable to inform Governments of what has been done, it represents merely a preliminary stage of the work.

In conformity with the Treaty of Peace, it is for the Governing Body of the International Labour Office to decide, in drawing up the Agenda of a Conference, in what order questions suitable for incorporation in an International Seamen's Code shall be included in that Agenda, with a view to the adoption of Draft Conventions and Recommendations tending to promote the international codification of maritime legislation, or to establish certain parts of an International Seamen's Code.

The International Labour Office will thereafter, according to its usual procedure, address to Governments a detailed *questionnaire* relating to the items on the Agenda.

It has been considered desirable, however, to keep Governments informed from day to day of all the preparatory work, because it is only in this way that it is possible to avoid uncertainty and inconvenience.

CHAPTER I.

THE ATTITUDE OF GOVERNMENTS.

The Agenda of the Second Session of the International Labour Conference, which was fixed by the Governing Body at its meeting in Paris, on the 27th January, 1920, included the following item: "The Possibility of establishing an International Code for Seamen."

In accordance with the procedure already adopted as regards the Washington Conference, the International Labour Office drew up *questionnaires* on the various items of the Agenda and addressed them to the Governments.

The *questionnaire* relating to the possibility of the establishment of an International Seamen's Code was couched in the following terms :—

(1) Do you think it possible to establish a kind of International Code for Seamen ?

(2) If so, what does your Government consider should be the general principles of an International Maritime Code as regards the conditions of service at sea ?

In particular should the seamen's contract of employment be brought into line or not with that obtaining generally in the case of other workers : for instance, for discipline, the right to leave their ship in a foreign port, the payment of wages before discharge, etc. ?

N.B.—The Governing Body of the International Labour Office, at its meeting in January when the Agenda of this *questionnaire* was drawn up, had this important question brought before it.

The Governing Body considered it so vast and bound up with so many other problems that the coming International Conference would hardly be able to deal with it. In spite of this, it deemed it necessary to retain the question in that Agenda for general examination. We should be glad if you would send us forthwith the most complete information available on this subject, particularly on those points which might ultimately give rise to International Agreements, in order that the work which will be subsequently necessary may be put in hand.

The replies received from the Governments were summarised in a Report prepared by the Office which was laid before the Conference.

In their replies, the different States agreed, on the whole, with the view of the Governing Body, and the consensus of opinion appeared to be that though there were no insuperable difficulties in the way of an International Code for Seamen, the time was not yet ripe for the detailed discussion of the project, owing to the variety and complexity of the problems involved.

In accordance with this view, the various Governments did not attempt to state in detail what they considered should be the general principles of an International Maritime Code, although in certain cases they expressed their attitude to some of the important problems involved.

The replies received from the Governments were reproduced *in extenso* in the Report* laid before the Conference, and are herewith printed.

1. *THE POSSIBILITY OF AN INTERNATIONAL CODE.*

United States of America.

The Government of the United States expressed the following view :—

" The Seamen's Act of the United States, being very much in the nature of a code, demonstrates the possibility of making an international code for seamen."

Argentine Republic.

The Government of the Argentine Republic expressed the opinion that the establishment of a kind of international code for seamen is possible.

Belgium.

The Belgian Government expressed the following view :—

" It is certainly possible, and it will be necessary, to establish an international code for seamen, relating to the regulation of conditions of labour, manning, accommodation, articles of agreement, etc."

Finland.

The view expressed by the Government of Finland is as follows :—

" Taking into consideration the great differences prevailing between the different continents and the separate States contained within these, not only regarding

* Report IV. Seamen's Code. Prepared for the Genoa Session of the International Labour Conference.

their climate, natural resources, wealth, staple industries, and development, but in regard to their national character, disposition, ethical code, and legislation, it would hardly seem expedient—if at all possible—to attempt to establish any detailed international legislation in regard to seamen. Such ought to be confined to general principles such as those discussed in the foregoing pages."

France.

The attitude of the French Government is expressed as follows :—

"The establishment of an international code for seamen may be justified, either by the interests of the shipowners whose expenses for salaries and other accessories would be equalised, or by the interests of the seamen who would benefit by a common regulation of work, both considerations eminently calculated to create a happy equilibrium favourable to the development of the maritime transport industry, and consequently to the amelioration of the economic relations of the whole world. France, moreover, more than any other maritime power, would have a primary interest in unifying the law relating to seamen. It is, in fact, an acknowledged truth that the charges which are imposed on French shipowners by the national laws are, generally speaking, notably higher than the similar charges imposed on other shipowners by their respective legislations ; consequently any international agreement which aimed at approximating foreign legislation to the French legislation, would diminish the pecuniary deviation which at present separates the working expenses of French shipowners and foreign shipowners, and

would to that extent strengthen the position of the French Mercantile Marine in the struggle of world competition.

" The law relating to seamen embraces a considerable number of rights or obligations, the creditor or debtor parties to which are in some cases the shipowner, in others the seaman, and in others the State, arising either from the purely private execution of the contract of maritime employment, or from the action exercised by the State in the name of public order, in the working of the ship or in the professional life of the seaman. We would point out specially : (1) In the matter of the execution of the contract of employment and apart from the rules relating to the formation, establishment and termination of the contract of employment, the obligations incumbent upon the shipowner relating to the payment of the wages due to the seaman, with the related questions concerning abatements, places and times of payment, consignment, suspension and retention of wages, payments in advance and on account, restitution of advances, assignments of wages, debts of seamen, seizures and cessions of wages, and accessorily to the jurisdiction, procedure, periods of prescription, etc., in regard to litigation relating to the execution of the contract of maritime employment, to the furnishing of the seaman employed on board with food and sleeping accommodation suitable to the voyage undertaken, or in default thereof, to the allocation of any equivalent indemnity ; to the care of, and the wages to be paid to, seamen falling sick or injured in or by reason of the service of the ship, and to the discharge of the seaman in the place of his embarkation or in any case in a continental national port (repatriation and passage)

and obligations incumbent on the seaman and relating to the performance of the work for which he has been engaged ; and, secondly, in the matter of State action the obligations incumbent on the shipowner and relating to the observance by him of the rules concerning regulation of work, manning, the nautical security of the vessel, management, habitability and salubrity of quarters, feeding of crews, obligations incumbent on the seaman and specially as regards failure of performance of the disciplinary and penal law relating to seamen, and the obligations incumbent on the State as the public authority relating to the establishment and effective working of regulations regarding the finding of employment and unemployment of maritime workers ; professional maritime instruction to be given to candidates for navigation certificates and the conferring of certificates and diplomas enabling their holders to exercise the functions of command on board ship ; the solution by way of conciliation or arbitration of collective conflicts arising between shipowner and seamen and the material support of seamen in old age or falling sick in the course of employment (insurance against normal or premature old age, insurance against accidents or industrial diseases, etc.).

" It will, therefore, be understood how difficult of solution is the question of International Law relating to seamen, touching as it does so many problems which are, moreover, as complex as they are numerous.

" In the first three items of its Agenda, the Genoa Conference has put down for consideration the particular points of working hours, manning and accommodation (Item I), of articles of agreement, facilities for finding employment, provision and insurance against unemploy-

ment (Item II) and the protection to be given to children (Item III), but there will also be on the table a mass of problems so vast that the Conference will find it impossible to arrive at a definite solution of each of them and will have to be satisfied with a simple exchange of views for the purpose of clearing the much encumbered ground and of preparing for the future.

" Moreover, a methodical *a priori* quest of nationa law for seamen would require a preliminary knowledge of all rules enacted in this matter by the national legislations of the principal maritime powers, a knowledge which would make it possible to bring together and compare the different laws of the world, and, therefore, to build up a common legislation, a sort of compound of the particular legislations which, while taking account of the special requirements of each country and safeguarding the vital interests of the national marines, would unite in these provisions the measures considered most fit, ' to ensure the physical, moral and intellectual well-being ' of the workers of the sea. (Treaty of Peace, Part XIII, General Principles.) Now the French Government does not possess in the matter of foreign maritime legislation a sufficient equipment of documents to enable it to express, on the greater part of the points relating to the question at issue, a settled and authoritative opinion."

Germany.

The German Government expressed the view that the establishment of a kind of International Code for seamen is not possible at present.

Great Britain.

The attitude of the British Government is expressed as follows :—

" The practicability of establishing an International Code for seamen depends upon the willingness or otherwise of all maritime countries to agree to adopt and enforce a reasonable and proper code.

" The general principles of an International Code for seamen as regards conditions of service at sea cannot be indicated until the large questions of policy involved have been considered by the National Maritime Board.

" In view of the great diversity of conditions affecting fishing operations in different countries the proposal to establish an International Code for Sea Fishermen would raise very great difficulties."

Greece.

The opinion of the Government of Greece was as follows :—

"The establishment of an International Code regulating in a uniform manner the conditions of work of seamen is certainly no easy matter. The Hellenic Government does not overlook the movement which has been in evidence for several years in the seafaring world, the tendency of which is to secure conditions of work which will improve the general position of seamen so as to assimilate it in more ways than one to that of workers on land ; but, however favourably disposed the Government may be to the ideals of the seafaring world, it is by the nature of things forced to take account of the essential differences which exist between the work of workers on land and the function of the seaman. Also

it fully shares the opinion of the International Labour Office that the coming Conference would not be able to solve a question of such extent and involving so many other problems, but that it could at all events prepare the ground and trace the line of demarcation between work at sea and work on land. The Hellenic Government reserves the right to submit its views to the Conference in a special memorandum."

Netherlands.

The Government of the Netherlands expressed the following view :—

" The Netherlands Government does not consider that the time has yet come for the establishment of a kind of International Code for seamen. In general, the formation of collective agreements is not yet sufficiently developed."

Norway.

The Norwegian Government expressed the following view :—

" The Government will at the present time not say that it is impossible to compile such a code but considers the practical carrying out of the idea very difficult.

" It may be of interest to inform that Norway for several years has had co-operation with the other Scandinavian countries just within this scope. Already the Norwegian Maritime Law of July 20th, 1893, was prepared under co-operation between Norway, Sweden and Denmark. As far as the regulations regarding the crew in this law are concerned there are indeed a couple of minor differences, but in the main the three laws are uniform. The co-operation has been continued during the pending revision of the law. For this

purpose a mixed committee has been formed with representatives for each of the three countries and Finland. The committee—which as yet, however, has not given its recommendation—will presumably suggest that the regulations regarding the crew be separated from the maritime law and subsumed under a special *law concerning seamen.*

" This Scandinavian co-operation within the scope of the maritime law has so far shown good results and will, as mentioned above, be continued. We will, however, remark that the co-operation has been highly facilitated by the fact that Norwegians, Swedes and Danes are closely related as nations. The languages do not differ more than that they can understand each other mutually; the judicial sentiments are mainly the same.

" We must therefore be wary of drawing analogy from this co-operation when it comes to extending the scope to all nations. We fear that the preparations in details of a general International Code for seamen in practice will meet with great difficulties. If the idea of international rules within this scope is to be realised it ought therefore perhaps not to be done in this way that an International Law is prepared, but by adopting an International Convention, which only stipulates certain general principles and leaves the closer framing of these to national legislation."

Spain.

The Spanish Government replied to the question as follows :—

" At the meeting held in Paris by the Governing Body of the International Labour Office, preparatory

to the Seamen's Conference, the English delegate voted against this item of the Agenda. The Spanish delegate, considering not only the quality of this vote, in which the Belgian delegate also joined, but also the importance and complexity of the other measures to be dealt with, such as the working day, wages and the age of admission to employment, expressed his opinion that the consideration and discussion of a subject so important as the establishment of an International Code for seamen should be left for a later date, considering, moreover, that it would be too much to expect that at the first moment anything would be done beyond the introduction of the question, and therefore that it should be postponed so as to leave more time for modelling on a large scale the whole contexture included in the position of seamen as a working and social class.

" The Spanish delegate having therefore voted at the meeting in question against this point, without implying opposition to the possibility of the establishment of such a Code at the proper time, which opinion it should be noted the Argentine representative supported, it is not fitting nor convenient to enter now on a consideration of such an important question; we must limit ourselves to ratifying the attitude of our delegate in supporting the votes of England and Belgium, without denying any more than he did, the possibility of establishing an International Code, after a careful and proper study of the matter, and to maintaining on the present occasion our abstention from going more deeply into the question for the purpose of expressing any concrete opinion on the substance of the matter involved therein."

Sweden.

The Swedish Government expressed the following opinion :—

" International legislation relating to seamen may, under certain presumptions, be effected.

" Such legislation should, however, only embrace vessels employed in foreign shipping, and should not apply to the national shipping, which the different countries carry on along their own coasts and on their respective inland waterways.

" As regards, however, even the first-mentioned class of shipping, international rules may not be suitable for all circumstances, but ought to be limited to certain subjects, especially selected for such regulation. In solving this problem, it seems to be of great importance to proceed gradually, because the establishment of international rules, which may produce incalculable consequences, must be preceded by a close and careful deliberation on the different questions involved."

2. *THE PRINCIPLES OF AN INTERNATIONAL CODE.*

The attitude of Governments on the question is expressed in the following replies which were received :—

United States of America.

The reply of the United States of America was as follows :—

" The requirements of the sea service make it necessary that more stringent disciplinary measures be applied to seamen at sea than to men in other classes of industry. A distinction should be made between the service of

seamen while at sea and while in a safe harbour. In the former case suitable penalties should be provided to enforce obedience and the efficient performance of their duties by seamen, but, while in a safe harbour seamen should be subject to only such civil liabilities as those to which other classes of workmen are subject. Payment of wages in advance before they are earned should in all cases be prohibited. Other principles which should be included in the preparation of an International Code should be such as are the basis of the present laws of the United States relating to seamen. These laws are conveniently brought together in code form in the Bulletin of the Bureau of Navigation of the United States Department of Commerce, entitled 'Navigation Laws of the United States, 1919.'"

Argentine Republic.

The Argentine Republic, in its reply to the *questionnaire* on this point, dealt only with the question of compensation for accidents, and pointed out that in the Argentine Republic, the principle is recognised that the same compensation for accidents incurred during work, which, under Law 9688 is granted to industrial labour, is also granted to seamen.

Belgium.

To this question the Belgium Government submitted the following reply:—

"It is impossible to assimilate the working agreements of seamen to those of workers on land. There is universal agreement that good discipline on board is indispensable for the safety of navigation. With regard to the right

of leaving the ship in a foreign port, it is considered by all that the exercise of this right is almost impracticable and injurious equally for the seaman and for the shipowner. The question of payment of wages during the voyage should be regulated in an international manner. Insurance against enforced unemployment caused by the loss of a ship should be obligatory and should be rendered uniform for all ships. The question of the insurance of seamen against loss of life and possessions should also be regulated in an international manner."

France.

The attitude of the French Government is expressed as follows :—

" If so, what does the French Government consider should be the general principles of the International Maritime Code as regards the conditions of service at sea ? In particular, should the seamen's contract of employment be brought into line or not with that obtaining generally in the case of other workers, for instance, for discharge, the right to leave their ship in a foreign port, payment of wages before discharge, etc. ?

" In a general sense, and for the reasons explained in the first question above, the French Government will not be in a position to decide on the various problems dealt with by the International Labour Office until after these particular points have been discussed at the Conference and its opinion has been enlightened and fortified by the documentary, economic and other information which it will be able to gather in the course of the debates.

" As regards the desirability of unification of contracts of employment on land and at sea and without prejudice to the definitive solution which the French Government will give later to these questions, it does not appear that it would be practically possible or even desirable for the practical working of merchant ships to create an absolute and complete assimilation between workers on land and workers at sea.

" This problem has already been frequently discussed by French shipowners and seamen either separately in their corporate congresses or together in technical governmental councils, and if it has always been recognised as useful to approximate as much as possible the clauses of contracts of employment on land and at sea, which present no character of peculiar specialisation, the seamen and their qualified representatives have equally always recognised the necessity of clauses special to maritime employment not only in disciplinary and penal matters (which require to be governed by a particular code in as much as ' the ship and the individuals on board of her, form a particular society in which unity of action, hierarchy, absolute respect for authority, are necessities of public order which must be assured by efficacious sanctions '—Barbey Report, 1890), but also even in the matter of the formation, establishment and termination of the maritime employment.

" In 1905 and in 1913 the French Government set down for consideration the two important questions of the revision of the disciplinary and penal Decree Law relating to the Mercantile Marine and of the various statutes which relate to employment of seamen. The very detailed discussions which followed both in the

special commissions charged with the elaboration of the preparatory texts and in the technical governmental councils charged with fixing the final texts to be submitted for the approbation of Parliament, led to the drawing up in 1913 and in 1914 of two formal Bills which still at the present day reflect exactly the equilibrium of ideas at which the French shipowners, the maritime proletariat and the department of mercantile marine have finally arrived and might, therefore, usefully serve as a basis for the building up of a contractual and penal law for seamen.

" Without entering into exact details of the Bills in question, we will signalise only the solution somewhat complex but very complete given by Article 133 of the Bill of 1914 to the particularly delicate question of the limit of the period of service at sea, during which no determination of the engagement agreed upon by the seaman, can be effective, *i.e.*, ' a seaman shall not be able, either in French ports or in foreign ports, to make use of the right of determining his agreement from the time fixed by the captain of the departing vessel for the commencement of the service by watches in view of setting sail ; provided, nevertheless, that the right of leaving the service shall not be refused to him more than 12 hours before the time fixed for setting sail if the seaman belongs to the deck staff or to the engine-room staff and if the ship has been in port more than 48 hours, more than 4 hours before the time fixed for setting sail if the seaman belongs to one or other of the two staffs and if the vessel has been in port less than 48 hours, more than 2 hours before the time fixed for the embarkation of passengers if the seaman belongs to the general service staff. A seaman shall not be

able, either in French ports or in foreign ports, to make use of the right of determining his contract before the time fixed by the captain of the vessel entering port for the cessation of service by watches, provided, nevertheless, that the right of leaving the service shall not be refused to him more than 4 hours after the arrival of the vessel at the place of mooring in which she shall be in safety, if the seaman belongs to the deck staff or engine-room staff, more than 2 hours after landing of the passengers, if the seaman belongs to the general service staff. Violation by the seaman of the provisions of the preceding paragraphs shall give rise, independently of such indemnities as may be due to the shipowner, to the application of the disciplinary and penal provisions enacted by law.' "

Great Britain.

The following view is expressed in the reply from the British Government :—

" *Sea Fishing :*—The engagement and discharge and discipline sections in Part IV of the Merchant Shipping Act have worked well and would form a good basis for a code if one is desired.

" Any question of right to leave in a foreign port does not so much arise in case of fishing boats. A merchant sailor could find employment in other vessels, a fisherman, trawler or drifter, leaving his ship in a continental fishing port would often be stranded there.

" It is better the man should sign for the voyage, but on some voyages—according to the agreement—the men can claim discharge at any time, anywhere, on giving a certain notice.

"There is no system of payment of wages before discharge but an arrangement is frequently made as between skipper and man for an advance of wages, at the skipper's own risk."

Netherlands.

On this question the Netherlands Government made the following reply :—

"In accordance with the preceding section (*see* above, page 17) this question must remain without a reply. But it may be observed that the special conditions under which seamen perform their work require special provisions for their working agreements."

Norway.

The Norwegian Government expressed the following view :—

"The Norwegian regulations of interest to these questions are to be found in the Maritime Law of 1893 as mentioned above under question 1. As this Law, however, is somewhat antiquated, the Norwegian provisions may be of less interest and still more so as they at present are being revised by a Scandinavian Committee.

"As the recommendations of this committee are not yet at hand, the Norwegian Government is at present not in a position to set up any proposition regarding the principles of eventual international regulations. We will only point out one single case which to the Norwegian mercantile marine it is of considerable interest to have regulated by international agreement, namely, the settlement of disputes which arise between master and crew while the ship is abroad.

" In the Norwegian articles of agreement (*see* further regarding these under the reply to question 2A and annexure No. 9*) the parties bind themselves to have disputes regarding the right understanding of the contract provisionally settled by a Norwegian consul and not when abroad to bring them before any foreign court of justice. We have, however, experienced that this clause is not always respected by foreign authorities, and that essential inconveniences are caused when the cases are tried by a court without any knowledge of Norwegian law and judicial sentiment.

" We would therefore consider it desirable that this case be regulated by an international agreement, stating as a principle, that disputes between master and crew should not be brought before a court of justice in some port abroad, where the ship may happen to be lying."

Sweden.

The opinion of the Swedish Government on this question was as follows :—

" The points that seem primarily to be most adapted for international legislation, are questions A, B and C under the first item of the Agenda, dealing with *hours of labour, manning and accommodation.*

" A matter on which the possibility of international regulation has already been shown by a number of conventions, is the question of securing *assistance for sick and destitute seamen* left abroad, and their repatriation.

" It is likely that this matter could, with advantage, be given immediate attention with a view to further internationalisation.

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* Report IV.

" It is very difficult to decide to what extent the judicial principles of the contracts of employment may be made a subject for international legislation. It must be taken into consideration that the contracts of employment in the different countries obtain their support from the general principles of the civil legislation and are, moreover, closely connected with the national statutes concerning agreements in other trades. The different conditions of shipping, *i.e.*, shipping carried on by regular liners, by tramp steamers or in time-charter, etc., require also their special rules of agreement.

Further, attention must be paid to the distinction of statutory regulations, the application of which ought to be dependent on the free will of the contracting parties, and of such stipulations as ought to be of a compulsory character. It is the last-mentioned category of rules that should, in the first instance, constitute the subject of international legislation.

" As to the question whether the seaman's contract of employment ought to be brought into line or not with that obtaining generally in the case of other workers, it may be maintained that the characteristic features of the seafaring trade must necessarily entail certain peculiarities in seamen's legal position with regard to their contracts of employment. In the present state of things it has not, however, been found appropriate to express any more definite opinion that would imply the taking up of a position with reference to the different matters associated with this question."

CHAPTER II.

APPOINTMENT AND REPORT OF THE COMMISSION ON AN INTERNATIONAL SEAMEN'S CODE.

The International Labour Conference met at Genoa on the 15th June, 1920. Twenty-seven countries were represented.

On the 21st June the Conference appointed the following Commission to consider and report on the fourth item of the Agenda.

Representatives of the Government Group.

Belgium : Mr. Pierrard.
Denmark : Mr. Busck-Nielsen.
France : Mr. Baudoin.
Germany : Dr. Werner.
Great Britain : Mr. Wotzel.
Italy : Mr. de Michelis (Substitute, Professor Majorana).
Japan : Mr. Matsuoka.
Netherlands : Mgr. Nolens (Substitute, Mr. Landweer).
Norway : Mr. Hansen (Substitute, Mr. Brockman).
Spain : Rear-Admiral Pasquin y Reinoso (Substitute, Mr. Montesinos).

Representatives of the Employers' Group.

Canada : Mr. Robb.
Denmark : Mr. Host (Substitute, Mr. Lund).
France : Mr. de Rousiers (Substitute, Mr. Vincent).

Germany : Mr. Holm (Substitute, Dr. Paul Ehlers).
Great Britain : Sir Alfred Booth (Substitute, Commander Walton).
India : Mr. Cameron (Substitute, Mr. Melville).
Italy : Mr. Brunelli (Substitute, Mr. Corrado).
Japan : Mr. Hori (Substitute, Mr. Tadeo Okasaki).
Spain : Mr. Lopez Doriga.
Sweden : Mr. Nordborg (Substitute, Mr. Hallberg).

Representatives of the Workers' Group.

Argentine : Mr. Dicuatro.
Australia : Mr. Burke.
Belgium : Mr. Chapelle (Substitute, Mr. Van Pottelsberghe).
Denmark : Mr. Spliid (Substitute, Mr. Hedebol).
France : Mr. Rivelli (Substitute, Mr. Pasquini).
Germany : Mr. Wissell (Substitute, Mr. Döring).
Great Britain : Mr. Havelock Wilson (Substitute, Mr. Henson).
Italy : Mr. Giulietti (Substitute, Mr. Giglio).
Japan : Mr. Ken Okasaki (Substitute, Mr. Tsutsumi).
Norway : Mr. Michelsen (Substitute, Mr. Johannessen).

The Commission met on the 21st, 22nd, 24th, 25th and 28th June, and at the conclusion of its labours presented the following Report to the Conference :—

REPORT OF THE COMMISSION ON THE INTERNATIONAL CODE FOR SEAMEN.

This Commission was entrusted by the Genoa Conference with the preliminary consideration of the fourth item of the Agenda of the Genoa Conference. This

item reads as follows: "Consideration of the Possibility of drawing up an International Seamen's Code."

The International Labour Office circulated to all Governments of Members of the International Labour Organisation the following *questionnaire* dealing with this item of the Agenda :—

1. "Do you think it possible to establish a kind of International Code for Seamen ? "

2. "If so, what does your Government consider should be the general principles of an International Maritime Code as regards the conditions of service at sea ?

"In particular, should the seamen's contract of employment be brought into line or not with that obtaining generally in the case of other workers : for instance, for discipline, the right to leave their ship in a foreign port, the payment of wages before discharge, etc. ? "

When this item and this *questionnaire* were approved by the Governing Body of the International Labour Office, the Governing Body considered "the item so vast and bound up with so many other problems that the coming International Conference would hardly be able to deal with it. In spite of this, it deemed it necessary to retain the question in that Agenda for general examination."

A Report on this fourth item of the Agenda, prepared by the International Labour Office, contains the replies of various Governments to the *questionnaire* as well as a collection of extracts from the laws of various countries concerning articles of agreement, manning, and accommodation for seamen aboard ship. This Report has been thoroughly studied by the Commission, and the replies of the various Governments have been very carefully discussed and considered.

In the course of its labours, after two days' general discussion, the Commission found it convenient to set up two Sub-Commissions, between which the work was divided. Each of these Sub-Commissions contained two Government, two shipowners' and two seamen's representatives. Each set itself the task of answering detailed questions which had arisen during the general discussion, and these questions and the conclusions reached by the Sub-Commissions were then considered at length by the plenary Commission, which, with some additions and modifications, agreed that the questions covered the field of the Commission's work and approved the conclusions reached. These conclusions were then formulated by a drafting committee, and as formulated were afterwards adopted by the whole Commission.

Conclusions of the Commission.

The Commission begs, therefore, to submit the following conclusions to the Conference, and it is unanimous in recommending that they should be adopted by the Conference as the result of its consideration of the fourth item of its Agenda.

As the term " seamen " has not the same meaning in the laws of all countries, it would be useful as an introduction to an International Seamen's Code to establish, so far as possible, uniform usage of this word in the laws of all countries.

For the purpose of this Report, the term " seamen ". is used to include every person engaged to serve on board any ship and inscribed on the muster roll, whatever be the function of such person whether a member of

the crew or master of the ship or otherwise employed in connection with the ship's voyage, and whether the ship be public or private, excluding warships. It is recognised by the Commission that persons employed on fishing boats constitute a distinct class, both because they are often owners of their own boats and because they are frequently employed on terms which give them a special interest in the enterprise; and if the term "seamen" is used in law to include them, it must be with recognition of their special position as seamen. In view of the decision of the Conference in its sitting of 16th June, as to the application of the items of the Agenda to fishing vessels, the Commission has made no attempt to determine how far the provision of a seamen's code should cover the special interests of fishermen, but this question has been left to future determination.

For the purpose of this Report the term "seamen's code" is used to mean the "ensemble" of laws and regulations dealing with the condition and position of seamen as such.

In most countries the systematic codification of seamen's law has not been undertaken up to this time, with the result that there is frequently confusion in the minds of seamen, if not also in the minds of shipowners, as to the precise nature of their rights and obligations. The British Merchant Shipping Act of 1894 and the German Seamen's Law of 1902 may in a sense be called national seamen's codes, though the former is more in the nature of a general shipping code. A draft of a seamen's code had also been prepared in France before the war. But these compilations of the laws relating to seamen are not complete, and progress may still

be made even in these countries toward a more complete systematization of seamen's law.

The Commission is convinced that it would greatly facilitate the establishment of an International Seamen's Code in the sense in which that end is approved by this Commission, if each of the maritime countries of the world would advance as far as possible the codification of its own law relating to seamen. The clear and systematic statement of the law of each country in a single compilation would make it much easier for it to be understood in other countries. The uniformity which already exists would be more easily extended if such national codification were effected. The Commission has therefore decided to urge that the Conference shall adopt a Recommendation in this sense, and a draft of such a Recommendation is appended to this Report.

The Commission has experienced some difficulty in defining what is meant by an International Seamen's Code. It has decided that the term shall be used in this Report to mean a collection of the laws and regulations dealing with the condition and position of seamen as such, which it may be possible for the various maritime countries of the world to adopt as a common and uniform body of international seamen's law. The content of such an International Code has not been and could not be determined with precision by this Commission. Indeed, the establishment of such a code must mean a labour of years.

The Commission has made a survey of the present situation for the purpose of determining whether any such general code or such special codes now exist. In times past, the seafaring world has known the existence

of a single body of law common to numerous maritime countries. The Rhodian law and the Laws of Oleron and of Wisby are striking instances of International Seamen's Codes which in their time served useful ends.

The " Consolato del Mare " served the Mediterranean countries during several centuries as a sort of international code of maritime law. And in this connection it is fitting that this Conference assembled in Genoa should pay its tribute to the commentaries on the " Consolato del Mare " by a famous Genovese citizen in the early part of the eighteenth century, Giuseppe Maria Casaregi (1670–1737). The debt owed to him by modern civilisation is itself an indication of the possibilities of international codification.

If the modern growth of nationalism has tended to the creation of separate national maritime laws, there are not lacking signs that in recent years appreciation has become more general of the unity of the seafaring world as an international community. The Conference which assembled in London in 1913 and 1914, and which elaborated an International Convention for the safety of life of both seamen and passengers at sea, is an instance of this. Mention may also be made of the conventions concerning several specific divisions of sea law, which have from time to time been drawn up by the International Committee for the Unification of Maritime Law, and some of which have already found acceptance in the law of numerous maritime countries.

The Commission has fortunately included among its members certain representatives of the Scandinavian countries, and it is indebted to those gentlemen for an account of the Inter-Scandinavian Maritime Law of 1893. Denmark, Norway and Sweden have found it

possible since that date to maintain a common shipping law, and the fact that a common law exists has been of great benefit to Scandinavian shipowners and seamen. At the present time representatives of these countries and representatives of Finland are working on a commission which has been entrusted with its revision.

The Commission therefore feels it unnecessary to labour an argument that it is possible to establish an International Seamen's Code, in the sense in which that term is used in this Report. It is convinced that if this possibility is acted upon and an International Code is established through the medium of the International Labour Organisation, it is only the willingness of the Maritime States which are Members of the Organisation to adopt and enforce its provisions, which will condition its success.

The argument has been heard during the meeting of the Genoa Conference, that the codification of sea law on an international scale would be most dangerous ; that it would mean the perpetuation of many obsolete provisions in existing law ; and that if such codification were successfully attempted, it would make it more difficult in the future to liberalise existing law and to adopt it to changing conceptions of social justice. The Commission has felt it its duty to examine this argument earnestly and thoroughly ; and as a result of such examination, it has been convinced that such dangers are not serious, if indeed they exist at all. Certainly there can be no danger in codifying and uniformising the law which is already somewhat uniform in various countries. And if it should prove to be unwise to proceed except in rare instances with the codification of the law on very contentious subjects, the

demonstration of this fact will from time to time enable the advocates of further codification to escape such dangers.

The Commission would point out that any international code should be framed in elastic terms, and that if its content cannot ever be a maximum of the legal regulation existing in any one country, it should nevertheless be the maximum of the regulations common to numerous countries. It must also be noted that in the Draft Convention adopted at the Washington Conference a very salutary principle was introduced in the Articles requiring periodical consideration of the necessity for revision. This principle should find a permanent place in the seamen's legislation attempted through the medium of the International Labour Organisation; and in the opinion of this Commission it affords sufficient assurance against the possibility that law which may have become common to various countries would be more difficult to change in any one country.

Nor does experience in the Scandinavian countries, which already have a common maritime law, justify serious fear. The Scandinavian Code has already been modified by the Convention on assistance at sea, signed in Brussels in 1911, and further modifications may result from the work of the revision committee which is now sitting. On the whole, therefore, although the Commission has attempted to survey without previous commitment the possible dangers attending codification of sea law on an international scale, it has been convinced that these dangers are slight, if not non-existent, and are greatly outweighed by advantages which may accrue.

Of the possible advantages which may be expected from the establishment of an International Seamen's

Code, as envisaged in this Report, the Commission would direct especial attention upon two outstanding points. Unlike workers in many other fields, seamen must often do their work in several countries, in each of which it may be necessary for them to know something of the law as to their relations with their employers and their fellows. Even when not in other countries, much of the seamen's work must be done on the world's highway, far removed from the usual reach of public authorities. Moreover, on the ships of most countries the seamen are frequently of many nationalities. It is not unusual that the seamen on a ship neither speak the language of the ship's country, nor understand its laws. Seamen form what is, indeed, an international community, and as such they have many relations on which it would greatly redound to their advantage to have applied to them a uniform law, whatever flag be flown by the vessel on which they ship. Such a uniform law can be secured only through common international action.

Another advantage is quite as obvious and quite as important. With commercial competition between the merchant fleets of various countries as keen as it was in the days before the war and as it promises to be in the years to come, there are certain fields in which various States find it difficult to adopt any new legislation because of its possible reaction to the advantage of the merchant fleet of a competing country. If, for instance, one State attempts by legislation to secure the improvement of seamen's living accommodation, it may find itself at a disadvantage *vis-à-vis* another State which fails or refuses to make a similar change in its laws. Commerce tends to apportion itself among States in

accordance with the advantages and disadvantages in existing legislation, and the balance which is thus struck at any one time is frequently a very delicate and precarious one which any change in legislation may upset.

Progress in national law may therefore depend to a large extent upon the possibility of common international action in a particular legislative field, and without such international action the progress which is possible may be precluded altogether.

An historic example of this necessity for common international action is furnished by the Plimsoll law enacted in England in 1894.

It was contended that the limit placed by this law on the load-line for British ships, was to the disadvantage of British shipowners in competition with those of other countries. The effect of this legislation and the history of its administration furnish convincing proof that standards which are thought desirable in one country cannot sometimes be attained, unless other countries proceed simultaneously to adopt the same standards.

Without attempting to enumerate other advantages which may be expected from an International Seamen's Code, the Commission is convinced that in the circumstances of the modern industrial and commercial world, the codification of sea-law, in certain fields at least, has become not only a commercial necessity, but also the *sine quâ non* for the application to workers at sea of standards already attained and commonly accepted for workers on land. In these fields, the alternatives are international action, or slow and tardy progress.

The Commission has not attempted to lay down in detail the general principles which should find expression

in such an International Seamen's Code, and it is convinced that for the most part the establishment of these principles must await more thorough investigation. It seems clear, however, that any codification to be attempted should at first be in those fields where a measure of uniformity already exists in the laws of various countries. There are certain respects, principally concerning the formal relations existing between the seaman and his employer, in which the laws of many countries have long followed the same general course. Just as national codification has been most successful when preceded by a large degree of maturity in the laws codified, so it will perhaps prove that in international codification the readiest fields are those in which uniformity now exists. But codification must also meet the need for international action in those fields where national action is impossible or difficult without it, and if the framing of generally acceptable legislation in such fields may call for more thorough investigation and more extensive adjustment of principles and policies, it should nevertheless prove quite as indispensable and quite as successful.

Whether an International Seamen's Code should be a complete body of law concerning seamen, or whether it would be more useful to elaborate special codes for particular fields of seamen's law, the Commission has not attempted to decide.

It has been convinced, however, that there are certain subjects which now offer promising fields for further investigation and possible codification. It has selected five of these fields in which it believes that immediate work should be undertaken, as follows :—

(1) Articles of agreement ;

(2) Accommodation for seamen on board vessels ;
(3) Discipline ;
(4) Settlement of disputes between individual seamen and their employers ;
(5) Social and industrial insurance for seamen, and possible arrangements for international reciprocity in this field.

The other items of the Agenda of the Genoa Conference have not been considered by the Commission in this connection, but if it should prove possible for the Genoa Conference to adopt Draft Conventions concerning hours of labour and unemployment and the minimum age of employment, and if such Draft Conventions should be ratified by a considerable number of the maritime States, they would constitute an important body of international legislation which might be described not improperly as a sort of special international code.

In its consideration of the possibility of establishing an International Seamen's Code, and of the lines along which endeavour promises to be most fruitful to this end, the Commission has not attempted to determine specifically what should be the content of an international code or codes. Indeed it has throughout its work assumed that no codification should be attempted without the most thorough investigation and exchange of views. Many years were spent in the formulation of the Code Napoleon in France ; twenty years' preparation preceded the adoption of the German Civil Code in 1896 ; and the more recent Japanese and Swiss Codes were similarly preceded by labour extending over long periods. It need not be discouraging, therefore, if the

Commission has concluded that the work of establishing a less extensive International Seamen's Code will necessarily be a labour of months or years.

But a beginning can be made at once. To this end the Commission has adopted a suggestion made by the representative of the Japanese Government and proposes that the Conference should adopt the following procedure. The International Labour Office should be requested to undertake the task of collecting the laws of various countries, and of making them available in convenient form to interested persons in all other countries, of tabulating and digesting these laws, and reporting to the various Governments on the state of the existing laws in each country and the uniformity which already exists among them, of preparing a complete *questionnaire* concerning the fields suggested in this Report as promising fields for codification, of sending this *questionnaire* to each Member of the Labour Organisation, of making available to all the Governments the answers to this *questionnaire*, as well as other relevant data which it is able to collect, and of studying in the light of its investigations the possibility of new international legislation along the general lines laid down in this Report.

For this work the International Labour Office should have the collaboration of competent jurists, as well as of persons experienced in the administration of maritime laws, and should consult with organisations of shipowners and seamen. It is further the opinion of the Commission that, if possible, report should be made by the International Labour Office concerning the progress of this work not later than the 1921 meeting of the International Labour Conference. The prelimi-

nary part of the work, the collection and digest of the laws and their distribution, should at all events be completed within one year of the adjournment of the Genoa Conference. At the earliest date possible, the Governing Body of the International Labour Office should place on the Agenda of the International Labour Conference the proper subjects which will enable this work to culminate in Draft Conventions or Recommendations to be made to the various Governments.

Finally, for the purpose of carrying out the recommendations of this Report, the Commission proposes to the Conference the adoption of—

(A) A Resolution to be voted by the Conference, approving the course of action suggested in this Report, and giving to the International Labour Office the necessary instructions for its execution ; and

(B) A formal Recommendation, urging upon Members of the International Labour Organisation the desirability of advancing the codification of the national seamen's law in each country.

A. *Resolution proposed for adoption by the Conference.*

The International Labour Conference approves the conclusions placed before it in this Report on the possibility of drawing up an International Seamen's Code, and affirms the possibility and necessity of such a code : and with a view to the better protection of the interests of the seamen and the shipowners, as well as of the public, in matters affecting the international seafaring community, the Conference requests that the International Labour Office shall proceed with the

least delay possible to make the investigations necessary for establishing an International Seamen's Code along the lines laid down in the Report of this Commission. At the same time, the Conference expresses the *voeu* that it will prove possible for the Labour Office to make a report on the progress of its work not later than the 1921 meeting of the International Labour Conference, and that it will also prove possible for the Governing Body to place on the Agenda of the International Labour Conference at an early meeting the proper items for a consideration of Draft Conventions or Recommendations which will advance the international codification of seamen's law.

B. *Recommendation proposed for adoption by the Conference.*

The Genoa Conference recommends that each Member of the International Labour Organisation shall undertake the embodiment in a Seamen's Code of all its laws and regulations relating to seamen in their activities as such, in order that, as a result of the clear and systematic codification of the national law in each country, the seamen of the world, whether engaged on ships of their own or foreign countries, may have a better comprehension of their rights and obligations, and in order that the task of establishing an International Seamen's Code may be advanced and facilitated.

(Signed) PIERRARD,
Reporter.

ADDITIONAL REPORT BY THE MINORITY.

Without detracting in any way from the Majority Report of the Commission as it has been agreed, a minority of four members of the Commission wish to go further with respect to a resolution presented to the Commission by the Norwegian seamen's delegate. The text of this resolution is appended to this Minority Report.

A majority of the Commission considered that the resolution covered matters which went beyond the competence of the Commission, inasmuch as it would deal not with the possibility of establishing an International Code or the methods to be followed in its establishment, but rather with the content of such a code when established. A majority of the Commission therefore hold the opinion that in recommending a special study of "articles of agreement" and "discipline" with a view to possible codification in these two fields, the Commission had gone as far as it was desirable or proper to go. They were therefore unwilling to deal with the Norwegian resolution, which would constitute an expression of opinion on the direction that codification in these two fields should take. They contented themselves with requesting that the Norwegian motion should be presented by the Norwegians to the International Labour Office, in connection with its work on an International Seamen's Code.

A minority of the Commission, on the other hand, were of the opinion that the resolution should have been sent by the Commission to the Conference with the suggestion that the Conference should request the International Labour Office to consider it in connection with the work of an International Seamen's

Code. If this course is taken by the Conference, it will mean that the Conference desires that the principles embodied in the resolution should be made the subject of further investigation.

A minority of the Commission now requests that the resolution as presented by the Norwegian seamen's delegate be considered by the General Conference, and it recommends that the General Conference should express its interest in the resolution and direct the International Labour Office to consider the inclusion of its principles in any draft of an International Seamen's Code which may be prepared.

Norwegian Resolution.

Whereas: The International Labour Office Report on the Seamen's Code exposes two vital and important facts, first, that in all countries represented at this Conference the seaman's status is little better than that of the serf, and second, that none of these countries seem to be prepared, at this Conference, to change this ancient status; and

Whereas: The information furnished by the different countries indicates that the contract of the seaman is in a moral sense no contract, because neither the obligations nor the penalties for its violation are the same upon the two contracting parties—the penalty upon the shipowner being one of regulated damages, the penalty upon the seaman one of compulsion to continue to labour against his will, or, penal servitude the duration of which is likewise regulated by law, and

Whereas: Such great inequality before the law cannot be tolerated in a world that has been "made safe for democracy;" therefore be it

Resolved that this Commission recommend to the various Governments that seamen be placed upon the same legal level as shipowners, through the repeal of all laws and the abrogation of all treaties under which the seaman may be compelled to labour against his will when the vessel is in safety, or suffer incarceration for refusing to fulfil a civil contract to labour.

(Signed) Oscar Nilsen.
(Signed) Hj. Johannessen.
(Signed) H. Michelsen.

Genoa, 27th June, 1920.

CHAPTER III.

DEBATES AND DECISIONS OF THE CONFERENCE.

The Report of the Commission came before the Conference on the 30th June. In the discussion which ensued on the Draft Resolution put forward in the Report, several delegates emphasized the desirability of establishing an exact definition of the word "seamen," while one delegate expressed the view, which however was not generally shared, that the Commission should have laid down definite principles for the preparation of the code. The following extracts from the proceedings of the Conference indicate the main points of the discussion.

Dr. COLMO, *Argentine Government Delegate*, speaking in French and interpreted in the Conference as follows :—

"I fully recognise the conscientiousness of this Commission's labours and I fully recognise its skill and competence. I feel sure that in its opinion this Report is fully worthy of your acceptance. But I wish to ask whether the Conference considers that it has accomplished its task. It was asked the results of its labours, and it now asks the International Labour Office to prepare proposals for a seamen's code. It therefore recognises the possibility of such a code, but, in my opinion, it should submit to us the preparation of this code. In my opinion the Office is an executive office for the Conference, and this Commission should have

submitted to us the proposal instead of placing the task on the International Labour Office.

" When I look at the subjects which it says should form part of such a code, I notice that they comprise points which are already the subject of discussion in other Commissions of this Conference. For instance articles of agreement, and unemployment. The Conference is asked to pronounce on the advisability of admitting these points into a seamen's code now, and then it will have to pronounce another vote later on, when these subjects are discussed on the report of the other Commissions. In my view each Government has already been asked its opinion in the *questionnaire* which was sent out to the various Governments some months ago, and the Governments have replied to that *questionnaire*, and their replies are embodied in the pamphlet which has been circulated. Why, therefore, has the Commission not based its studies on this pamphlet which has been placed in the hands of each of us, and why has it not been able to prepare a code for us on the basis of this pamphlet ? Has it done so ? I do not think so. I therefore suggest that the Commission has not exactly accomplished the task which was set before it."

MR. DE ROUSIERS, *French Shipowners' Delegate, member of the Commission*, speaking in French and interpreted in the Conference as follows :—

" I know I am searching for difficulties, but still I ask, in view of the French definition, is a dock labourer, a man engaged in loading the cargo, a seaman ? He is surely engaged ' aux fins du voyage.' Similarly a man employed on the quay-side is engaged ' aux fins du

voyage.' But is he a seaman? Certainly not. The question of discipline which has got to enter into the Seamen's Code cannot possibly apply to dock labourers. I therefore propose an alteration in the French text. The English text is clearer and there is no need to alter it, but in the French text I propose words to this effect :—' A seaman is any person engaged in the service of a ship and inscribed on the muster roll.' The English text to my mind is clearer. It says : ' Anyone who is engaged to serve on board any ship.' ' To serve,' that is to say a member of the crew. I therefore ask the Commission to make this improvement in its definition of the term ' seamen ' as far as the French text is concerned."

Monseigneur NOLENS, *Netherlands Government Delegate, member of the Commission*, speaking in French and interpreted in the Conference as follows :—

" Even the definition of Mr. de Rousiers does not seem to me quite right. If we speak of all the persons engaged on board for the voyage, is this to include men who are engaged in navigation on a small river ?

" Now, to turn to the objection of the delegate from the Argentine, I think he was expecting too much from the Commission. The Commission was composed of many delegates who sent substitutes to this Commission, and now the delegate from the Argentine demands that this Commission should have produced a code in three days. . . . I am content with the proposal of the Commission, especially as regards the second part. The first part, I know, is the task of the International Labour Office, and I am sure it will be well done. As regards the second part, the codification in each country,

I am in favour of this. My own country has had such a work in hand for many years, but it is manifestly impossible to put into a small pamphlet an immense work like the Codes of Justinian or the Napoleonic Code. We must consider the work with which the Parliaments of all countries are burdened. . . . It is easy to say to a country, 'Codify your laws,' but I think we must give them time. We must not hurry them. I agree with the proposal of the Commission."

MR. HANSEN, *Norwegian Government Delegate, member of the Commission :—*

"I propose that instead of as here is stated, 'in connection with the voyage' should be put in 'during the voyage.' That will prevent the inclusion of men that are engaged just for work on board the ship while in the harbour, and not intended to follow the ship."

MR. KYRIAKIDES, *Greek Shipowners' Delegate :—*

"According to the term which is placed before us, certainly it comprises everyone on board of a steamer who is sufficiently equipped in order to effect a certain voyage from one place to another place. Therefore, all those in port who are used in order to effect a voyage, from the captain down to the lowest man are seamen. A steward is a seaman. A ship-chandler who is related to the steamer is not a seaman. A repairer is not a seaman. A steamship agent is not a seaman. But only those on board who are absolutely necessary to contribute in order to complete a voyage."

THE PRESIDENT OF THE CONFERENCE, speaking in French and interpreted in the Conference as follows :—

" The meeting is not called upon to give a final definition of the word ' seaman.' It is called upon to approve of certain principles laid down in the proposal here and the general discussion will be useful to the persons who have to finally edit that text. . . . That will be done by the Drafting Committee when the principles embodied in these resolutions are being considered, if they are accepted by the meeting."

MR. HENSON, *British Seamen's Delegate, substitute for Mr. Havelock Wilson on the Commission :—*

" It is for men who are learned in the law to define what is a seaman. The British mercantile law or the Merchant Shipping Act, like other countries, I dare say, defines a ' seaman ' as everyone who is serving on board of a ship excepting the master and the apprentices. We have gone a little farther than that in what we consider should be the definition of a ' seaman.'

" But I would point out that it would not affect in any shape or form men who were serving on small ships, in small waters, because we say here ' to include every person engaged to serve on board any ship in connection with its voyage.' Before a man can become a seaman he must first of all sign an agreement and that agreement defines the extent of the voyage and his obligations, and in the majority of cases refers to inland waters, except on the American coast, where they do not sign agreements in any shape or form. We are simply giving our definition for the consideration of the men of all

nations who know really what a seaman is according to the legal definition."

MR. PIERRARD, *Belgian Government Delegate, Reporter to the Commission*, speaking in French and interpreted in the Conference as follows :—

"I agree with Mr. de Rousiers and accept his slight modification of the definition in the French 'engaged to serve on board a ship and inscribed on the muster roll of the crew.' I accept this and in fact proposed it myself in the Commission. I accept it of course provided the Conference agrees to it. I cannot admit the Norwegian proposal of 'during the voyage.' This was considered by the Commission and it was pointed out that by excepting those sailors in port, a very large number of sailors would be excluded. I agree with what Mr. Henson and the President have said, that the real definition should be the work of jurists, and that all the Commission can do is to give indications and suggestions as to the lines which should be followed."

MR. GUTHRIE, *Australian Government Delegate* :—

"There is no international code here. There is nothing to guide our people. There are two things I wish to point out :—

"(1) That the seaman now has got to sign articles for a term of three years or more, it may be five, because it is until his return to his home country.

"(2) That the seaman to-day is liable to the criminal law for a breach of his agreement, whereas the shipowner on the other hand is only liable to a civil action."

MR. DELL'ORO MAINI, *Argentine Shipowners' Delegate*, addressed the following declaration to the President of the Conference after the acceptance of the Draft Recommendation :—

" 1*st July*, 1920.

" SIR,

" I have the honour of addressing you with the object of making known the ideas of the Argentine shipowners, whom I represent, in regard to the question of the international code for seamen. I would have explained these ideas by word of mouth yesterday, having been put down to speak, but the delegates who wished to speak on the substance of the question were not allowed to do so before the vote on the Draft Recommendation.

" I take the liberty, Sir, of respectfully protesting on this point.

" Although the principal question is already, in a sense, decided, I desire to express for every purpose which may be useful in my official capacity my most categorical adhesion to the idea—likewise expounded by the Delegate of the Argentine Government, Dr. Colmo—of establishing before the international code for seamen, the fundamental principles which should serve as a basis for it, and which should, in the first place and as a preliminary, inspire the action of the legislative powers of the Members of the League of Nations.

" The amelioration of the conditions of the work of seamen as of all the other workers of the world, and tranquillity in industrial relations depend not only on hours of work and wages ; they are closely bound up with fundamental principles of another order for the conquest and maintenance of which we are witnessing, in many countries, long and painful conflicts.

" I adduce as a proof the experience of my own country in which the 8-hour day is already established by custom and by the consent of the shipowners themselves, and in which the right to high wages is not disputed, but in which there exist profound misunderstandings based on principles which people affect to ignore and which disturb that harmony between the parties which is an interest of all of us.

" The Argentine Republic, like other American countries which are perhaps little known as regards their social conditions, offers in this respect an interesting lesson by virtue of the breadth of its social and political conceptions resulting from its character as a new country, open by the effect of the most liberal laws to all the reputable workers of the world. Inspired by this spirit, the Argentine shipowners have come to this Conference animated, not by the desire to arrive at solutions in the form of reciprocal concessions, but, on the contrary, for the mutual and broad recognition of rights while accomplishing their respective duties. Now, there is one indispensable condition for reaching this amelioration of the maritime working class, and that is, to establish an agreement not only on material conditions, the importance of which I appreciate, but particularly at the present moment on social principles which are concerned with the actual organisation of labour. Without these principles, peace cannot exist in the relations between capital and labour, and if peace does not exist, the resolutions of international conferences will lose a great part of their efficacy.

" On the other hand, to make Recommendations to States with a view of establishing a system of international maritime law without laying down these funda-

mental principles is, it seems to me, to renounce the task of establishing a real code and to be satisfied with a simple compilation of no great social value.

" I wish, however, to keep within the limits of the Resolution which has been passed, and I take the liberty of affirming that the national codes of seamen should be established on uniform international principles, classified in the manner adopted by the Commission, and in this sense I think that the International Labour Office might, in conformity with the Resolution adopted, proceed to prepare a system of general principles to be submitted to the consideration of the next Conference and which would allow of the adoption later on of a complete international code.

" As regards the principles of articles of agreement and discipline, the Argentine shipowners maintain the principle of absolute juridical equality in the sense of freedom of contract and equality of sanction for the parties who do not fulfil their engagements.

" They think, moreover, that this contract is not assimilable to those of other industries either from the point of view of the employers or from the point of view of the workers, inasmuch as navigation is a public service, national and international, which gives a special character to the contract. The Argentine Government admitted this conception in the Decree of the 21st March, 1918.

" Such is the opinion of the Argentine shipowners which possesses not only a theoretical but a practical interest in view of the fact that the Argentine ports constitute the object of the undertakings and of the workers of the whole world."

* * * * * *

The Draft Resolution was put to the vote and adopted by 50 votes to 2.

In the lengthy discussion which ensued on the Recommendation and the Minority Report, various delegates emphasized the importance of including in the International Code such questions as articles of agreement and discipline, and of placing the relations between shipowners and seamen on the same legal footing as those existing between employers and workers on land.

It was agreed by 56 votes to 7 to pass the Draft Recommendation to the Drafting Committee.

Mr. Pierrard, the Reporter to the Commission, said that the Commission had considered the Norwegian resolution and had decided that it dealt with questions which did not lie within the jurisdiction of the Commission, since it was concerned, not with the question of establishing a code for seamen, but with recommendations as to what that code should contain, a matter in which the Commission had already gone as far as it deemed possible. The resolution had, however, been included in the Report as it represented the views of an important minority in the Commission.

The following extracts from the proceedings of the Conference have been chosen with a view to illustrating the opinions which were expressed by various delegates.

MR. LESLIE, *Australian Government Delegate* :—

"In the Minority Report they go a certain length with the Majority Report, but in the last paragraph of the Minority Report they ask for instructions to be given that the international code should be drawn up by the abrogation of all treaties under which the seamen may be compelled to work. I think it would

be a grievous mistake for this Conference to give any instructions in regard to an international code beyond the codification of all existing laws in the first place. I would hope, therefore, that the Conference will entirely reject the Minority Report."

MONSEIGNEUR NOLENS, *Netherlands Government Delegate, member of the Commission,* speaking in French and interpreted in the Conference as follows :—

" As you know, I hold very objective views, and as it stands now I could not possibly accept the Norwegian resolution in its present drafting, because, as far as Holland is concerned, I could never admit that in this country, which I represent at the Conference, the seaman's status is little better than that of the serf. I do not think that any nations represented here could accept these terms. However, the form is one thing, the draft and the substance is another, and when we come to regard the substance there is no doubt that in this matter we have reminiscences of the old civil code according to which the legislation always dealt with relations between master and servant. It used always to be ' master and servant.' In our regulations, which were passed in 1907, we dropped that, we dropped the term ' master and servant.' We changed all that, but before that date, 1907, the employer and the worker were always referred to as ' master and servant.' In our regulation in Holland, which we passed in 1907, we talked about regular articles of agreement, and we were very explicit and stated in all details what that agreement ought to be. We abolished thereby all prerogatives on the part of the master, the employer, and we agreed that the legal position of both should be the same, that is to

say, from a legal point of view they should be placed on the same footing. Now, to my mind the present relations between shipowner and sailor bear the traces of that old regime. They are too much like the relations of master and servant, and there are too many prerogatives on the part of the employer. Of course I do not wish to compare now the position of employer (or shipowner) and sailors to that of employer and workers on shore, because we know for the purpose of discipline such relations ought to be placed on a different footing. Still, I do not wish to go into details. What I say is that in substance there is something true in what has been put forward by the Norwegian delegation, and that in establishing an international code the matter of the relations between employer and worker should be examined; that in the articles of agreement a limit ought to be put on the prerogatives of a shipowner; that from a disciplinary point of view some steps ought to be taken, but that only just such measure of discipline as was necessary should be granted, and that in order to insure the security of the navigation at sea. As regards the remainder, that is, the relations between shipowners and sailors, I maintain that that should be on the same legal footing as that of employers and workers on shore. In the sailor's world they claim that they ought to be given the same status as those of their fellow-workers on shore, and that articles of agreement embody that principle. I wish to be clearly understood, both by shipowners and by sailors. What I want to say is this, that before nations enact legislation they should think twice; they should judiciously examine the relations between shipowners and sailors, and they ought to put the shipowners and sailors on

the same legal footing, granting, of course, that there must be exceptions from the point of view of discipline, and exceptions necessitated by the safety of the ship at sea. So that I ask you not to reject the Norwegian motion without discussion. I ask you to discuss that Minority Report, and perhaps you may be able to find a formula that will be put right under the eyes of the Government when they come to enact legislation, in order that something may be done to improve the status of the sailor as regards his relations with the shipowner."

MR. HENSON, *British Seamen's Delegate, substitute for Mr. Havelock Wilson on the Commission :—*

" I, personally, would be prepared to go a long way with reference to the Norwegian resolution, but I am not prepared to go all the way. The first point in the resolution states that the seamen's status is little better than that of the serf. I do not agree with that at all. Whilst agreeing that the articles of agreement and the conditions of the seamen are bad, the seamen of all nations can alter that in twenty-four hours if they are combined together. I, Mr. Chairman, would be prepared to agree to a resolution in the latter part of this Commission recommending to the various Governments that seamen be placed upon the same legal level as shipowners, and I do that because I consider that the seaman has never had the same rights as the shipowner, and I will try and illustrate that very shortly.

" A worker on shore at the end of the week receives his wages, and when he has finished his day's work each day, his liberty is his own to do whatever he likes. But in the agreement which the seaman enters into, although he may have completed his day's work and his

ship may be in a safe harbour, part of that agreement is that money and liberty abroad shall be at the master's option.

"That means, Sir, that even though the seaman may have a hundred lire due to him in the port of Genoa, and he wishes to see the beauties of Genoa from end to end, that first of all he has to ask liberty to go on shore, which can be refused by the master of the ship, and he often has to go, cap in hand, to ask for a few shillings. The money of the seaman is retained by the shipowner, and is often doubled and trebled. The seaman also should have the same rights if an action is taken against him for any crime which he may commit on board of a ship, but the seaman very often is taken before a naval court, not composed of his equals, but composed of the masters of ships, and has not even the right that is given under naval law, or under military law, to have a friend here to represent him. If a seaman leaves his ship abroad, he is liable to arrest and imprisonment, but the owner of the ship can leave the seaman behind illegally, and he is not liable to arrest or to imprisonment. . . . We claim that whatever agreement is entered into, it should not be the same as the agreements which are now entered into, extending sometimes for three years; but that the agreement should not be for more than six months or twelve months at the outside; that the agreement should be as between men entering into an agreement; and that whatever penalty lies upon one for the breach of the agreement, that that penalty should also lie upon the other. If that is done, then it will be better for both sides. I cannot fully support the Norwegian resolution, but I could agree with the latter part of it."

MR. DE ROUSIERS, *French Shipowners' Delegate, member of the Commission*, speaking in French and interpreted in the Conference as follows :—

"When I read in the first lines of the Norwegian amendment the reference to a state of slavery, I must say the exaggeration that I saw there prevented me from being very much moved. But on reading on, I saw that there was evidently some misunderstanding existing, not only in the minds of the Norwegian delegation, but in those of some of the other delegates as regards the point whether the owners and the seamen were equal before the law. This impressed me greatly, and I must explain my views, because I think the misunderstanding on this point is causing a certain amount of ill-feeling. I do not profess to be acquainted with all legislations, but I will state what I know with regard to French legislation. Whenever I have represented French shipowners at conferences which discussed the alterations in articles of agreement, or questions of discipline, I know that the shipowners have always agreed that the two parties to the agreement are on equal footing. The penalties, I wish to point out, are the same for both sides, but those penalties can only be imposed by official action.

"Take for instance the case of a desertion of a ship by its crew. The shipowner can apply in civil law and secure the forfeiture of the men's pay. Any other penalty can only be put in force by the action of Government authority. We have in our country also many regulations, the same as Australia has, dealing with all these points. Supposing a ship sails without having complied with the proper regulations as regards quarters for the men, the regulation . . . imposes a fine of from

four hundred to four thousand francs, or imprisonment for a month to one year for every shipowner who is guilty of this. But the prosecution must only be at the instigation of the State. If the man himself wishes to bring a complaint personally he can only secure damages if he brings a civil action. I do not know if this same distinction applies in the laws of all other countries.

" I think, however, we must try and satisfy those members of this Conference who feel their seamen are being harshly treated ; therefore I beg to propose the following amplification of the motion proposed by Mr. Henson :—

" ' Criminal procedure shall only be resorted to with a view to upholding public regulations which govern the articles of agreement of seamen, and shall only be entered upon at the request of officials of the public authorities ; civil procedure only shall protect agreements freely entered into between seamen and the representatives of the ship on which they have embarked.' "

MR. JOHANNESSEN, *substitute for Mr. Nilsen, Norwegian Seamen's Delegate*, one of the signatories of the Norwegian resolution :—

" A resolution like the one we Norwegian seamen's representatives have put before you was adopted in Norway fifteen months ago by a meeting of the several ratings of seamen—representatives and members.

" This resolution was submitted to the Norwegian Government, and the Premier, Mr. Gunnar Knudsen, who is one of Norway's greatest shipowners, said that he could not see any good reason for continuation of the old status under which seamen live and labour.

He said that he hoped to see it abolished before the sitting Parliament adjourned.

" Norway, Denmark and Sweden have now sitting a joint commission whose duty it is to propose to the three countries such changes in the present law as shall bring the law into harmony with modern ideas.

" The foreman of the Norwegian section of the joint commission submitted the resolution to a meeting of the commission in September, 1919. At a later meeting held in Sweden the leader of the Norwegian section again called attention to the resolution and expressed the hope that the principle in the resolution would be made the guiding idea in the framing of the new law.

" On pages 69, 70 and 71 of Report IV, on the Seamen's Code, we find that the Government of France already in 1914, as a result of a Conference between representatives of the Government, the shipowners and the seamen, had submitted a proposal to the French Parliament to the effect that the seamen's status be changed. The proposal is that the seaman may terminate his contract in any safe harbour upon giving notice which, in accordance with the safety of the vessel and the passengers, is from two to twelve hours.

" As bases for our resolution we have taken the reports from the different nations as the reports appear in Report IV. In this Report we find that the seaman (nobody is a seaman until he has signed the shipping articles) who does not render himself on board at the time set, can, if the master so desires, be taken on board by force, with or without police assistance. We find also that if the seaman has deserted or escaped from the vessel (it is only prisoners, serfs and seamen who escape ; others simply quit their work), the master

may cause him to be arrested, brought before a court, and to be sentenced to imprisonment. We find further that these laws do not exist for the protection of seamen as a body, or for the protection of society as such, but for the protection of such shipowners as may desire to use them.

"Well, the seaman's status and the penalties he incurs in seeking to withdraw himself from the service of the vessel are as follows: he is compelled to labour against his will or to suffer imprisonment if he seeks to break or does break his contract to labour; but the master as representative of the owner may cancel the contract at any time or place by paying as civil damages to the seaman from one to three months' wages and he can do this although he can find no legal ground under which the seaman may be dismissed, and if the damages are not paid there is no prison penalty for either the master or the owner of the vessel. I respectfully submit this to the jurists present and ask them if this be equality before the law.

"I ask the representatives of the different nations if these laws are based upon democratic principles, and if it be in this manner that they are going to fulfil the promises which were made to the seaman when he freely gave his life for the world's freedom and to bring food to the hungry during the late world war? We cannot believe that this Conference, which is called for the protection of seamen, can vote against this resolution.

"There will be those who protest strongly against one word in this resolution—the word 'serf.' If you can find another word which gives an accurate definition of the seaman's status, another word may be used; but

I again appeal to the jurists to tell this meeting the legal difference between the man who could not leave his master's estate and the seaman who cannot leave the vessel in a safe harbour ? What is the difference, if there be one, between the penalties imposed upon the disobedient serf or the escaped serf and those imposed upon the seamen who fail to obey in the safe harbour. There are many who seem to think that we seamen cannot understand and feel our status—that we cannot feel the difference in the law as it exists between us and the shipowners. With reference to this point permit me to say that it might have been true many years ago ; but since I have sailed I have often heard men say, ' I have again sold myself,' in place of saying ' I have shipped again.' This I think is a sufficient answer. There are, especially amongst shipowners, men who say, ' Yes, but you do not need to sign the contract if you do not like to.' To this I answer that when Esau came from the hunt and was hungry, and he asked his brother for food, the brother answered, ' Yes, if you will give to me your right as the first-born.' Esau was hungry and the bargain was transacted. Thus did Esau become his brother's serf.

" Finally, I beg to remind you that the evidence of the serf was of no value as against his master unless it was corroborated either through the testimony of others, or through facts which came out during the trial. The evidence of a seaman against the vessel, the shipowner or the master is sometimes about of the same value. We know this from our experience before consuls and courts.

" These laws which compel the seaman to work against his will must be repealed, and the seaman must

be treated as other men when the vessel is safe. Anything less than this will gradually make it impossible to get self-respecting men to serve at sea."

MR. KYRIAKIDES, *Greek Shipowners' Delegate* :—

"I appeal mostly to the delegates of the Governments, not to the delegates of the shipowners, or the seamen, because they know thoroughly well what the position is at present, in all ships with their crews. Many a time, indeed, steamers have been abandoned by their crews in different ports, and were delayed for fifteen or twenty days simply because the crew wanted to go away. Of course I can understand the grievances of the seamen. But what about our grievance ? Is it not a contract binding on both parties, the seamen and the shipowners ? If a Greek shipowner decides to discharge any of his crew he is bound to pay him all his repatriation expenses and four months' wages. If any of the crew wishes to go away at any port—at Buenos Aires, at Las Palmas, at Cape Verde, or any other port in the world—he is free to walk off without anyone hindering him. These, Gentlemen, are words based upon truth, and I can prove this at any time you desire. For this reason I cannot say that this Norwegian resolution is correct. There must be a binding contract in explicit terms and language between the shipowners and the seamen which will guarantee to both sides equal rights and equal justice. For this reason I propose the following resolution, to which I beg you to give due consideration :

"' A contract of engagement should be drawn up with equal judicial rights to employees and employers binding on both parties. On no consideration

should seamen be allowed to abandon ship at any foreign port or ports before the completion of a round voyage, or before the expiration of the period of time for which the seamen are engaged. In the event of owner or owners wishing to discharge any one of the crew at any foreign port, said owner is bound to pay all repatriation expenses and two months' wages, except in cases where the seaman has proved incapable or unfit to perform the work he is engaged for, or proves disobedient. Such an agreement to be inserted in the ship's articles.'

" That, Gentlemen, is the resolution I put before you, and I hope it will be treated in the same spirit as that in which it is put forward. I am a friend of seamen, but in the meantime I am also a friend of the shipowners. I want justice for both sides, and I believe the time has come to solve all these questions."

Mr. GIGLIO, *substitute for Mr. Giulietti, Italian Seamen's Delegate, member of the Commission* :—

" It is a question of fact, and the fact is that juridically and from a legal juridical standpoint, the shipowner and the seamen are not at present on a footing of equality, and that is the reason why I and my English friends supported the resolution introduced by the Norwegian delegate. We support it because we believe the time has come when the seamen and the shipowners should be placed juridically on a footing of perfect equality, and in order to clear up the situation, which

I consider is confused (and efforts have been made to confuse it still further) I introduce the following motion, and this motion would read :—

" ' This Conference, after hearing the conclusion of the minority, emanating from the Commission for the study of an International Seamen's Code, affirms the principle of the most complete equality on juridical and social grounds between the rights of seamen and the rights of ship-owners.' "

MR. ALBERT THOMAS, *Secretary-General to the Conference*, speaking in French and interpreted in the Conference as follows :—

" This matter has been discussed, for instance, in France in 1913. A proposal was laid before the House, containing 120 Articles. Nothing has yet been done with it. I recognise that a war intervened in the meantime, but still this question will have to be settled, and it is one which people will have to go about very carefully.

" I would propose to the meeting to adopt the two resolutions—the one proposed by the French ship-owners' representatives, Mr. de Rousiers, and the motion proposed by Mr. Giglio.

" Mr. de Rousiers' resolution tends to point out that there are in this matter certain considerations that come within what may be called civil contracts. There are also certain considerations that come under the heading of matters of public interest. The recognition of these two facts is not contradictory. There are undoubtedly

points there that counted in the public interest, and all those points have to be taken into consideration. At the same time Mr. Giglio's motion asks for the recognition of equality of rights between seamen and shipowners. That is a point that the assembly also could admit, and the two things do not contradict each other. When you come to look into a great deal of maritime legislation, as it exists to-day, you find that the points treated are practically the relations between the man and the ship, not between the man and the shipowners. I think that those two points will have to be taken into consideration. There will have to be gradual accommodation of the points of public order, public interest, and the points of civil contract between equal parties, and the equality of rights between two classes of people, shipowners and seamen. Those two points will have to be brought gradually into closer relationship, and the solution that is found will have to satisfy both requirements. It would be useless to try to push the question too far. Therefore to try to rush the matter would not be in the interests of the work we have at heart, and I would propose in conclusion that the meeting should adopt those two resolutions—Mr. de Rousiers' resolution and Mr. Giglio's resolution."

As it was obvious that the Norwegian resolution was not acceptable, the Secretary-General suggested that the motions of Mr. de Rousiers and Mr. Giglio should be incorporated in a single text by the Drafting Committee of the Conference.

This was agreed upon by 44 votes to 14, and the following text was submitted to the Conference and adopted on 10th July by 41 votes to 16 :—

REVISED DRAFT TO BE SUBSTITUTED FOR THE NORWEGIAN RESOLUTION CONTAINED IN THE MINORITY REPORT OF THE COMMISSION ON THE INTERNATIONAL SEAMEN'S CODE.

(Text of the Drafting Committee.)

This Conference recognises that the contracts of engagement of seamen in all countries contain two kinds of clauses :—

(i) Clauses of a public character, inserted in the public interest ;

(ii) Clauses of a private character, inserted in the private interests of shipowners or seamen or both.

The Conference affirms the principles :—

(1) That so far as possible the clauses of a public character should be the same in the different countries ;

(2) That in the clauses of a private character, the legal right and duties of seamen and shipowners, *inter se*, arising out of such clauses, should be placed upon a footing of strict equality ;

(3) That violations of provisions in contracts of engagement between seamen and employers should not be dealt with as criminal offences, unless they be violations of the clauses of a public character maintaining public policy as distinguished from private interest, and even then only at the instance of public authorities ;

(4) That violations of provisions in contracts of engagement should be made the subject of procedure in civil courts only where such contracts have been freely entered into on both sides.

The Conference therefore invites the International Labour Office, in its investigations preparing for the establishment of an International Seamen's Code dealing with contracts of engagement and discipline, to keep in view the application of the foregoing principles, and to embody them so far as possible in any drafts of an International Code on either of these subjects which it may place before future meetings of the International Labour Conference.

* * * * * *

The Recommendation proposed by the Commission and approved by the Conference was, in accordance with the Standing Orders of the Conference, submitted to the Drafting Committee and was finally adopted, by 69 votes in favour with three abstentions, in the following form :—

RECOMMENDATION CONCERNING THE ESTABLISHMENT OF NATIONAL SEAMEN'S CODES.

The General Conference of the International Labour Organisation of the League of Nations,

Having been convened at Genoa by the Governing Body of the International Labour Office, on the 15th day of June, 1920, and

Having decided upon the adoption of certain proposals with regard to a " consideration of the possibility of drawing up an International Seamen's Code " which is the fourth item in the Agenda for the Genoa meeting of the Conference, and

Having determined that these proposals shall take the form of a recommendation,

Adopts the following Recommendation, to be submitted to the Members of the International Labour Organisation for consideration with a view to effect being given to it by national legislation or otherwise, in accordance with the Labour Part of the Treaty of Versailles of 28th June, 1919, of the Treaty of St. Germain of 10th September, 1919, of the Treaty of Neuilly of 27th November, 1919, and of the Treaty of the Grand Trianon of 4th June, 1920 :

In order that, as a result of the clear and systematic codification of the national law in each country, the seamen of the world, whether engaged on ships of their own or foreign countries, may have a better comprehension of their rights and obligations, and in order that the task of establishing an International Seamen's Code may be advanced and facilitated, the International Labour Conference recommends that each Member of the International Labour Organisation undertake the embodiment in a seamen's code of all its laws and regulations relating to seamen in their activities as such.

CHAPTER IV.

THE JOINT MARITIME COMMISSION AND THE INTERNATIONAL SEAMEN'S CODE.

The Governing Body of the International Labour Office during its Session in March, 1920, in London, decided on the appointment of a Joint Commission of twelve members comprising five shipowners and five seamen appointed by the Genoa Conference, and two members chosen by the Governing Body of the International Labour Office. This Commission meets when convened by the President of the Governing Body, who presides over its sittings.

The Genoa Conference at its Session of the 9th July, 1920, approved the nominations made by the shipowners' and seamen's groups respectively :—

Shipowners.	Seamen.
Mr. Deckers (Belgium)	Mr. Döring (Germany)
Mr. Hori (Japan)	Mr. Giulietti (Italy)
Mr. Cuthbert Laws (Great Britain)	Mr. Nilsen (Norway)
	Mr. Rivelli (France)
Mr. Nordborg (Sweden)	Mr. Havelock Wilson (Great Britain)
Mr. Robb (Canada)	

The composition of the Commission was completed during the Fifth Session of the Governing Body by the appointment of two of their members, Mr. Robert Pinot, representative of the French employers, and Mr. Oudegeest, representative of the Dutch workers.

The questions bearing on the establishment of an International Maritime Code fall to be dealt with by this

Commission, which held its first session on 8th November, 1920.

A full report on the work which had already been undertaken with a view to the establishment of the code was laid before the Commission by the Director of the International Labour Office. The methods of procedure suggested therein were as follows :—

" 1. *The Scope of an International Seamen's Code.*

" It is certainly a difficult, and, perhaps, an unnecessary task to attempt to define precisely the limitations of a seamen's code within the general body of maritime law. The Report approved by the Conference at Genoa foreshadowed a code dealing specially with the position of the seaman as such. It is clear that the numerous relationships which the seamen has in common with other members of society cannot be covered by the provisions of a code drawn up to deal with his special status as a seaman ; and it seems equally evident, on the other hand, that certain parts of maritime law which affect the seaman only as they affect all persons whose interests are covered by maritime law, do not fall within the purview of a special seamen's code.

" The International Labour Office must, therefore, attempt some general delimitation of the field to be covered by an International Seamen's Code, in order that its work will not overlap that of other organisations which are concerning themselves with the unification and codification of maritime law on an international scale. The general field of maritime law may be divided as follows :—

" (1) Those matters which concern the seaman more especially in his industrial situation as a seaman.

These will be dealt with by the International Labour Office, and it may be assumed that other organisations will not include them in their programmes.

" (2) Certain matters which, although they directly affect the industrial situation of seamen, also directly and vitally affect their interests in the maritime world. It may be assumed that these matters will not be dealt with by other organisations without previous consultation with the International Labour Office and the agencies which are at work on an International Seamen's Code.

" (3) The more general matters in connection with maritime activities which do not specially affect maritime workers. These will naturally fall to the domain of other organisations, with which, however, the International Labour Office may from time to time co-operate in its general endeavour to advance and safeguard the interests of seamen which may be indirectly affected.

" It would be difficult to make a final and complete enumeration of the various matters which fall under these headings. It may serve some purpose, however, to have the following list of the more general subjects which would naturally fall under the first of these headings and would therefore be within the general field which may be covered by the International Labour Office, in its work on an International Seamen's Code :—

" (1) Facilities for finding employment for seamen.

" (2) Articles of agreement and their control by public authorities.

" (3) The obligations of the seaman to the shipowner, and the regulation of work on board ship. (Hours of work, weekly rest, etc.)

" (4) Wages, their mode of payment, suspensions and retentions of wages, seizures and assignment.

" (5) The feeding and accommodation of seamen on board ship, and generally measures concerning the health of seamen.

" (6) Rules relating to safety on board ship.

" (7) Sickness and injuries to seamen.

" (8) Repatriation of seamen discharged in foreign ports.

" (9) The conditions of expiration of articles of agreement, and particularly the right of the seamen to terminate his agreement in certain ports and under certain conditions.

" (10) The rules relating to conciliation and, where necessary, judgments on individual disputes arising between a shipowner or master and a seaman. (Rules as to the competence of tribunals and rules of procedure.)

" (11) Fixing of a minimum age for admission to maritime work.

" (11*a*) Fixing of a minimum age for admission of workers in the engine-room.

" (12) Composition of effectives on board ship, and regulation of the employment of foreign labour on board ship.

" (13) Insurance of seamen against incapacity or sickness, old age insurance or retiring pensions, insurance against unemployment through shipwreck or for other causes.

" (14) The service of inspection of maritime work, charged with the control of the application of conventions, laws and regulations relating to the hygiene and safety of maritime work.

" (15) Discipline on board ship.

" (16) Rules relating to the solution by means of conciliation and arbitration of collective disputes as to maritime work ; establishment of regulations with regard to wages, with uniform determination in all countries of the considerations to be taken into account in the establishment of these regulations.

" (17) The granting of international reciprocity as regards seamen, especially in the matter of the remitting of wages due to foreign seamen, the devolution of the estates of deceased seamen in foreign countries or on board foreign vessels : assistance to seamen in case of sickness, injury, shipwreck, etc.

" These subjects may be made the basis for a number of international conventions. Some of them have already been dealt with by the Genoa Conference, others have been proposed by the Genoa Conference as promising fields for international codification. It would be chimerical to attempt a complete codification on all these subjects, arranged in an absolutely logical order. Nor is such an effort a practical necessity. It is important, however, that within a measurable time the necessary conventions for regulating these matters on an international scale shall be prepared, discussed and, one may hope, adopted. When that task is finished, what is called the International Seamen's Code will be

in existence, and a grouping of the various conventions in the form of a Code will be a matter of little difficulty.

" 2. *Organisation of the Work.*

" The preparatory work necessary for the elaboration of an International Seamen's Code may be outlined as follows :—

" (1) Collection of materials, information and documents ; classification and digesting of materials assembled, and constant completion of them ; distribution of results among Governments and people interested ; correspondence with Governments and with organisations of shipowners and seamen.

" (2) Study and use of materials collected and classified under (1) ; preparation of *questionnaires* for distribution to Governments and organisations of shipowners and seamen ; preparation of drafts and proposals for the International Code.

" (3) Criticism of drafts by competent legal experts, representing points of view of various countries and various interests.

" (4) More general criticisms and checking of work of legal experts by non-legal representatives of interests affected.

" (5) Communication to Ministries of various Governments for opinions of Government officials.

" (6) Final consideration of proposed drafts of an International Code.

" Roughly speaking, the functions described under the first paragraph will be those of the regular staff of the International Labour Office, which has continued

on a smaller scale, the Maritime Section established in connection with the preparations for the Genoa Conference; the functions described under the second paragraph will be those of a legal expert, in the service of the Labour Office, with the collaboration of the Legal Section of the Secretariat of the League of Nations. The functions described under the third paragraph will be given to a committee of jurists, chosen from various countries as specially competent; the functions described under paragraph four will naturally fall to the Joint Maritime Commission, which forms a part of the organisation of the International Labour Office; the fifth paragraph describes the usual practice of the International Labour Office with reference to its drafts; while the functions described under paragraph six are properly those of the International Labour Conference.

" 3. *Scope of the work planned.*

" The Report of the Committee on the International Seamen's Code, as approved by the Genoa Conference, suggests five subjects as being promising fields for immediate codification, as follows:—

" (1) Articles of agreement.
" (2) Accommodation.
" (3) Discipline.
" (4) Settlement of disputes between individual seamen and their employers.
" (5) Social and industrial insurance for seamen, and possible arrangement for international reciprocity in this field.

" It is obviously impossible to attack at once the whole field which will eventually be covered. Logical arrangement and completion are less desirable than sure

and steady progress. The Commission at Genoa recognised this fact in suggesting particular fields in which codification ought to be attempted. The International Labour Conference may thus be called upon to consider from time to time drafts of parts of a general code dealing with particular subjects, just as in Genoa it adopted different Conventions dealing with different subjects. In course of time the body of these Conventions may itself form the International Seamen's Code.

" In collecting documents and material, however, the whole field of seamen's relations must be kept in mind. While our documentation must thoroughly cover specific fields, it must not be limited to them."

After a long discussion the Commission came to the following decisions :—

(1) It approved the general method of procedure proposed therein for the elaboration of the International Seamen's Code.

(2) It asked the International Labour Office to ascertain from the Governments the measures taken or contemplated by them for the establishment of national codes required by the Genoa Conference.

(3) It further instructed the Office to send to the Governments, and also to the national owners' and seamen's organisations, for their observations, a memorandum on the methods adopted for the construction of an international code.

(4) It proposed that as a preliminary measure the drafting of an international code of seamen's articles of agreement should be taken in hand.

CHAPTER V.

CONCLUSION.

In the previous pages have been collected together the documents relating to the proposal for the preparation of the International Seamen's Code and the proposals made by the Joint Maritime Commission.

In accordance with those proposals the following *questionnaire* has been drawn up, and the International Labour Office would be glad to receive the replies of the Governments thereto at the earliest possible date, in order to facilitate the progress of its work.

As, in accordance with the Resolution adopted by the Genoa Conference, the Office is required to present a Report to the next Session of the Conference in October, 1921, the Office would be glad if replies could be furnished before 1st July.

1. What measures have already been taken or are contemplated by your Government for the establishment of the national codes called for by the Recommendation of the Genoa Conference ?

In connection with the formulation of national codes, it is of interest to note that an attempt has already been made in France by a Commission presided over by Mr. Grunebaum-Ballin to assemble in one draft law all existing legislation referring to articles of agreement and all other questions concerning the protection of seamen. The draft is very complete in its scope, nothing comparable having been done in any other country, and the text is therefore given in an Appendix hereto for the assistance of Governments when proceeding to codify their maritime laws in accordance with the Genoa Recommendation.

2. What is the opinion of your Government with regard to the programme of work approved by the Joint Maritime Commission in connection with the elaboration of the International Seamen's Code ?

3. What preliminary suggestions has your Government to make, in connection with the International Seamen's Code, bearing upon seamen's articles of agreement ?

APPENDIX.

(1) DRAFT OF A FRENCH MARITIME CODE (1913–14).

Preliminary Note.

French legislation relative to maritime labour, and the relations between shipowners and seamen at the present time, consists principally of ancient statutes, dating from the seventeenth, eighteenth and even the sixteenth centuries, of twenty or so articles in the Commercial Code promulgated in the reign of Napoleon I, and of the Act of the 17th April, 1907, dealing with the safeguarding of navigation and the regulation of work on board merchant ships.

Five months after the creation of the Under-Secretaryship of State for the Mercantile Marine, Mr. de Monzie, then Deputy and Under-Secretary of State (now Senator), formed a Commission of representatives of shipowners and seamen and of jurists and officials in order to codify and complete this existing legislation. As Chairman, he appointed the President of the Council of the Préfecture of the Seine, Mr. Grunebaum-Ballin, a former member of the Council of State, who in the past had frequently, and particularly in collaboration with Mr. Briand, had occasion to take part in legislative tasks, and to devote himself to the study of questions concerning the conditions of workers.

This Commission completed its task in April, 1914. It had adopted, in the great majority of cases by a unanimous vote, 195 articles of a Draft Code entitled

"Draft Law on Articles of Agreement for Seamen." This draft had to undergo a long examination before being laid before the Chamber of Deputies.

The report of Mr. Grunebaum-Ballin, important extracts from which are reproduced below, constitutes a general commentary on the Draft Law on Articles of Agreement for Seamen, printed in full hereafter. In the first part of this report he expressed himself as follows :—

"Before transforming these provisions into a Bill for submission to Parliament, it was necessary to collect, in one comprehensive enquiry, the advice and opinion of all the parties interested, of all the professional organisations of shipowners and of seamen, of societies devoted to the study of questions regarding labour or maritime legislation, and of the legal experts in maritime law. Reforms of so wide a scope, such numerous and complex texts, could not be promulgated in a moment, as though from the top of some Parliamentary Sinai. They require a prolonged preparation even before they are discussed in the Chamber of Deputies.

"This preparation might have taken the form of applying a method of drawing up laws, which though very modern is already much used. The interested parties are consulted; the remarks and criticisms of the industrial associations and of the jurists and lawyers are collated; Parliament is spared examination of points on which the interested parties and the technical authorities have succeeded in reaching beforehand an almost unanimous agreement; industrial associations and trade unions, as well as technical and scientific bodies, are called to participate, in some measure, in the task of legislation. Such a method of drawing up

laws is without doubt the method of the future, and if there be no trace of it in the constitutional laws, it may be said that it has found its way into the ' unwritten Constitution.'

" This plan of procedure, which is so reasonable for the preparation of national, and yet more necessary for the establishment of international legislation, was not, however, followed in France in regard to the Draft French Maritime Code. The proposed enquiry had not taken place when the war supervened in August, 1914.

" It is to be remarked that in the draft printed below there are a number of articles which constitute codification in the proper sense of the term—that is to say, they reproduce the regulations now in force in France ; many others, however, either contain important innovations or complete the laws and regulations actually in force."

EXTRACT FROM A REPORT

Submitted to the Under-Secretary of State for the Mercantile Marine, concerning the work of the Commission appointed to consider the re-drafting of regulations concerning Seamen's Articles of Agreement (Maritime Labour Code Commission), by Mr. Grunebaum-Ballin (Chairman).

Part II of the draft deals with the main object of a maritime code, viz., legislation concerning articles of agreement. It contains the fundamental provisions which give practical expression to the general principles on which the Commission based its work.

The first thing to be done was to define seamen's articles of agreement, and then to find a formula wide enough to include all persons who might be parties to such articles, either by hiring out their labour or by employing the services of others for pay.

According to Art. 5 of the draft, all persons who employ and pay for the services of others in maritime navigation are shipowners, and are subject, in that capacity, to the law concerning articles of agreement. The following are thus included :—Small owners of fishing boats ; small shipowners engaged in the limited coasting trade or national coasting trade ; more important companies to which a certain number of members belong who are engaged in maritime transport ; the great limited commercial shipping companies, which to a large extent monopolise ocean-going trade and much international coasting trade ; Government Departments such as those of the Customs or the Civil Engineering Department (Ponts et Chaussées), which fit out sea-going vessels and hire seamen for their own requirements ; and private persons who fit out yachts for pleasure cruises, make use of ships for scientific explorations, or for floating hospitals. According to Art. 6 of the draft, all persons of either sex, of whatsoever age or rank, who are employed by shipowners in maritime navigation in return for pay, are deemed to be seamen and are subject in that capacity to the law concerning articles of agreement. The following fall within this category :— Captains, mates, pursers, doctors, engineer officers, stokers, trimmers, deck-hands, cooks, stewards, cabin boys, stewardesses, interpreters, and, finally, wireless telegraphists, the last but by no means the least useful of all the experts whose special knowledge is needed by the ever-growing complexity of modern ships.

Such generalisations as these are particularly useful They simplify matters, and settle many points which are still more or less disputed, as, for instance, the question as to whether certain provisions of the maritime regulations at present in force do or do not apply to the large number of persons who, chiefly on large passenger liners, do work not specifically nautical, and who come under the general denomination of " general service staff."

It was obviously necessary to depart from the limits of the Commercial Code, limits certainly too narrow, so as to include all categories of maritime navigation, even such as have no connection with trade. Seamen's articles of agreement have nothing essentially commercial about them, but a wrong conception of them has prevailed owing to commercial courts having been substituted for the old Admiralty courts and maritime law having been included in the

Commercial Code. This wrong conception should now disappear, particularly in view of the important change in juridical competence sanctioned by Part VIII of this draft.

Generalisations and simplifications of this sort, however, must not cause us to lose sight of the distinctions, exceptions and derogations arising out of the application of the principles of a general law to a great number of very diverse and very special conditions. This is a delicate task, and to achieve it it was necessary to formulate without hesitation a very lengthy and detailed series of regulations, which would have to be further completed by various administrative orders. It was likewise necessary clearly to bring out the nature of articles of agreement, to make them once more really homogeneous, or, to employ an expression which politics has brought into use, to unify them.

The division of a contract into two parts, " maritime contract " and " civil contract," by theoretical and practical jurisprudence, is purely artificial, and due to the defects of ancient regulations no longer adequate for present requirements ; and both the distinction and the regulations should be abolished.

For a very long time past agreements between shipowners and seamen have very often been made either for a whole series of voyages, or, in advance, for one voyage periodically repeated, as for example in the deep-sea fishing industry. An agreement concluded for a single voyage, a single expedition or " adventure " as it used to be called in olden days, has ceased to be the one typical method of signing on for seamen, and indeed is tending to become the least usual method.

Since steamers have so largely supplanted sailing vessels, thus revolutionising maritime navigation, the shipping world has undergone a transformation. Large limited companies, very heavily capitalised, have sprung up for the purpose of engaging in the maritime transport industry, and employ very large numbers of persons divided up into different categories and ranks, each with its own hierarchy and rules for promotion. The running of both coasting and ocean-going vessels is now so well organised that maritime transport services, as regards speed, frequency, and regularity, continually tend to become more and more comparable with land transport services. Almost all the great shipping enterprises have permanent

staffs, which include all their officers, drawing fixed salaries, both during a series of voyages and in the intervals when in port. There is, however, a difference between their pay at sea and on land. All these officers can be assigned to any ship according to requirements.

Members of the crew below the rank of officer have not the same privileges, yet often remain for very many years in the service of the same shipowner. Furthermore, the deep-sea fishing contracts customary in certain ports expressly provide that the agreements entered into shall continue during the intervals between voyages, and stipulate for the payment of land wages, different from the wages paid at sea.

Finally, the increased use of machinery, the development of technical knowledge, and the tendency of those with similar occupational interests to form unions has caused far-reaching social, economic and intellectual changes in the seafaring world in general. Remarkably strong trade organisations have come into existence, and are already prepared to put in practice those collective conventions which seem destined to be all-important in regulating the relations between capital and labour in the twentieth century. To strict equality before the law, to the inadequate and somewhat fictitious equality of the rights of individuals, these conventions will add dynamic equality, the complete and genuine equality of economic and social forces.

Written maritime law ignores these very far-reaching changes which have taken place in the customs and practice of agreements. It leaves them absolutely out of account. Seamen's articles of agreement, properly so called, are in principle legally considered as entered into for a single voyage, just as they were when the old Ordinances were established, and as in 1807, when the Commercial Code came into force. Arts. 252, 254, 258 and 265 of this Code refer to seamen hired or engaged by the voyage, as opposed to those hired or engaged either by the month or on condition of sharing in the profits or the freightage. But this merely refers to special terms of payment, viz., a lump sum agreed upon for a voyage. According to these regulations, indeed, which are still in force, no agreement, whatever the form of remuneration, could outlast the voyage, and, generally speaking, a voyage lasts as long as the muster roll, because the Decree of 19th March, 1852, stipulates that there must be a new muster roll

for every voyage. An exception is made in the case of short voyages, and a great many departures have also had to be made from the rule owing to the numerous and contradictory circulars issued, and described by M. Danjon* as a labyrinth in which it is quite easy to get lost. The old conception of the seaman as serving the ship instead of being bound by contract to serve the shipowner prevails everywhere. Hence in jurisprudence, in administrative practice, in phraseology, and in the minds of those concerned, the idea of the duration of articles of agreement and of the muster roll continued to be closely, indeed almost indissolubly, associated.

In fact, as is proved by the circular of 22nd November, 1827, concerning long-term engagements, there was even at the beginning of last century, a confused idea that a form of legal regulation was necessary in which articles of agreement should be distinct from a muster roll, and should be of longer duration. But the system recommended in this circular has never been widely known, and has seldom been acted upon.

In point of fact the Maritime Board (*Administration Maritime*), whose business it is to protect seafarers, does not concern itself with maritime contracts except in so far as they begin and end with the muster roll, or rather the muster roll is the only maritime contract of which the Board takes cognisance. Everything preceding embarkation, and everything subsequent to a disembarkation, lies outside the sphere of its competence, and is of the nature of a civil contract. Thus, by the strangest contradiction between law and practice, we have, in actual fact, permanent relations, often continuing for a great many years, between a shipowner and a seaman, covering a long series of voyages, connected one with another; but in law these relations appear as a succession of embarkations, and of entries on the muster roll, in other words, as a series of breaks in the continuity of the legal bond.

This state of things has had awkward consequences, and a great many practical difficulties have had to be overcome by makeshifts. For seamen the result has been insecurity of employment, moral and material uncertainty, and for shipowners unstable crews and consequently bad working for their shipping services. An attempt

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* *Traité de droit maritime* (Treatise on Maritime Law), Vol. I, p. 423.

was made on two occasions to improve matters, once by the Marseilles Commercial Tribunal, in its verdict of 10th June, 1902, confirmed by decree of the Court of Aix; and once by the Commercial Tribunal of Le Havre, in its verdict of 19th February, 1907. Both endeavoured to make a real and harmonious whole out of a contract, which to-day consists only of disconnected fragments; but from the legal standpoint their arguments were obviously open to criticism, and their efforts failed. The legislator is forced to intervene, so that the permanent and long-standing relations between owners of shipping businesses and maritime workers may be put upon a really solid legal basis. In no other way could employer and employed begin and steadily continue to work together with that trust and loyalty which ought to unite them, and without which the fate of maritime enterprises, whose success means so much to the nation's prosperity, will become every day more uncertain. In no other way will it be possible to make reasonable provision for seamen to have periods of rest, or to take count of the rights which should be conferred on them by seniority of service.

To attain this end, a common-sense truth must be recognised, and it is that as soon as there is an agreement between the parties, the one to hire out his labour and the other to use it, in return for payment, for one of the various kinds of work required for maritime navigation, there should be one and the same contract susceptible of prolongation so long as the contracting parties remain the same, even if the work should be done for several different ships and extend over several voyages. This single contract is not sometimes "civil" and sometimes "maritime," according to the very inappropriate expressions now in vogue. It is at once both civil and maritime. It is entirely maritime because from the moment it is entered into, even should this be a long time before embarkation on any voyage, its sole, or at any rate its main purpose, is service at sea. The intervals spent on land included in the term of a seaman's articles are only secondary considerations. During such periods he seldom does any work for the benefit of the shipowner, by whom, however, he generally continues to be paid, and by whom he can always be called upon. One of the main functions of the maritime authorities is to intervene when maritime workers in general make contracts, so as to ensure their protection, and to

insist that the laws and regulations concerning the offer of their services for hire shall be respected. The maritime authorities ought, therefore, to have a say in the drawing up of seamen's articles of agreement, before they embark upon a voyage ; and they ought to consider such articles quite by themselves, and independently of the muster roll.

These are the new principles embodied in Arts. 4 and 10 of the draft. Ideas so simple and logical would doubtless have been adopted long since had they not been opposed to the established tradition of maritime law. Spain is the only country whose laws explicitly embody them in a noteworthy manner (see the Royal Decree of 18th November, 1909) ; but the laws of most other foreign countries still cling to tradition.

This same contract is also entirely civil because from the first to the last day that it is in force it is subject to the general regulations of the civil law of contracts. Furthermore, it is civil in another sense, in that it no longer resembles a prolongation of service in the navy, as used to be the case when the old system of " classes " still prevailed, and a vessel's crew were considered as naval men temporarily put at the disposal of the mercantile marine.

This the authors of the draft disciplinary and penal code had already realised. Accordingly, basing it upon the German law, the *Seemannsordnung* (Maritime Code) of 2nd June, 1902, they included a clause putting both contracting parties on a footing of absolute equality as regards the conditions under which contracts could be dissolved and especially the time within which notice can be given. The characteristic of maritime labour legislation, therefore, ought to be the equality of the contracting parties before the law. Such equality is the soul of reciprocal contracts, and ensures a just balance being maintained between reciprocal obligations.

On the other hand, according to this disciplinary and penal draft, if a man who has embarked on a vessel as one of her crew afterwards deserts her, he is considered guilty of the offence of " irregularly absenting himself," but not, as he would have been by the Decree of 1852, of " desertion "—a shameful expression destined henceforth to be applied, in military penal legislation, only to a soldier who deserts his post or a seaman who deserts the colours while serving on board one of the Republic's ships.

Seamen's articles of agreement have a great deal in common with contracts at common law for hiring out labour, and with the Land Labour Code. They must, therefore, be divided into three categories, distinguished by their durations, as follows :—

(1) Agreements for a fixed period. This is one of the methods of hiring labour "for a term" alluded to in Art. 20 of the Labour Code, which prohibits perpetual or life contracts.

(2) Agreements for an indeterminate period. In practice this is a very common type in the mercantile marine, and it is identical with agreements regulated by the very important prescriptions of Art. 23 of the Labour Code (formerly Art. 1780 of the Civil Code) and by Arts. 26 and 27 of this Code.

(3) Agreements for the duration of a voyage, which exactly corresponds to the agreements for "a specific undertaking" of land legislation (Art. 20 of the Labour Code). This is the old form of articles of agreement, one which no longer excludes every other, and which in the legislation of the future will rightly continue to occupy an important position. It is on this three-fold division that this draft is based.

Seamen's articles of agreement, therefore, are a civil contract concerning the hiring out of services and governed by the same general principles as labour contracts in land occupations. But it is none the less on that account an altogether special type of labour contract, and in making laws affecting it this must never be forgotten. The aim of those who have drafted the law concerning seamen's articles of agreement may, in short, be defined as follows : as far as possible to reconcile the general rules to which the workers are legally subject, as conceived and defined by modern law, with the many special regulations which cannot be abolished on account of long-standing tradition and the immutable necessities of maritime navigation.

It has often been said and in terms so appropriate that we cannot but refer to them again here,* that there is not merely an agreement

* Ministerial Circular of 2nd May, 1884 ; Atthalin, *Rapport sur le projet de code disciplinaire et pénal* (Report on the Draft of a Disciplinary and Penal Code), pp. 25–27 ; Ripert, *Traité de droit maritime* (Treatise on Maritime Law), pp. 373–375.

on board the vessel herself between the captain as representing the employer and the seamen employed by him; but all those subject to the risks of navigation are genuinely associated together, so as to form a separate community, or a State in miniature. This little community, an institution which has its true basis in "public law," has a head, the captain, who is invested with the powers of policing and commanding the ship, and who ought to have the power of resorting to coercion. It is under severe discipline, entailing many disciplinary and penal sanctions, and comparable to, if not identical with, military discipline. An agreement at private law becomes in a sense twofold, directly it takes effect and is carried out upon a vessel about to put to sea, by becoming connected with public law. By the conditions of the agreement to which he adheres, a seaman enters into a contract binding him to the shipowner. By the drawing up of the muster roll in which his name appears, he joins the ship's community and submits to its laws, agreeing beforehand, in case he should infringe them, to submit to the repressive measures intended to ensure respect for such laws. The seaman is now one of the shipowner's hands, and, as M. Ripert has very properly remarked, he also becomes a *functionary* of the ship, as soon as the muster roll has been closed.

This juxtaposition of the bilateral contract for the hiring out of services and of that hierarchical State in miniature which a ship's community forms, makes several points clear. Thus, it shows why a mere civil sanction—that of damages, the only one allowed by common law (as witness Art. 1142 of the Civil Code)—does not answer here; and why the law of contract affecting seamen's articles of agreement is not in itself enough, and must necessarily be completed by the regulations of a disciplinary and penal code. It also explains certain prescriptions of the draft which fundamentally differentiate between the status of a seaman on board a vessel and that of a workman on land. Thus Art. 21, para. 3, forbids a seaman, even when not on duty, to leave his ship without permission; Art. 30 (Art. 26 of the Act of 17th April, 1907) forbids a seaman to refuse his services when the ship is at sea, and this no matter how long hours he may be required to work; while Art. 133 abolishes his right to cancel his articles while he is serving at sea.

We see, therefore, how closely articles of agreement are connected with necessities of a public nature. In the laws relating to a labour contract of such a special kind, private and public law are inextricably blended, as indeed they have tended to blend in maritime legislation for centuries past. Maritime law, in fact, so far from being out of date and superannuated, is in many respects in advance of its time, and affords numerous instances of those mutual incursions of private law and public law into each other's domains, which are perhaps the characteristic of the trend of legal evolution to-day.

It is of very great importance for the maintenance of public order that seamen should fulfil the duties they have undertaken, both towards the shipowner and towards the whole crew. No less important is it that seafaring people in general should be protected and their rights defended, and in each case traditions of equally long standing are involved. It is not very long since State intervention has predominated in general labour legislation, but in maritime labour regulations it is no new thing. Now, the Decree of 4th March, 1852, declared that old regulations concerning the hiring of ships' crews and concerning their pay came within the category of matters of a public nature, and therefore could not be abolished by any convention to the contrary. In so doing it merely gave further sanction to a principle which had long been admitted, and by which the authors of this present draft have constantly been inspired. Out of the 195 Articles of the draft hardly more than 20 lay down, with regard to articles of agreement, stipulations interpreting the presumed wishes of the parties, and susceptible of being set aside directly the joint intentions of the contracting parties are expressed to the contrary. All the other Articles contain imperative prescriptions to which the parties must conform, whether they will or no, and which are considered to be of a public nature, within the meaning of Art. 6 of the Civil Code, because no agreement to the contrary can prevail against them. (See Art. 192 of the draft.) Thus in seamen's articles of agreement the public element, that is to say, what is according to law or regulation, always predominates over what is merely private or contractual. The maritime authorities, representing the public in general, ought therefore to witness and even share in the drawing up of a contract

based on the joint wishes of individuals. In laying down the rules contained in Arts. 10–16, the draft, far from innovating, completes and perfects the work begun by the Edict of July, 1720, the Ordinance of 31st October, 1784, and Art. 250 of the Commercial Code.

Going beyond Art. 250, it declares null and void every kind of maritime agreement except such as have been made in writing before the accredited representative of the maritime authorities. This official, therefore, more than ever acts as a notary with regard to articles of agreement. Thus once and for all an end is put to the controversies of writers and the dubitations of jurists concerning the legal value and conclusive force of agreements which have nothing to do with the muster roll mentioned in Art. 250 of the Commercial Code.

Furthermore, following in the footsteps of the maritime laws of England, Germany and Italy, the points on which the parties are bound to be explicit and which they are compelled to include in the clauses of the agreement, are clearly defined (Arts. 10 and 11). In order to guard against any lack of forethought of the parties the law outlines this agreement, which partakes almost equally of the nature of a public and a private contract, and prescribes its main features.

Should an attempt be made to insert stipulations contrary to regulations declared to be of a public nature, this could be guarded against by the procedure defined in Arts. 16 and 182. Nevertheless the authorities are not themselves allowed to proceed to settle questions, often very delicate indeed, for which judicial intervention is indispensable.

Several passages inserted in Chapter I of Part III and dealing with the duties of seamen towards shipowners are new, and there is no precedent for them in our existing maritime law. In legislation concerning articles of agreement it is well that the obligations of both parties alike should be clearly defined and compared, so as to counterbalance each other. Each of the contracting parties is thus enabled to know what are his duties as clearly as what are his rights; and, when confronted with his own obligations, he can see how they justify and guarantee the obligations which he can insist upon being fulfilled by his partner in the contract. This is what

has been done by the Civil Code for those who hire or lease things (inanimate objects), but it omitted to do as much for persons hiring out their services—that is, for labour contracts—and nothing has ever quite atoned for this omission. Even in political and constitutional law, the idea of some such twofold statement has occurred —a statement of rights on the one hand and an enumeration of duties on the other. Thus an illustrious member of the Constituent Assembly, the Abbé Grégoire, proposed to decree that the rights and the duties of citizens should be enacted simultaneously.

Now, as soon as the muster roll is made up, and as soon as it begins to take effect on board a ship, seamen's articles of agreement are completed and reinforced because the crew now constitutes a society, with penal laws of its own It should, therefore, of course be made clear to the parties concerned that any repressive measures to which they may be subjected are never the arbitrary acts of some authority imposed on them by force and constraint, but sanctions due to their failure to observe one of the duties incumbent on them. Great as ought to be the authority of those in command in small communities such as a ship's crew, it is not that of an absolute monarchy. On comparing the list of maritime misdemeanours and offences with that of their contractual obligations, the crew must realise that penalties are not inflicted because the fancy takes their superiors so to do, but because the seamen really have broken one of the rules of that maritime social contract to which they voluntarily adhered. They must fully realise that they are not the subjects of a despotic master—" positive slaves," as the ancient maritime law of the Rhodians put it—but really and truly " citizens of the ship," to use Montesquieu's fine phrase*; and they ought also to know that, whenever they are punished, it is because they have broken the laws of their floating city.

The laws of several foreign countries, moreover, contain similar enumerations of seamen's obligations; and Art. 24 of the draft is borrowed from Arts. 77 and 78 of the maritime laws of Sweden, Norway and Denmark.

Chapter II introduces into the codification of articles of agreement the prescriptions of the Act of the 17th April, 1907, concerning the

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* Montesquieu, *Esprit des Lois*, Book XXVI, Chap. 25.

regulation of labour on board ship. There is no need to insist on the importance of this, the only law since the ordinances of the eighteenth century, for the legal protection of maritime workers. As already pointed out, these regulations, although recent, seem to require alteration, some of which are not of much moment, though others, such as the difference between Art. 28 of the 1907 Act concerning a weekly rest-day, and Arts. 32–37 of the draft, dealing with the same subject, are more important. These Articles were not drafted and accepted by the majority of the Commission till after a long and very animated discussion. The principle of a weekly rest-day, which had been included in maritime labour laws since 1907, could no longer be gainsaid. However greatly its introduction may have inconvenienced the shipping world, imperative considerations both of social hygiene and of social equity required that it should be maintained. Remarkably bitter disputes as to the methods of its application arose almost immediately after the passing of the 1907 Act, owing to the conflicting interests of shipowners and seafaring workers in general. The great strike of 1909, which was ended by M. Ditte's arbitral award, dated the 3rd July, 1909, introduced, at any rate for the more important shipping services whose port of register is Marseilles, a kind of statute, enjoining a weekly rest-day. This statute has come to be considered by those concerned as an annexe to or emendation of Art. 28 of the 1907 Act. It seemed as impossible to induce the Mediterranean maritime workers to revert to the system in force before M. Ditte's award as to allow them to be the only men to benefit by the advantages of the new system introduced by this arbitral award, from the operation of which the seamen of the ocean and Channel ports were excluded, although the former of these solutions was urged by the Central Shipowners' Committee.

The regulations concerning a weekly rest-day, therefore, are in the main based upon M. Ditte's arbitral award. The custom of compensatory rest—that is, rest allowed on land, with pay, in all cases in which no rest could be granted at sea during a voyage—was widely accepted. There seemed no other course save frankly to recognise that practically it is not possible to allow the engine-room staff a weekly rest-day while at sea, and that this deprivation ought to be compensated by rest when the vessel is in a port of

call or at her port of register. All the limitations of the general principle due to the conditions and exigencies of sea-life have been taken into account. In order to lessen the burden entailed by social legislation upon shipowners, exceptions have been allowed to the rule of a whole day's periodical rest; and it has been decided to allow compensatory rest to be given by half-days. In certain cases of non-maritime occupations, similar regulations exist as regards the weekly rest-day. (See Arts. 42 and 43 of the Labour Code.) Finally, the Commission unanimously and entirely rejected the proposal to allow pecuniary advantages such as extra hours of work, double pay, etc., to be substituted for rest-time not granted in ordinary course. It was felt that although, in the interests of society in general, the law allows the partial abolition of periodical rest, nevertheless the parties to a contract must not be allowed to agree to any such thing, nor shipowners be suffered to purchase it, as it were, from the seaman. Everyone was agreed that real rest must be enforced. This part of the law concerning seamen's articles of agreement will have to be completed by the addition of clauses providing that both a shipowner breaking the rules concerning the weekly rest-day, and a seaman frustrating their true purpose by doing work for which he is paid by a third party on a day when the shipowner allows compensatory rest with pay, are to be punished.

On the other hand, it would seem as if the penalties at present prescribed in Arts. 33 and 40 of the Act of the 17th April, 1907, in the case of infringements of rules concerning labour on board ship, must eventually be included in the penal and disciplinary legislation of the mercantile marine.

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Part IV of the draft, which includes 70 Articles, that is, more than one-third of the total number, deals with the obligations of shipowners and consequently with the rights of seamen, and thus strongly supports and extends the legal protection of seafaring workers. Without examining in detail regulations so lengthy and complex, we may mention the clauses in Chapter I, concerning pay, which are intended to guarantee fishermen paid by a share in the catch, against the dissimulations, fraud and deceitful contrivances to which they are exposed by this superannuated system of remuneration (Arts. 40 and 52–55)—for instance, certain innovations such as

those contained in Art. 56, providing for the partial deposit of their pay; Arts. 79 and 80, enabling a seaman's wife and children under age to have deducted from the pay of the husband or father amounts sufficient to provide them with necessaries; and Arts. 83 and 84, which define the limits within which seaman's pay may be attached for debt.

Everyone knows how under the old system seafaring persons were bound hand and foot. In many cases such direct and continual interference of the Government with the pecuniary relations between shipowners and seamen no longer conforms to modern habits and thought. Some of the old regulations must be abolished, and the application of such as deserve keeping must be restricted or made less hard and fast. Arts. 62, 63, 70 and 71 of the draft considerably modify the injunctions of old regulations such as the Declaration of the 18th December, 1728, and the Decree of the King's Council of the 19th January, 1734, which forbid the payment of any instalment, advance on or balance of pay except in the presence of the representative of the maritime authorities. As for the prescriptions of the Ordinance of the 1st November, 1745, forbidding officers and other members of ships' crews to lend money to one another, and declaring promissory notes and undertakings signed in connection with such loans to be null and void, there seemed no other course than simply to repeal these.

Prior to the Act of 17th April, 1907, no legal enactments existed concerning the duty of feeding ships' crews at sea. The very valuable prescriptions of Art. 31 of this Act and of subsequent legal regulations have been improved and added to. Another and not less important duty has been imposed upon shipowners—that of supplying seamen living on board with indispensable articles of bedding. It is painful to think that such a regulation, dictated by elementary considerations of humanity and the most obvious necessities of hygiene, does not even now conform to the practice most usually followed, and that some persons might deem it a bold innovation. The correlative duty of keeping the crew's quarters and articles of bedding in order had already been imposed upon the seamen. (Art. 22.)

The Ordinance of 1681 (Book III, Part IV, Art. 2) contains a prescription reproduced almost word for word in Art. 262 of the

Commercial Code. According to this Ordinance a seaman injured in the service of his ship or who has fallen ill during a voyage has a right to receive pay and free medical attention. Thus principles of social justice, which were not destined to appear in legislation concerning accidents to workers on land and concerning dangers arising out of employment until the end of the nineteenth century, were already embodied in maritime law. As has been well said: "Colbert's ideas were two centuries in advance of his time."* In the new codification there could be no question of depriving seamen of any of the benefits conferred on them by Art. 262 of the Commercial Code, to which the Act of 21st April, 1898, and 29th December, 1905, and various others of later date, concerning a provident fund, form an admirable adjunct. No one has asked for an alteration in the rule which enacts that a seaman who has fallen ill during a voyage or been injured while working on board, shall be paid his full wages, a rule which places seamen in a very favourable position as compared with land workers, and which is such a heavy burden on shipowners. Indeed, the statute concerning sick or injured seafaring persons has even been improved in certain respects (*cf.* Arts. 94, § 4, 96, § 2, and 105). The most important reform in this respect would certainly be to transfer to the Provident Fund the burdens at present incumbent on shipowners—a reform which would be in the interest alike of shipowners and seamen. It could not, however, be introduced straightway into the draft concerning seamen's articles of agreement, because it necessitated considerable alteration of the laws concerning provident funds. But the Commission wished at any rate to prepare the way in some degree for this reform, and point out, more decisively than could be done by a resolution, how highly desirable it seemed.

The draft has arranged the provisions of Arts. 258 and 262 of the Commercial Code relating to repatriation, and the rules followed in this matter by jurisprudence or contained in Government regulations (*see* the Decrees of 22nd September, 1891 and 24th December, 1896). At the same time it has again imposed on shipowners the obligation of paying the whole cost of the seaman's return to his

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* Demolière: "*L'Article* 262 *du Code de Commerce*" (*Bulletin de la Marine Marchande*, May, 1907, p. 180).

home. As we know, the provisions of the Decree of 4th March, 1852, declared this traditional obligation, contained in the Decree of the 5th Germinal, year XII (Arts. 1 and 8), to come under the category of public law. These provisions were modified by an Imperial decision of 22nd March, 1862, the legality of which was highly questionable. As a matter of fact, for the last half century, in the immense majority of cases, shipowners, when entering into an agreement with seamen, have made the latter sign a declaration expressly renouncing the right to claim travelling expenses to his home. The Commission considered that, without reverting to the old rule—a rule of no practical use now—it was right to make shipowners bear the expense of a seaman's return to the port of embarkation while cutting down such expense to an absolute minimum. (Art. 111.) According to the draft, this regulation is to be included among those which cannot be modified by any agreement to the contrary.

Finally, Arts. 113 *et seq.*, concerning seamen's claims and privileges, and reproducing the provisions of a draft Bill brought in on 5th June, 1897, considerably increase the guarantees which seamen at present enjoy. For a long time past it has seemed almost outrageous that the prescriptions of Art. 216 of the Commercial Code should be applied to the claims of the members of a ship's crew, for this Article allows the shipowner to limit his responsibility by abandoning the ship and her freight. The International Maritime Committee, at the Paris Conference, held in October, 1900, passed a resolution to the effect that such a limitation of responsibility should no longer be allowed with regard to claims of this kind. Art. 113 of the draft is in conformity with this resolution.

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Certain legal prescriptions, although only a very few, all of them now comprised in Arts. 20 *et seq.* of the Labour Code, deal with the cancellation of contracts for hiring out labour in land industries. Owing to the extreme brevity of these laws, however, they have had to be supplemented by legal doctrine and by jurisprudence ; and 28 Articles about the termination of seamen's articles of agreement are included in Part V of the draft. It may be asked whether, in drafting so many Articles, the Commission was not too prolix. We think not ; firstly, because besides the cases such as we meet with in

common law, in which articles of agreement are individually cancelled, there are other ways in which they may be terminated, particularly by the collective breach of their agreement on the part of the crew embarked on one and the same ship, in consequence of one of the numerous accidents occurring in life at sea. The risks and dangers of the sea have given rise to these traditional ways in which seamen's articles of agreement may lapse, ways regulated in considerable detail by Arts. 252, 253, 254, 257 and 258 of the Commercial Code. These regulations, sanctioned by customs of very long standing, but slightly brought up to date by the Act of 12th August, 1885, are maintained, almost unaltered, in the draft, the authors having merely endeavoured to arrange them more clearly and more methodically.

As for those different ways in which contracts may terminate which are common to contracts for seamen and for land workers hiring their services, it seemed desirable to define them and clearly state in which cases they apply to each of the three categories of articles of agreement, as distinguished by their duration. Here it was possible to draw very largely upon general legislation dealing with land labour. The first paragraph of Art. 270 of the Commercial Code does not allow compensation to a dismissed seaman—compensation payable by the captain and not by the shipowner—unless he can prove that he was dismissed without reasonable cause, thus obliging him to prove a negative fact. The fourth paragraph of the same Articles does not allow any compensation at all to a seaman dismissed after having been regularly taken on, if the dismissal took place before the muster roll was closed. Now, both these prescriptions, which involve a derogation from common law, and are contrary to equity and even to the laws in force under the old system, disappear in the draft, and provisions laid down by the Civil Code are substituted for them. While introducing these provisions into maritime law, however (provisions contained in Arts. 23, 25, 26 and 27 of the Labour Code), it was not deemed absolutely necessary to follow their wording slavishly, but the opinion prevailed that they might be couched in language calculated to bring out more clearly the true meaning of the provisions as interpreted at present by legal doctrine and by the jurisprudence of the Supreme Court (*Cour de Cassation*).

Except in the case of one special point, dealt with, however, as will presently appear, in Art. 158, the Commission went no further. Obviously nothing short of a revision of the Land Labour Code would introduce the emendations and improvements necessitated by present-day legislation, which is so inadequate in matters concerning dismissal and the time within which notice to leave must be given. The draft adopted on this subject in 1905 by the *Conseil Supérieur du Travail* has as yet had no result so far as Parliament is concerned.

The wisest course seemed to be to enumerate the legitimate reasons for dismissal and notice. Other reasons might eventually be allowed, but this enumeration is calculated to prevent a great many lawsuits. Here, if anywhere, clear, definite and detailed regulations are needed. Maritime law, as has been rightly said, "loves precision."

A particularly delicate question, involving penal and disciplinary law and the mercantile marine contract law, concerns the fixing of the period of service at sea during which a seaman may not cancel an agreement into which he has entered. This question affects the fundamental interests of shipowners. The 1905 Commission and the *Conseil Supérieur de la Navigation*, after examining and discussing it at great length, arrived at the first paragraph of Art. 34 of the Draft Disciplinary and Penal Code—a paragraph which has since been sharply criticised by incorporated maritime organisations. Art. 133 solves the problem in a way which, if complex, is complete; and when it was read a second time, the shipowners' representatives and those of the various categories of maritime workers were agreed as to the wording.

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The Commission has collected into one part (Part VI of the draft) the special provisions concerning officers and those affecting captains. It begins by recognising that all the provisions concerning articles of agreement are in principle, and in the absence of any stipulation to the contrary, wholly applicable to ships' officers. The classic distinction between the technical aspect of a captain's functions and their representative and commercial aspect has, of course, been maintained, but only the first named, resulting from a genuine contract whereby services are hired out, comes within the scope of a law concerning articles of agreement. The second, arising out of

a contract conferring commercial powers, must continue to be governed by the prescriptions of the Commercial Code, particularly by Arts. 221–249. In the law of labour contracts, however, it is impossible not to take into account this dual position of the captain. Hence Art. 155 of the draft confirms Art. 238 of the Commercial Code, which forbids a captain to break his contract during a voyage. It may seem very hard to have made no change whatever in the regulations of Art. 218 of this Code, by which a shipowner can at any time suddenly dismiss a captain without giving any reason, and without owing him any compensation, unless there be a written agreement to the contrary; but the general regulations formerly adopted concerning the dismissal of seafaring men have not been sanctioned, as is expressly stated in Art. 156 of the draft.

In principle, the draft gives officers the right to periodical rest (Art. 150), a right hitherto established by no definite clause, but one scarcely disputed in practice, and recognised in the arbitral award of 25th March, 1914, which put an end to the dispute between the Messageries Maritimes Company and its engineer officers.

Even after having, as far as possible, except for certain restrictions, specially applicable to the captain, made the general rules concerning dismissal, laid down by the Civil Code and the Labour Code, apply both to the staff officers of the mercantile marine and to the crews, the Commission was still not satisfied. There is no more legitimate cause of anxiety to workers of every category, whether higher officials or lower clerks, working-men or seamen, than the fate of those of their fellows who have grown old in the service of an employer and been discharged after many years of service, and when, owing to their age, they can no longer hope easily to find another position. In 1905, when the *Conseil Supérieur du Travail* was discussing the time within which notice to leave must be given, this anxiety was clearly manifest. Hitherto, however, no Bill on the subject passed either by the above-named Council or by one of the French legislative Chambers, has admitted that persons in receipt of pay, not even those who have worked for the same employer for a very long time, may be entitled to compensation if dismissed, always supposing them to have been guilty of no misdemeanour; and that they should receive a grant, the minimum amount of which would be fixed beforehand by law, and which

would be proportionate to the length of service. Were there such a law, the courts, which have hitherto been very parsimonious about estimating grants, would merely be empowered to fix them when allowed at a rate above the legal minimum. M. Leboucq also brought in a proposal for a law on these lines, but without success.

Here we are faced with one of the most regrettable deficiencies of social legislation. Those who earn their living at sea, especially officers in the mercantile marine, suffer very seriously from the precariousness of their employment, and the longer a man has been in the service, the more he feels this. They complain of having no guarantee as regards seniority of promotion, and during the Commission's first meetings, they complained very bitterly indeed about this. In 1903, at the Congress of the *Conseils de prud'hommes,* M. Quillent compared a workman grown old in the routine performance of the same work and dismissed by his employer, with a bird so long shut up in a cage as to have forgotten how to fly about and find its food; while before the *Conseil Supérieur du Travail* Professor Jay referred to this only too apt comparison, describing the lot of the workman thus dismissed as "pitiable." But what is to be said of a sea bird, worn out with the fatigues of existence at sea, which has suddenly to get used to the utterly different conditions of life on *terra firma?* Or of a seaman dismissed after twenty-five or thirty years' seafaring service, and too often forced to find some means of earning for himself or his family to eke out his meagre half-pay pension ?

Here, indeed, is a case of flagrant social injustice, especially when we have to deal with captains and officers not allowed by the State to exercise their profession until after years of study, theoretical and practical, and after obtaining commissions and certificates, subject to strict regulation. For the greater safety of navigation generally, the State is constantly raising the standard of the technical knowledge necessary to obtain these commissions and certificates. But whereas on land, lawyers, doctors, dispensing chemists, etc., carry on their professions independently, albeit the State lays down regulations about admission into their callings, they are yet free to continue working as long as their physical and mental strength allows. Those who hold the commissions and certificates entitling

them to be officers in the mercantile marine, on the contrary, almost invariably remain salaried persons. So soon as they have passed the prime of life, but long before their life's normal span is over, they are in most cases dismissed ; and it is practically impossible for them to find another position, either at sea or on land.

The Commission was struck by the fact that, in equity, this abnormal and singularly unfortunate state of things needs to be changed, without prejudice to any prescriptions which may some day be introduced into general legislation concerning dismissal of aged workmen and of other aged persons employed in land occupations, and which would necessarily eventually become applicable to all maritime workers. By establishing a right to a modest, temporary compensation for dismissal in the case of those employed a very long time by the same employer, the Commission thinks it has suggested (in Art. 158) a valuable reform.

M. Hauriou*, *doyen* of the Toulouse Faculty of Law, one of the most masterly French jurists, and a jurisconsult accustomed to consider human nature as much as legal clauses, has delicately analysed the feeling of those who work for wages and salaries that their employment is their property. This feeling it is which makes the worker demand compensation as something undeniably due to him, merely on account of his having lost a position which he quietly filled for a long while ; and this feeling has been partly met by the clause adopted by the Commission applying to a category of earners to whom the State owes some guarantees in return for those which it demands from them.

This Article was unanimously voted by all the Commission members present except one ; and the representative of the Central Ship-owners' Committee, speaking for this Committee, stated that no opposition would be raised to its being adopted.

The prescriptions of Part VII concerning the employment of minors, especially boys, learners and apprentices, have a twofold object. On the one hand, to ensure the ship's crews and officers being recruited, boys, learners and apprentices must be taken on board, for the problem of apprenticeship is no less acute at sea than in land industries. Art. 162 partly reproduces, at the same time making them more stringent, the provisions of Art. 30 of the Act of 17th April, 1907, fixing the minimum number of boys and learners

* *Principes de droit public*, pp. 339–342.

who may be taken aboard a vessel. Above all, circumstances being as they are, it is needful to ensure the training of a large number of engineer officers. This is the purpose of Art. 162 and Art. 161, the latter giving a new and wider meaning to the old expression " apprentice."

On the other hand, the work of minors must be specially protected when serving at sea as when working ashore ; and for this purpose the prescriptions of the 1907 Act have again been resorted to, albeit with some slight changes. The capacity of minors to sign articles of agreement has also been regulated. At present a sailor boy, even if under 18, is not an apprentice in the meaning conferred on this word by civil law, but is considered to a certain extent as having served his time, so as to enable him to engage in his calling. Article 160 defines his legal situation.

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Part VIII of the draft is a law dealing with competence and procedure in litigation concerning seamen's articles of agreement. That commercial judges should cease to be competent to decide lawsuits between members of crews and shipowners, had long been keenly desired. That they should ever have been competent to do so can only be explained historically because the attributes, which under the old system devolved on Admiralty courts, were transferred to commercial courts, and their competency has often been justly criticised, on the ground that shipowners and captains alone had a say in the election of consular judges, whereas the crew could neither elect them nor were they eligible for election. This is clearly quite inconsistent with the true nature of seamen's articles of agreement, and the Commission unanimously voted for its abolition. Moreover, in jurisprudence it is even now admitted that disputes concerning maritime labour must not be judged by consular judges, except where seamen on trading and fishing vessels are concerned.

The question is : who is to replace the commercial judges ? In seamen's unions an active campaign has been proceeding to advocate the creation of Maritime *Conseils de prud'hommes*. Nevertheless, even the most ardent defenders of the interests of workers cannot but admit that the jurisdiction of such Committees has fallen far short of expectation. Experience has proved that it is liable to

various inherent defects, above all to the almost inevitable abuse of cross actions. The tendency to-day is not to multiply special tribunals, but much rather to abolish them : and the draft mercantile marine disciplinary and penal code, in particular, provides for the abolition of two such special courts. True, in the nineteenth century it was thought necessary to institute *tribunaux prudhomaux*, to protect employees and workmen against the presumed partiality of civilian magistrates, who were looked upon as class magistrates. Owing to a number of social circumstances, as much economic as political, the democratisation of the Bench is even now to some extent an accomplished fact, and is daily becoming more so. No one would venture seriously to assert that justices of the peace represent a " class justice." They are judges at common law for cases concerning labour contracts (Art. 5 of the Act of 12th July, 1905), and, as a matter of fact, they decide disputes affecting a very large number of wage and salary earners.

On the other hand, the public must begin to realise what a judge's technical powers really ought to be. Many persons have formed a wrong conception of this. Supposing a judge actually had to possess professional knowledge based on experience connected with the subject of disputes, then we should need not the four or five different courts we now have, but a hundred. Professional or technical knowledge is not, however, the main thing ; for civil, administrative and commercial magistrates or *prud'hommes* have numberless opportunities of obtaining as much technical information and knowledge as they require for the solution of the problems with which they are confronted. The technical part of a judge's work, to which he is equal only after study and long practice, and which could not be expected from temporarily elected judges with no special training, is something wholly different. It is the art of investigating the origin and progress of a dispute ; of following the complexities of legal procedure or correcting its defects ; of weighing and contrasting the worth of conflicting arguments ; of reading and comparing legal clauses ; of arriving at settlements, and of stating the genuine motives of a decision to be given in this, that, or the other sense—in short, applying the principles of law and equity governing all disputes to a multitude of special instances. Even in maritime lawsuits men trained for

the work of conducting cases are as much needed as men trained for the business of navigation are needed for navigating a ship. A vessel steered by magistrates, on pretext that she had none but lawyers on board, would probably never arrive at her destination.

Besides these general objections to temporarily elected magistrates, there are others, specially applicable to shipping circles. The very necessities of their occupation prevent seafaring men being often able to exercise their electoral rights at parliamentary, municipal or cantonal elections, nor can they often be candidates. This proves the practical difficulties in the way of constituting maritime arbitration tribunals by election. Consequently, the Commission did not hesitate simply to revert to common law jurisdiction, this being convenient, speedy, and inexpensive; but the officials of the Maritime Boards have been entrusted with the business of making a preliminary attempt to reconcile the parties. In small disputes between seamen and shipowners, or the captains representing them, this official even now commonly acts as conciliator.

A judicial procedure, alike simple and inexpensive, is a necessity for seamen, and it is no less needful that it should be easily accessible. In this respect the territorial competency regulations included in the draft are of great practical importance. They differ markedly from the regulations at present followed, both those in accordance with Art. 420 of the Code of Civil Procedure, meant for commercial disputes and not at all suited to maritime lawsuits, and those arising out of agreements between the parties. The prevailing system, under which seamen can often sue shipowners only in Paris or some other town far away from any seaport, cannot continue in force. Its effect is virtually to make it impossible for maritime workers to appeal to justice. By Arts. 172 and 173 of the draft, the judge in the port where the dispute occurs will, in most cases, be competent to settle it; and in some other cases it will be the judge in any port where the defendant can legally be summoned to appear.

A very delicate question arises about the captains of trading vessels and fishing boats. As already stated, they are bound to the shipowners both by a contract commercial in character, and by a contract for the hire of their services almost identical with that of the members of their crews. The former contract occasions difficulties which, so long as commercial courts exist, must come within

their cognisance. The majority of the Commission were of opinion that, although captains are bound by contractual obligations of two different kinds, only one kind of court must be competent to decide disputes between them and shipowners. Consequently, it was resolved that commercial tribunals should continue, as at present, to be competent for this purpose.

Finally, Part VIII contains certain special definite rules of procedure intended to ensure disputes about articles of agreement being settled with the least possible delay.

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The vast development of international relations makes it impossible to legislate now on any subject without studying the questions of international law connected with it. The prescriptions of Part IX of the draft deal with the most important of these questions, and are couched in terms markedly well disposed to foreign seamen. Labour legislation tends more and more to protect all workers alike, without distinction of nationality. It is to the interest both of shipowners and of the nation that foreign seamen should be attracted to and kept in French ports and on board French ships on account of being well treated there. Indeed, for certain kinds of work there are even now far too few men, both in the mercantile marine and in the Navy, and this shortage will become a still more serious menace in the future than it is now. In the interests of French seamen it is likewise imperative that they should be as much as possible on a footing of equality with foreign seamen. It is extremely bad for them that shipowners should have any inducement to employ foreigners, in preference to French citizens, even within the limit, allowed by law, on the plea that the law imposes less heavy obligations on them with regard to the former.

Perhaps these few legal clauses, together with the conventions already in force between France and several other maritime powers (England, Germany, Italy, etc.), concerning seamen's mutual aid and the payment of the wages of absent or deceased seamen, may prove an inducement to draft international legislation concerning the hiring of seamen, and the legal protection of their labour. It is greatly to be desired that, as the natural outcome of the Brussels Convention concerning assistance at sea and the London Convention concerning the safety of navigation, there should be an international

Convention before long about this indispensable department of international maritime law.

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The draft concludes with a few general prescriptions. Art. 193 strongly emphasises the close connection between the law of articles of agreement and disciplinary and penal laws. Apart from the breaches of discipline, offences or crimes mentioned, punishments for which are provided in the Bill introduced on the 8th May, 1913, severe punishments must be included for breaches, on the part of shipowners, captains, or other seafaring persons, of the law of maritime labour contracts. Reference has already been made to some of these punitive clauses.

The last Article (No. 195) of the draft provides for the repeal of those clauses in existing legislation which it suppresses or replaces, especially the prescriptions of ordinances dating from the time when France was a kingdom and those of the Commercial Code framed under the Empire, which even now, in 1914, regulate articles of agreement. Soon we may witness the disappearance of these ancient relics of the past, which no one will greatly regret. The draft, whose main enactments have just been summarised, is perhaps more than a mere recast of the regulations at present in force, but is far from being entirely subversive of them. When, after the enquiry shortly to take place, this draft has been revised so that it can be cast in its final form and submitted to Parliament for discussion, together with the penal and disciplinary draft, it will be easy to pass and promulgate Books I and II of the Maritime Labour Code, concerning the law of contract and penal and disciplinary law respectively. It is permissible to hope that one day a Book III may codify the laws concerning disablement and provident funds, that is, concerning pensions, accidents and sickness arising out of employment at sea. A Ministerial Commission recently met to prepare the way for the revision of these regulations. Finally, recent legislation about maritime credit—legislation which has rendered such service to coast-dwellers, might form Book IV. It will then be seen that the Third Republic has succeeded in raising a legislative monument of majestic proportions for the protection of those interests which, more than all others, have a claim on the nation's solicitude—maritime interests

*DRAFT BILL CONCERNING SEAMEN'S ARTICLES OF AGREEMENT.**

Part I.—Employment offices.

Article 1.

Article 2.

Article 3.†

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* Abbreviations in the references :—

Com. Code = Commercial Code.

Lab. Code = Labour Code, Book I.

A. 1907 = Act of 17th April, 1907, concerning safety in maritime navigation and the regulation of labour on trading vessels.

D.P. Bill, 1913 = Bill concerning the Mercantile Marine Disciplinary and Penal Code laid upon the table of the Chamber of Deputies on 6th May, 1913, based on the work of a Commission of which Mr. Atthalin, Member of the Council of State, was Chairman—not yet passed.

† As the result of the progress made in France during the war, the idea of organising employment offices for unemployed seamen by means of joint offices gained ground rapidly. So also did the idea of the already proposed abolition, now almost an accomplished fact, of fee-charging agencies and of "crimps." Consequently the three first Articles of the 1913 draft are now superseded. They are no longer abreast either of present-day conditions or of prevailing tendencies ; and the three Articles of a Bill brought before the Chamber of Deputies by the Government in 1917 and based upon the work of a Special Commission which met in March of that year, are far better calculated to meet the requirements of the times. These three Articles are as follows :—

Art. 1.—Saving direct engagement, which shall remain legal provided the laws and police regulations are observed, all persons intending to enter into a maritime labour contract must do so through the medium of joint maritime employment offices.

These offices shall constitute maritime sections of the departmental or municipal public employment offices established for land workers.

The supervision of these employment offices shall be carried out by administrative committees composed of equal numbers of shipowners or ex-shipowners and of seamen or ex-seamen, who shall give their opinion on all points connected with the development of these institutions

Part II.—Maritime articles of agreement, their form and authentication.

Art. 4.—All articles of agreement concluded between a shipowner or his representative and a seaman, concerning service on board one or more vessels principally engaged in maritime navigation, shall be articles of agreement within the meaning of this Act.

Art. 5.—The following shall be considered as shipowners within the meaning of this Act; every private individual, every group of individuals, and every public department, except that of the Navy,

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The discussions which gave rise to these joint maritime employment offices and the administrative orders which lay down the conditions of their operation shall be approved by Decrees of the Under-Secretary of State for Maritime Transport and for the Mercantile Marine, who shall subsidise these offices from the funds at his disposal.

Art. 2.—After the promulgation of this Act, no employment agency other than those provided for in the foregoing Article shall be opened or be permitted to remain open for the purpose of finding employment for workers desirous of entering into a maritime labour contract

The following persons shall be considered as carrying on maritime employment agencies within the meaning of the first paragraph of this Act :—Any persons who, for remuneration, act as intermediaries between shipowners and seamen, with a view to finding employment for the latter, or whose profession it is to recruit for more than one shipowner either all or part of a vessel's crew.

Only those persons carrying on maritime employment agencies who are in possession of a permanent licence issued by the municipal authority prior to 1st August, 1907, shall be entitled to compensation in accordance with Art. 97 of Book I of the Labour Code.

Art. 3.—Every infringement of the provisions of paragraphs 1 and 2 of the preceding Article shall be punishable by penalties prescribed in Art. 102 of Book I of the Labour Code. The closing of any agency illegally carried on shall be ordered by the penal judiciary authorities.

for whom or for which a vessel is fitted out and accomplishes a sea voyage.

Art. 6.—The following shall be considered as seafarers within the meaning of this Act :—Every person, of either sex, entering into an agreement with a shipowner or his representative to serve on board a vessel engaged in maritime navigation.*

Seafarers placed under the captain's authority shall be divided into deck staff, engine-room staff, and general service staff.

Each of these divisions shall include several special categories of workers.

The provisions of this Act, except such as apply expressly and exclusively to one category of workers, shall be applicable to all.

Art. 7.—Power to enter into a contract, as regards articles of agreement, shall be subject to the provisions of common law, saving that the prescriptions of Arts. 8 and 9, hereinafter contained, may be applicable.

Art. 8.—No person shall be able to enter into valid articles of agreement unless he be free from any other maritime contract,† and unless he can comply with the conditions of fitness and capacity required by the laws and regulations concerning the kind of work he undertakes to do, or the position he is to fill on board.

Art. 9.—The carrying out of seamen's articles of agreement shall be subject to the production, before embarkation, of a certificate given after medical examination and certifying that the seaman is physically fit for the kind of navigation and of service on board ship which he has undertaken to do, and is free from any contagious disease likely to infect other persons on board.‡

The medical examination shall be made by a doctor appointed or recognised by the administration of the mercantile marine. A doctor authorised to embark on a vessel as ship's doctor shall have authority to make a medical examination of every seaman signing on as one of her crew.

In cases where a charge is made for medical examination, a shipowner taking on a seaman shall be bound to refund him the cost of the examination and medical certificate

* *Cf.* D. P. Bill, 1913, Art. 2.

† *Cf.* the Order of 31st October, 1784, Part XIV, Art. 6.

‡ *Cf.* the Act of 26th February, 1911, Art. 7.

The duration of the validity of a medical certificate shall be determined by administrative order.

Art. 10.—All clauses and stipulations of seamen's articles of agreement must, under penalty of being declared invalid, be verified before the maritime authorities.*

They shall be drawn up on forms which shall be obtainable from the mercantile marine administration and must be headed by the declarations provided for in Arts. 11 and 12 *infra*.

They shall be entered in or annexed to the muster roll.

If, however, the agreement has been concluded before it was possible to begin making up the muster roll, or for service on more than one ship, then the original shall be given to the maritime authorities, and a copy shall be annexed to the muster roll of every vessel on which the articles of agreement are to be carried out.

Art. 11.—Articles of agreement shall be clearly worded, so that the parties thereto can be in no doubt about their rights and mutual obligations.

They shall contain provisions indicating whether they are concluded for a fixed period, for an indeterminate period, or for one voyage.

If the articles be concluded for a fixed period, that period shall be stated.

If the articles be concluded for an indeterminate period they shall state the length of the period which should elapse between the giving of notice by one of the parties and the cancellation of the contract.

This period shall be the same for a shipowner or his representative and for the seafarer.†

It shall not be less than twenty-four hours.

If the articles be concluded for the term of one voyage, they shall designate, by name or otherwise, the port or ports in which they will expire ; and if such designation does not make it possible to estimate approximately how long the voyage will last, then the articles shall fix a maximum period, after the expiration of which the seaman can ask to be put ashore at the first port of call, even if the voyage be not over. The articles shall, however, specify at

* *C*. the Edict of July, 1720, Part VI, Arts. 7 and 18 ; the Order of 31st October, 1784, Part XIV, Arts. 9, 10 and 12 ; and Com. Code, Art. 250.

† *Cf.* D.P. Bill, 1913, Art. 35.

what stage of the maritime or commercial operations carried out at the port where the voyage ends, the said voyage shall be deemed to be at an end.

Art. 12.—Maritime articles of agreement shall also expressly make mention of the following details :—

Firstly, the crew and the particular service which each seafarer contracts to perform and the position he shall hold.

Secondly, the date of commencement of service ;

Thirdly, the method of remuneration agreed upon between the parties ;

Fourthly, the amount of fixed pay or the basis on which profits are reckoned ;

Fifthly, the place and date of the signature of the agreement.

Art. 13.—In the event of the absence of any one of the particulars which in virtue of Arts. 11 and 12 should be included in the articles of agreement, the maritime authorities shall decline to accept such articles, and shall furnish a report stating the reasons for this refusal.

Art. 14.—The maritime authorities shall satisfy themselves that the parties to an agreement know and understand its clauses and conditions. For this purpose they shall question the parties, and, if need be, read aloud and explain the said clauses and conditions.*

Art. 15.—Articles of agreement shall be signed by the shipowner or his representative and by the seaman. If one of the parties cannot sign his name, the maritime authorities shall note this in the agreement.

The maritime authorities shall decline to accept the signature of either party if he be in an obvious state of intoxication.

Art. 16.—The maritime authorities shall countersign the agreement and shall set their seal thereto. They shall have no power to regulate the conditions of the agreement, but if in their opinion one or more clauses appear to be likely to be invalid as being contrary to those provisions of this Act which are declared by Art. 192 *infra* as of a public character, they shall oppose the signing of the agreement and refuse their *visa*, leaving it to the more interested party to appeal to the President of the Civil Tribunal, in accordance with Art. 182 of this Act, with a view to the removal of the objection.†

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* *Cf.* Ordinance of 31st October, 1784, Part XIV, Art. 10.

† *Cf.* Ordinance of 31st October, 1784, Part XIV, Art. 11.

Art. 17.—Every contract shall be entered in a book which shall be supplied free to a seaman by the mercantile marine authorities, and which shall remain in his possession. In this book shall also be registered the dates when his contract begins and ends, and the dates when he embarks and disembarks. An administrative order shall determine what other items shall be entered in the book, and also on what conditions and at what cost it is to be replaced, if lost.

The book shall contain no comments as to the way in which its owner has performed his duties.

Art. 18.—The text of the laws and regulations concerning maritime articles of agreement and also those concerning the conditions of the contract, shall be kept on board, in order that they may be communicated by the captain to any seaman on board his ship who may ask for them.*

Art. 19.—Maritime articles of agreement shall not require to be stamped or registered.†

Part III.—Obligations of the seaman towards the shipowner, and the regulation of work on board ship.

Chapter I.

Art. 20.—A seaman shall perform his service in accordance with the conditions laid down by the articles of agreement, laws, regulations and customs in force.

Art. 21.—Both while in port and at sea, on board ship and on land, a seaman shall be bound scrupulously to obey the orders of his superiors in all matters concerning the service on board ship; to take care of the ship and of her cargo, and, generally speaking, to do his duty zealously and attentively, whether by day or by night.

He shall be temperate, peaceable, and respectful towards his superiors, and shall refrain from using insulting language about anyone on board.

He shall not absent himself from his ship without leave.‡

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* Decree of 21st September, 1908, Art. 129.

† *Cf.* Act of the 13 Brumaire, year VII, Art. 16; Act of the 22nd Frimaire, year VII, Art. 70, para. 3, No. 13; and Lab. Code, Art. 19.

D.P. Bill, 1913, Arts. 7 and 11.

Art. 22.—A seaman shall be bound, outside his hours of work, to keep clean his quarters and everything connected therewith, as well as his articles of bedding. He shall not be entitled to any extra pay for such work.

Art. 23.—A seaman shall present himself, the first time he is called upon to do so by the shipowner or his representative, to embark upon any vessel on board which he has to render service.

Art. 24.—Except in absolutely unavoidable circumstances (*force majeure*) and when the safety of the ship, of those on board, and of the cargo is at stake, a seaman shall not be bound to do work outside his own special province, unless there be an agreement to the contrary.

Art. 25.—A seaman shall be bound to help in the salvage of his ship or of her wreckage, of wrecked articles and of the cargo.*

Art. 26.—A seamen shall not, on any pretext, be allowed to put on board a ship any goods on his own account, without the permission of the shipowner or his representative, unless there be a clause in his articles allowing him so to do.†

Any seaman contravening the prescriptions of the foregoing paragraph shall be bound to pay freight at the maximum rate agreed upon at the time and place of loading for the voyage in question, for goods of the same kind as those unduly put on board, and this without prejudice to any higher compensation which may be due to the shipowner or his representative. Furthermore, the captain shall be entitled to throw overboard any goods unduly put on board, if these be such as to imperil his ship or her cargo or to render him liable to fine or confiscation for infringing either customs, regulations or sanitary laws and regulations.

Chapter II.

Art. 27.—At sea and in open roadsteads the work of the deck hands and the engine-room staff shall be divided into watches. The deck hands shall be divided into not less than two watches, and the strength of this category of seamen must be so calculated that not more than twelve hours' work a day at most be required from each man.‡

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* *Cf.* Com. Code, Art. 261.

† *Cf.* Com. Code, Art. 251.

‡ *Cf.* A. 1907, Art. 24.

Art. 28.—Except in absolutely unavoidable circumstances (*force majeure*) and when the safety of the ship, of those on board and of the cargo is at stake—conditions of which the captain alone shall be the judge—a minimum of six hours' unbroken rest out of the twenty four shall be assured to the general service staff.*

Art. 29.—The engine-room staff shall be divided into three watches for long-distance voyages as well as for international coasting trade and national coasting trade, where a ship makes voyages of more than four hundred miles from any French port in the mother country, and her gross tonnage exceeds 1,000 tons burden.

On trading vessels other than those coming within the scope of the foregoing paragraph, and the gross tonnage of which is 200 tons or more, the work of the engine-room shall be arranged for three watches whenever the two-watch system would entail more than ten hours' work a day for more than two consecutive days for the engine-room staff.†

Each engine-room watch shall include at least one stoker for every three furnaces, save for any exceptions to this regulation which may be made by administrative order.

Except in cases of emergency in the engine-room no stoker shall, during his watch, be called upon to perform any other duty.

The shipowner or captain shall be bound to inform any men about to sign on of the composition of the crew, and of the number of furnaces which are to be in use in the stoke-hole, together with all the other items mentioned in the above-named administrative order, as being the basis on which the strength of the crew is to be calculated ; and he shall enter this information, when drawing up the muster roll, after the conditions of the contract.

On board steamers where the engine-room staff is divided into three watches, work connected with the upkeep of the engines shall be performed by the engine-room staff during the hours when they are not on watch and shall not entitle the men to claim any extra pay, provided no man be employed on such work for more than one hour out of the twenty-four.

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* *Cf.* Bill to amend the Act of 17th April, 1907 (Le Bail Report of 12th July, 1910), Art. 24.

† *Cf.* Decree of 20th September, 1908. Art. 2.

On board vessels where the engine-room staff is only divided into two watches, all work on the upkeep of the engines which is done outside of the regular hours of the watch shall entitle the men to extra pay, as hereinafter prescribed.

In all cases, whenever the watch is changed, the engine-room staff, together with the deck hands, shall assist in the removal of the ashes.*

Art. 30.—No member of the crew, no deck hand, nor any member of the engine-room staff may refuse his services, no matter how long hours he may be ordered to work.

Except, however, in absolutely unavoidable circumstances (*force majeure*), and when the safety of the ship, of those on board or of the cargo is at stake—a matter in which the captain shall be the sole judge—every hour's work a man may be ordered to do over and above the limit fixed in Arts. 27 and 29 shall entitle him to extra pay, the amount of which shall be settled by custom and contracts.

The exceptional circumstances taken into account in the foregoing paragraph shall be entered by the captain in a register, numbered and initialled by the maritime authorities. Such entries shall be countersigned by someone representing either the deck hands or the engine-room staff, as the case may be. The register shall be available for all whom it may concern, who may enter in it any remarks they may think fit.†

Art. 31.—If the vessel be in port or in sheltered roadsteads, no member of her crew shall be bound, except in absolutely unavoidable circumstances (*force majeure*), to work more than ten hours a day, including the night guard, if he be a deck hand, nor more than eight hours a day if he belong to the engine-room staff. Nevertheless, on the day of a vessel's arrival or departure, the total number of hours on duty while in roadsteads or in port, and of service at sea, may be as many as twelve for deck hands, without entitling them to claim extra pay, provided that these accumulated hours of work shall not occur more than twice in seven days, otherwise the provisions of the second paragraph of the foregoing Article shall apply.

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* *Cf.* A. 1907, Art. 25.

† *Cf.* A. 1907, Art. 26.

Art. 32.—Apart from the exceptions and derogations provided for in the Articles hereinafter contained, one full day's rest a week must be allowed to seamen and observed by them when their articles of agreement are for a period exceeding six days. Unless the captain shall decide to the contrary, Sunday shall be the weekly day of rest.*

Art. 33.—The following classes of work shall not be considered as infringing the rule of a weekly rest-day, and shall be compulsory, without any compensation being due from the shipowner: work necessitated by the safety of the ship, of the cargo, and of those on board, or by absolutely unavoidable circumstances (*force majeure*); the giving of assistance and such short tasks connected with the manœuvring of the vessel as are performed on sailing vessels by the men of the watch who are not allotted either to work at the helm or bow.†

Art. 34.—On the weekly rest-day in ports and sheltered roadsteads the following kinds of work shall be compulsory: all work which cannot be postponed, especially such as must be done in order to keep the ship clean, to keep the engines in working order, to replenish the ship's supplies, and to attend to the wants of those on board.

At sea the following kinds of work shall be compulsory: everything which cannot be postponed, especially such work as is necessary to ensure the safety, the running, and the cleanliness of the ship, and for attending to the wants of those on board.

The classes of work covered by the foregoing paragraphs shall be done by the whole or by part of the crew, as the captain shall decide.

Such work shall entitle those by whom it is performed to an uninterrupted period of compensatory rest, with pay, equal to the time spent on such work. Such compensatory rest, however, shall not be granted for less than half a day at a time.‡

The pay due during such compensatory rest shall be the same as that due for the time on duty during which the seaman became entitled to such rest.§

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* *Cf.* A. 1907, Art. 28.

† *Cf.* A. 1907, Art. 26.

‡ *Cf.* A. 1907, Art. 28, and the arbitral award of 3rd July, 1907 (the Ditte award).

§ *Cf.* the arbitral award of 25th March, 1914.

Art. 35.—While at sea the engine-room staff shall be bound, on the weekly rest-day, to do the work necessary to keep the engines working properly. Compensatory rest with pay shall be allowed them on land, either by whole days or on the terms laid down in the fourth paragraph of Art. 34.*

Art. 36.—Half, but not more than half, the compensatory rest days still due at the end of a voyage, may, for all categories of the crew, and by mutual consent of all concerned, be postponed to a later date, and, if need be, form part of a period of leave.

Art. 37.—An administrative order shall determine the conditions in which the provisions of the foregoing Arts. 27 to 36 shall apply to trading vessels of less than 200 tons gross and to fishing boats.†

Part IV.—Shipowners' obligations.

Chapter I.—Concerning fixed rates of pay, profit-sharing, and other forms of remuneration.

Section I.—General regulations.

Art. 38.—Seamen shall be remunerated either by fixed pay or by a share in the profits.

Art. 39.—For the purposes of this Act shares in profits, in a catch of fish, and in freightage, bounties and allowances of every kind promised to the seamen by the shipowner in the agreement shall be considered as pay.

In the event of an understanding between the parties that the seaman shall not be entitled to a bounty unless he continues working for the shipowner till the end of the fishing cruise, or the expiry of his agreement, the amount of the sum thus retained shall not exceed one-fifth of his whole pay, including the bounty.

Art. 40.—All articles of agreement according to which a seaman's remuneration consists, wholly or partly, in a share in profits or in the freightage, shall stipulate the expenses and charges which are to be deducted from the gross profits, in order to arrive at the net proceeds.

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* *Cf.* A. 1909, Art. 28, and the Ditte award.

† *Cf.* A. 1907, Art. 54 and Bill to amend this Act (Le Bail's report), Art. 1.

At the time of settlement no deductions, other than those thus stipulated, shall be made to the detriment of the seaman.

Compensation paid to a vessel by reason of the breaking off, curtailment, postponement or prolongation of her voyage, or for loss of profits or freightage, shall be considered as part of the gross proceeds.

This provision shall only apply to compensation allowed by insurance companies when the seaman has been contributing to the payment of premiums since the beginning of the voyage.

Shipowners' premiums and indemnities shall not be included in the proceeds to be shared, unless an agreement to the contrary exist.

Art. 41.—When seamen are paid by the month they shall, if the voyage be prolonged or curtailed, be remunerated in proportion to the time they have actually served, and this whatever the cause for the alteration in the voyage.*

Art. 42.—When seamen are paid by the voyage no deduction shall be made from their pay if the vessel be unloaded voluntarily in some place less distant than that named by her charterers.

Should a voyage be prolonged for some other cause than absolutely unavoidable circumstances (*force majeure*), pay shall be proportionately increased.

Should a voyage be delayed by the fault of the captain or shipowner compensation shall be due to the seamen.†

Art. 43.—When seamen are remunerated by a share in profits or freightage, they shall be entitled to no compensation for any postponement, prolongation, or curtailment of the voyage caused by absolutely unavoidable circumstances (*force majeure*).

Should the said postponement, prolongation, or curtailment be the fault of the shippers or of a third party, the seamen shall share in the compensation adjudged to the vessel.

Should the postponement, prolongation, or curtailment of the voyage be the fault of the shipowner or the captain, and should it be prejudicial to the seamen, the latter shall be entitled to compensation fixed after taking the circumstances into consideration as well as to their share in the profits earned.‡

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* *Cf.* Com. Code, Arts. 254 and 255.

† *Cf.* Com. Code, Arts. 255, 256 and 257.

‡ *Cf.* Com. Code, Art. 257.

Art. 44.—When seamen are remunerated partly by payment by the month, partly by a lump sum for a voyage, and partly by a share in profits or freightage, then in case of postponement, prolongation, or curtailment of the voyage, the deduction from each form of remuneration shall be made in accordance with the regulations which, by virtue of the foregoing Articles, apply to the form of remuneration concerned.

Art. 45.—In all cases provided for in Art. 24 when a seaman does work outside his own special province, and which is paid for at a higher rate, he shall be entitled to an increase of pay at least equal to the difference between his own pay and that given for the special kind of work on which he has been temporarily employed.

Art. 46.—The pay per hour of seamen employed according to Art. 25. in salvage work and recovering wreckage, shall not be less than twice the amount of their daily wage, supposing them to be paid by the month, or less than the average daily wage of the place where they signed on, supposing them to be wholly or partly paid by the voyage or remunerated by a share in profits or freightage.

Art. 47.—Seamen shall be entitled to a share in the salvage indemnity allotted to the rescue ship. This share shall be distributed either by agreement between the parties, or by the maritime authorities, subject to an appeal to the courts.*

Art. 48.—When, owing to a seaman having landed or died, another replaces him in a higher position, he shall be entitled to be paid accordingly.

Section II.—Concerning the suspension and retention of pay.

Art. 49.—Every time a seaman is guilty of absenting himself without leave for more than twenty-four hours, his pay shall cease to be due from the moment he ceases to serve till the moment he resumes work, without prejudice to the right of the shipowner to claim compensation, if need be, for any tort which the seaman's absence without leave may have caused him.

Pay shall also be suspended in the following cases :—

Firstly, if a seaman has been deprived of his liberty because he is accused of or condemned for some breach of penal law.

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* *Cf.* the ministerial decision of 27th November, 1826.

Secondly, if he has been called up for military service, to undergo a period of training or instruction, unless an agreement to the contrary exist.

If a seaman be not paid by the month, the sum to be deducted from his pay in virtue of the foregoing paragraphs shall be provisionally settled by the maritime authorities, unless an appeal be made to court.*

Art. 50.—In cases where a seaman's articles of agreement have been cancelled in consequence of dismissal for absence without leave, half the pay still owing to him shall be retained as security for any sums which he might be condemned to pay as damages to the shipowner. The remainder shall be paid without further formality to the members of his family to whom it was assigned, and, in default of any such assignment, into the Seamen's Fund on behalf of the seaman himself.

The amount retained as security shall be paid into the same fund. If, however, no action for damages has been brought against the seaman by the shipowner within the space of one year, beginning from the end of the voyage, then it shall be paid to the former.†

Art. 51.—The non-fulfilment by a seaman of obligations incumbent upon him either by virtue of laws, decrees and customs in force, or of his articles of agreement and any special regulations referred to therein, shall not render him liable to any fine or partial suspension of pay other than such as may result from the application of the law concerning discipline and punishment in the mercantile marine.

The foregoing provision shall not apply either to the deductions prescribed in the articles of agreement in case they are broken before expiry, or to fines prescribed in virtue of prevailing customs, except in fishermen's articles of agreement when they share in the catch or profits.

Section III.—Concerning assessment of pay.

Art. 52.—When the seaman's remuneration consists, wholly or partly, in a share in the profits or the freightage, the assessment of expenses and charges borne jointly and of proceeds and profits, shall be handed, together with original accounts and vouchers in proof thereof, by the shipowner, signed by him, to the maritime

* *Cf.* D.P. Bill, 1913, Art. 38.

† D.P. Bill, 1913, Art. 38.

authorities responsible for the calculation of the sum due to each individual.*

Art. 53.—When the seaman's remuneration depends wholly or partly on the proceeds of his own personal catch, or haul, the captain or employer shall every day enter these proceeds in a book which the seaman shall keep, and which shall be handed to the maritime authorities when the time has come for assessing the pay.

If all or part of a seaman's remuneration is subject to the quality, quantity or weight of the proceeds of his catch being verified, those concerned shall be entitled to appoint one of their number, by a majority of votes, to be present when this is done. Such person, unless there be an agreement to the contrary, shall be paid on the basis of the average daily earnings of a seaman in the place where the verification takes place, and at the cost of the crew.

Art. 54.—Where the pay of the seaman is to be calculated on the average selling-price of the catch or cargo the bases of calculation of this average price shall be entered in advance in the articles of agreement. The maritime authorities shall take note, when assessing pay, of the price consequent upon the application of these criteria.

Art. 55.—Should a shipowner wish to claim for himself all or part of the catch of one of his boats, after she has reached port, he shall make a declaration to that effect to the maritime authorities, and the price allowed shall be that prevailing on the day of his declaration.

Every shipowner desiring either to sell to a third party or claim for himself all or part of the catch of one of his boats, before she reaches port, must pay off her crew on the basis of the average prices prevailing in the port in question for catches made by boats of the same category a fortnight before and a fortnight after the fishing boat arrives in port.†

Section IV.—Concerning lodgments of pay.

Art. 56.—In agreements requiring a seaman to be absent at sea for more than four months, at least two-thirds of the pay agreed upon for such months as are due shall be paid as an instalment every

* *Cf.* Guernier's Bill, passed by the Chamber of Deputies on 18th March, 1913, Art. 1.

† *Cf.* Guernier's Bill, Art. 2.

four months into the Seamen's Fund, after deduction of assignments, advances and payments on account.

This provision shall not apply in cases in which seamen are remunerated by a share in profits or freightage.

Section V.—Concerning times and places of payment.

Art. 57.—Fixed wages which are due, wholly or in part, shall be paid, in the case of an ocean-going vessel, on arrival in the French port, where her long-distance voyage ends, even if this port be not the one where she was fitted out.*

The same shall apply when a vessel is fitted out for the international coasting trade, if there be no agreement to the contrary. No such agreement, however, shall authorise any payments to be made outside France, nor allow the interval between two payments made in France to be prolonged beyond three months.

If the ship be fitted out for the national coasting trade, the crew shall be paid every month, at the first port of call, if there be no agreement to the contrary. No such agreement, however, shall make it possible for the period since the last payment was made to exceed three months.

Every seaman put ashore by himself in France before the expiry of a voyage shall be paid at the time of landing.

Art. 58.—Should an ocean-going ship end her long-distance voyage at a foreign European port, the French maritime authorities at this port shall proceed to provisional assessment of pay. Such assessments shall be countersigned and sent to the maritime authorities at the port where the ship was fitted out. The balance of pay of each individual, after deduction of the sum assigned by virtue of Art. 56, and all moneys advanced or paid on account, shall be handed to the French authorities at the foreign port, either in the form of drafts or in cash, so that the seaman, on his return to France, or the persons appointed by him to receive the sums owing to him, may be paid through the Seamen's Fund.

A similar mode of procedure shall be observed when an international coasting trade voyage ends in a foreign port.

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* *Cf.* Royal Declaration of 18th December, 1728, Art. 5, and Decree of the King's Council of 19th January, 1734.

In the case where a seaman is put ashore by himself abroad, before the expiry of his voyage, his wages shall be paid into the Seamen's Fund for the purpose of being paid him on his return to France, or to any persons appointed by him.

Art. 59.—Pay due from the shipowner for periods spent on land, to a seamen who is still bound by his articles of agreement to work for the shipowner, but who is not serving on any particular vessel and whose name is not included in any muster roll, shall be paid at the times and places appointed by custom and convention.

Art. 60.—Shares of profits, except in the case of deep-sea fishing, shall be paid according to custom and convention.

Art. 61.—In the case of deep-sea fishing, shares shall be paid at the periods fixed by contract.

The balance of such shares shall be paid at latest within a fortnight of delivery, if the catch is sold for immediate payment, and within a month of delivery, if it is sold for quarterly payment. If, however, the whole catch has not been sold and delivered on 1st February following the fishing season, the shipowner shall be bound to settle with the crew on that date, on the basis of the average rates locally prevalent in January.

Art. 62.—The payment of wages and shares shall be made either before the maritime authorities responsible for the assessment of the sums due to those concerned, or before a representative thereof, or after due notice has been given to the authorities, the shipowner being liable to be called upon to prove that such notice has been duly given. All such payments made shall be noted in the seaman's book by the maritime authorities.*

Art. 63.—When the payment has not been made before the maritime authorities or the duly-appointed representative thereof, an official report concerning the payment made, and, if need be, the claims to which it has given rise, shall be sent, within forty-eight hours, to the maritime authorities.

Art. 64.—The provisions of the two foregoing articles shall not apply to the payment of wages coming under Art. 59.

Art. 65.—In case of the loss of the ship, proved or presumed, in accordance with Art. 88 of the Civil Code, and in case she is

* *Cf.* Decree of the King's Council of 19th January, 1734.

captured or unseaworthy, the men shall be paid at the Maritime Office of the area in which the event took place, if it occurred within sight of the French coast, and if those concerned ask to be so paid. In all other cases they shall be paid at the office of the port where the vessel was fitted out.

Art. 66.—The pay of seamen absent or missing shall be paid into the Seamen's Fund on behalf of those entitled to claim it.

Art. 67.—If the assessment of pay be not acceptable, either by the shipowner or his representative, or by the seaman, the seaman shall immediately receive the undisputed portion of his pay. The disputed portion shall be paid into the Seamen's Fund, where it shall remain on deposit until the verdict of the competent judicial authorities delivered at the request of whichever party first takes action is given.

All compromises concerning the amount in dispute shall be invalid unless approved by the maritime authorities.

Art. 68.—In case of a mistake, an omission, forgery or double entry, the assessment of pay drawn up by the maritime authorities may be rectified, at the request of those concerned, within five years of the time at which the assessment was made.

Art. 69.—Any payment of wages and shares made contrary to the provisions of Arts. 52, 55 and 62, shall be invalid.

Section VI.—Concerning payments in advance and on account.

Art. 70.—No part of his pay shall be advanced to any seaman except in the presence and under the supervision of the maritime authorities.*

Every advance shall be entered in the seaman's book. It shall not be permissible to deduct advances, however considerable, from the pay of a seaman or the share due to him, in excess of the following amounts: three months' pay in the case of long-distance voyages on sailing vessels rounding Cape Horn or the Cape of Good Hope; two months' pay in the case of sailing vessels not rounding these Capes; one month's pay for all other sea voyages; 50 francs

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* *Cf.* Royal Declaration of 18th December, 1728, Art. 6; and Decree of the King's Council of 19th January, 1734.

in the case of fishing boats not engaged in deep-sea fishing; 250 francs in the case of deep-sea fishing.

In so far as the advance exceeds the amount thus fixed, it shall remain the property of the seaman as a bonus on his contract, or lost advance-money. Nevertheless, advances exceeding these maximum amounts may be agreed to in the form of assignments.*

Art. 71.—Nothing shall be paid on account to a seaman during a voyage unless it has been previously entered in the log with the signature of the seaman, or, failing this, that of two of the leading men of the crew.

It shall not exceed one-third of the amount earned by the seaman in question at the time when the advance is requested, after deducting all advances and assignments.

The captain shall decide as to the advisability of granting the payment on account which has been requested.†

Art. 72.—All payments of advances made contrary to the provisions of Art. 70, and all payments on account made contrary to the provisions of Art. 71 of this Act, shall be invalid.

Section VII.—Concerning the refund of advances.

Art. 73.—A shipowner shall be entitled to the refund of advances and payments on account made by him, after deducting pay owing, in the following cases :—

Firstly, in case of breach of contract on the part of the seaman, without prejudice to disciplinary punishments or damages. This regulation shall likewise apply to bonuses on contracts or to lost advance-money.

Secondly, if at the time when the pay is assessed, the amount of pay advanced or paid on account exceed the amount of the pay or shares actually owing to the seaman.

This latter provision, however, shall not apply to advances which have been used as assignments.

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* *Cf.* Royal Declaration of 18th December, 1728; and Decree of the King's Council of 19th January, 1734.

† *Cf.* Royal Declaration of 18th December, 1728; and Decree of the King's Council of 19th January, 1734.

Art. 74.—In case of breach of contract by the shipowner, captain or charterers, the advances received by a seaman himself shall not be subject to refund.

Neither shall they be subject to refund in case of breach of contract owing to absolutely unavoidable circumstances (*force majeure*), if there be no agreement to the contrary.

Art. 75.—A seaman shall, in no case, receive payment for what is due to him except in specie or notes legally current.

Agreements, however, may provide for his being paid abroad in foreign coinage, at a fixed rate of exchange.

If no agreement exist, payment abroad in foreign coinage shall be made after the French authorities have ascertained the rate of exchange.*

Section VIII.—Concerning assignments of pay.

Art. 76.—In order that the provisions contained in the following Articles concerning assignments may be adhered to, a seaman shall be bound to acquaint the maritime authorities with the facts concerning his family and the domicile of those persons legally dependent on him. This he shall do when he signs on, and if need be, every time he embarks. He shall both make a declaration and produce his book, and any other papers, etc., which may be required.

Art. 77.—Every time he embarks a seaman may assign his pay and profits, but only to a person whom he is legally bound to support. The total amount of such assignments, however, may in no case exceed two-thirds of the said pay and profits. The amount of the assignments, the names of the beneficiaries, and the dates when payments are due shall be entered in the muster roll.†

Art. 78.—Seamen who, when they embark, do not avail themselves of the power of making assignments, shall be allowed to do so during a voyage, on the same terms and subject to the same restrictions. Their requests to this effect shall be handed in to the captain and by him transmitted without delay to the shipowner, while the maritime authorities shall make a corresponding entry in the muster roll.

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* *Cf.* Circular dated 19th November, 1885.

† *Cf.* Ministerial Decree of 22nd March, 1862.

Art. 79.—Should the maritime authorities receive a claim from the wife of a seaman asking to be allotted an assignment, they shall request the seaman to grant such assignment. Should the latter decline to do so, the authorities shall inform the wife accordingly, pointing out to her that her proper course is now to appeal to a Justice of the Peace, in virtue of Art. 7 of the Act of 13th July, 1907, concerning the contributions of husband and wife to the upkeep of the home, with a view to attaching or receiving her husband's pay within the limits laid down by Art. 83 hereinafter.*

Art. 80.—A person acting *de facto* as guardian of a seaman's children under age may obtain from the Justice of the Peace where the seaman is domiciled authority to attach or receive his pay for the requirements of the said children, within the limits defined in Art. 83 hereinafter.

In case such a person should send in a claim to the maritime authorities asking for an assignment in favour of a seaman's children under age, the procedure provided in Art. 79 shall be followed.

Art. 81.—A shipowner shall be bound to pay the amounts assigned within due time, either to the person to whom they are assigned, or into the Seamen's Fund.

Section IX.—Concerning seamen's debts and attachment and transference of their pay.

Art. 82.—Seamen's pay and profits shall be exempt from attachment and inalienable except for the reasons and within the limits defined in the following Article.†

Art. 83.—Seamen's pay and profits may be attached and transferred, but only to the extent of one quarter :—

Firstly, in case of a debt due to the State or to the Seamen's Disablement and Provident Funds.

Secondly, in case of a debt allowed by the maritime authorities for foodstuffs, clothing, or accommodation.

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* *Cf.* Act of 13th July, 1907, Art. 7.

† *Cf.* Ordinance of 1st November, 1745 ; Lab. Code, Art. 74.

Thirdly, in case of a debt to a shipowner for undue payment on a former assessment of wages, for an advance or undue payment on account, and for damages.*

Art. 84.—The same pay and profits may be attached to an amount not exceeding another quarter, for an alimentary allowance due in virtue of Arts. 203, 205 and 214 of the Civil Code, in compliance with a final legal decision.†

The provisions of this and of the foregoing Articles shall apply to grants representing pay allowed in cases of illness or injury, in accordance with Art. 99 of this Act.

Art. 85.—Besides the possessions, sums of money, drafts and other valuables declared to be unattachable either by Art. 592 of the Code of Civil Procedure, or by the laws regulating pensions, arrears and grants from Disablement and Provident Funds, or by any other laws, the following shall not be subject to attachment on any pretext whatsoever —

Firstly, seamen's clothing, without any exceptions ;‡

Secondly, instruments and other articles used by them in the exercise of their maritime calling ;

Thirdly, amounts owing for medical attendance and medicaments ;

Fourthly, amounts owing for repatriation or for returning a seaman to his own country.

Art. 86.—The debts specified in Art. 83 shall be notified to the maritime authorities or to the shipowner, and may be the cause of deductions at the time of the assessment of pay.

The procedure described in the Act of 12th January, 1895, shall also apply to the attachment of seamen's pay.

Chapter II.—Concerning food and sleeping accommodation.

Section I.

Art. 87.—Seamen shall be entitled to their food or to a grant equivalent thereto for the total duration of their inscription on the muster roll.

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* *Cf.* Ordinance of 1st November, 1745.

† *Cf.* Decree of 11th August, 1856.

‡ *Cf.* Edict of March, 1584, Art. 63.

Art. 88.—On every vessel on which seamen are fed by the shipowner, there shall be a properly qualified cook, above eighteen years of age. Should the crew number more than twenty men, the cook may not be taken away from his work, and set to do other work.*

Art. 89.—Seamen shall be supplied with wholesome food, of good quality, sufficient in quantity, and of a kind suitable to each particular voyage.

The rations given out shall be so composed as to be at least equal to those provided for seamen in the Navy. A list of food equivalents drawn up by a ministerial decree, together with details of what constitutes the rations given out, shall be always kept posted up in the crew's quarters. The deck hands, the engine-room staff, and the general service hands shall appoint, each in turn, one of their number to check the quantities distributed at each distribution, and, if need be, their quality also.

Every reduction of rations shall, except in cases of absolutely unavoidable circumstances (*force majeure*), constitute a claim to an indemnity to make up for such reduction.

Such absolutely unavoidable circumstances (*force majeure*) shall be mentioned in minutes entered in the log and signed by the captain and the ship's doctor, should there be one. Furthermore, each division of the crew shall appoint delegates, not exceeding three in number, by whom the said minutes shall also be signed. No claim can subsequently be put forward in regard to circumstances thus entered in the log.†

Art. 90.—No shipowner shall be allowed to instruct the captain or any of the ship's officers to contract to feed the crew.‡

Art. 91.—No person shall be allowed to bring any alcoholic liquor on board without the permission of the captain.

Any liquor brought on board in contravention of the foregoing provision, shall be confiscated by the captain and sold by the Administration of the Mercantile Marine for the benefit of the Disablement Fund, and this without prejudice to any disciplinary punishments.

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* *Cf.* Decree of 3rd September, 1913, Art. 13.

† *Cf.* Decree of 11th August, 1856.

‡ *Cf.* A. 1907, Art. 31.

The captain shall not be allowed to bring on board, cause to be brought on board, or keep on board, for the consumption of the crew, including the officers, alcoholic liquor exceeding in quantity the amount fixed by a decree of the Under-Secretary of State for the mercantile marine for each category of vessels.

Liquor kept on board in contravention of the foregoing provision shall be seized either by any authority competent to certify that such contravention is prejudicial to the good order and safety of the vessel or by the Customs officials. It shall be sold for the benefit of the Disablement Fund, and this without prejudice to any disciplinary or penal measures.*

Art. 92. —All shipowners shall be forbidden :—

Firstly, to keep on land any kind of stores in which they sell foodstuffs and goods of any kind whatsoever, directly or indirectly, to the seamen employed by them or to their families.

Secondly, to make it incumbent on the said seamen to spend their pay, wholly or partly, in stores recommended by shipowners.†

Section II.

Art. 93.—On vessels fitted out for long-distance voyages, articles of bedding shall be supplied by the shipowner, on conditions laid down by administrative order concerning hygiene on board ship.

The same shall apply to other vessels, if there be no agreement to the contrary.‡

Chapter III.— Concerning sicknesses of and injuries to seamen.

Art. 94.—Seamen injured in a ship's service or by reason of such service, shall be attended to at the cost of the shipowner.

Similarly with regard to seamen falling sick after a vessel has left her port of embarkation, unless the shipowner prove the sickness not to have been contracted in his service.

The prescriptions of the foregoing paragraph shall not apply to a seaman affected with lunacy, epilepsy, or any venereal disease, unless he prove such affection to have been contracted while serving.

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* *Cf.* A. 1907, Art. 31.

† Lab. Code, Art. 75.

‡ *Cf.* Decree of 21st September, 1908, Art. 18.

Except in the cases provided for in the second paragraph of this present Article, a shipowner shall not be liable to provide seamen when sick with medical attendance and medicaments, unless it be proved that their sickness was contracted while working for him.

If injured or sick, a seaman shall forfeit all claim to benefit from the provisions of this present Article and also from the other provisions of this present Chapter, if his sickness were contracted or he were injured while under the influence of drink or because he was guilty of some gross misdemeanour or breach of discipline.*

Art. 95.—The expenses of attending to a sick or injured seaman shall cease to be due when he has recovered from the injuries received or the indisposition contracted in the shipowner's service, or when the injury or sickness proves incurable.†

Art. 96.—When the ship's doctor, if there be one, or any other doctor appointed by the maritime authorities, declares a sick or wounded seaman to be in such a state that he must be put ashore, the said seaman shall be placed in a hospital on land or in a floating hospital; and the shipowner or captain immediately informed thereof.

Should he be put ashore in France, he can insist on being taken, at his own expense, and provided the doctor allow it, to his own home, to be nursed there. The shipowner shall then have a right to have the seaman attended by a doctor selected by himself.

Art. 97.—When a seaman is being nursed in his own home, he shall receive a daily allowance for medical attendance and medicaments. This allowance shall not exceed the cost of a day in hospital at the port where he was put ashore.

Art. 98.—Apart from the cost of medical attendance and medicaments, a sick or injured seaman shall be entitled to his shipboard food in kind, so long as he is on board.

Art. 99.—The pay of a sick or injured seaman, and, after he has been put ashore or taken to a floating hospital, an allowance equal to his pay, shall be paid him in cases coming within the meaning of the first and second paragraphs of Art. 94. Such payments shall continue either until the day of his death or until he is cured or proved incurable, or, if he were left in some place outside France, until the day of his return to France. In no circumstances, however, shall

* *Cf.* Com. Code, Art. 262.

† *Cf.* Decree of the Court of Appeal, of 24th July, 1894.

such allowance continue due for more than four months from the date when he was put ashore or taken on board a floating hospital.*

Art. 100.—When a seaman is not remunerated by fixed pay, such pay or grant representing it, due in virtue of Art. 99, shall be calculated in accordance with the average daily wage earned in the port of embarkation by men of the same grade and doing the same special work. Such pay shall be fixed by the maritime authorities in the said port, unless an appeal be made to court.

Art. 101.—Should a seaman die from a sickness or injury the expenses in connection with which shall be met by the shipowner, the latter shall bear the funeral expenses.†

Art. 102.—In seaports other than those of France, and if there be some French authority on the spot, a shipowner may, at the written request of the captain, be exonerated from all expenses for medical attendance and medicaments by paying to the said French authority, at the time the sick or injured seaman is put ashore, a lump sum calculated according to a tariff drawn up by administrative order.

This tariff shall be revised every five years.

The lump sum shall cover not only the expenses of medical treatment, but those of repatriation and travelling home, on the conditions laid down in Arts. 107, 108 and 111. The shipowner shall be allowed to pay the whole of such lump sum even if the seaman be put ashore while his agreement of fixed duration is still in force.

After the payment of the said lump sum, all that the shipowner shall be bound to do is to see that the seaman receives his pay, and, if need be, to pay him the equivalent grant prescribed by Art. 99.‡

Art. 103.—The prescriptions of the foregoing Article shall not apply in cases where a seaman who has embarked on a ship fitted out in a seaport of a colony, subject to the laws of the mother-country, is landed, owing to sickness or injury, in a seaport of the same colony.

Art. 104.—When, by virtue of the foregoing Articles, the shipowner is not bound to pay for the treatment required by a sick or injured seaman, the captain shall be none the less bound to see that sick or injured seamen on board his vessel have all necessary attention, until they are put ashore and handed over to some French authority.

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* *Cf.* Com. Code, Art. 262.

† *Cf.* Decree of 22nd September, 1891, Art. 4.

‡ *Cf.* Com. Code, Art. 262.

If there be no such authority in the seaport where the sick or injured seaman is put ashore, then the captain, at the cost of the shipowner, must do everything needful to ensure the seaman in question being medically attended to and repatriated without prejudice to the right of appeal against whoever may be legally responsible.

From the day when he was obliged to cease work, a sick or injured seaman coming under conditions to which the terms of this present Article apply, shall cease to be entitled to his pay, but he shall be entitled to his food on board, in kind, until he is put ashore.

Art. 105.—If accidents occur to a seaman while his articles of agreement are in force, by reason of or during work done by him on land for the shipowner, and while the seaman is not in the service of any ship, then the legislation concerning labour accidents on land shall apply.

Art. 106.—A subsequent law shall decide on what date the obligations devolving on shipowners because of the provision of this present Chapter shall begin to be chargeable to the Provident Fund, and shall fix, in case of need, the rate of increase of contributions due to such Fund by the shipowners.

Chapter IV.—Concerning repatriation and return home.

Art. 107.—Except in the cases enumerated in Art. 112 hereinafter, a shipowner shall provide, in cash or in kind, for the repatriation to France of seamen left or put ashore, because their articles have expired in a seaport outside France.

Those embarked in a French colony or protectorate must be repatriated to such colony or protectorate, unless it has been stipulated that they are to be conveyed back to France.*

Art. 108.—Repatriation shall include food and lodging, in addition to transport, but shall not extend to the supply of any clothing. Nevertheless, in case of necessity, the shipowner shall advance the money for indispensable garments.

Art. 109.—In every case when repatriation is due and is not paid for in kind, the captain shall hand to the French authorities, at the time of disembarkation, the amount of the expenses of such repatriation, which sum shall subsequently be refunded to the captain, pro-

* *Cf.* Com. Code, Art. 262; and Decree of 22nd September, 1891, amended by Decree of 24th December, 1896.

vided the seamen repatriated come within the meaning of the following Article.

Art. 110.—The shipowner shall have a right to meet the obligation to repatriate a seaman by finding him, if he be fit for work and the French authorities give their consent, employment similar to that in which he was previously engaged, and on a French trading vessel bound for the country to which the seaman is to be repatriated.

The pay earned by the seaman during this voyage shall be deducted from any pay which may be owing to him by the shipowner during such period.*

Art. 111.—Seamen not disembarked at the French port of embarkation shall be entitled to the travelling expenses necessary to reach such port from the French port at which they were put ashore.

Nevertheless, these expenses shall not be due unless the seaman leave the port of disembarkation within a week of landing.

If the journey to his destination costs less than that to the port of embarkation, the shipowner shall be bound to defray the cost of the former journey only.

If the journey to his destination costs more, he shall not be entitled to claim more than the cost of the journey to the port of embarkation.

In no case shall the shipowner be bound to pay travelling expenses until proof has been submitted to him as to what expenses have actually been incurred.

Such travelling expenses shall only include the cost of travel by railway or boat.

An administrative order shall determine the kind of travelling expenses which each category of seafaring person shall be entitled to claim.†

Art. 112.—A shipowner shall not be bound to defray the cost of repatriating a seaman who has gone ashore under the following circumstances :—

If he has been dismissed for a legitimate cause, either at the suggestion of the French authorities, or to undergo some punishment ;

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* *Cf.* Decree of 22nd September, 1891, Arts. 7 and 8.

† *Cf.* Decree of the 5th Germinal, year XII, Arts. 1 and 8 ; Decree of 4th March, 1852 ; and Decree of 22nd September, 1891, Arts. 16 and 18.

Or if he has contracted some illness or been injured under the circumstances enumerated in the fifth paragraph of Art. 94 of this Act;

Or if his articles of agreement have been cancelled by mutual consent before the French authorities.*

Chapter V.—Concerning seamen's claims and privileges.

Art. 113.—The provisions of Art. 216 of the Commercial Code, empowering a shipowner, by abandoning his ship and her freight, to free himself from engagements entered into by the captain, shall not be applicable to seamen's claims arising out of their articles of agreement.†

Art. 114.—The following shall constitute a first charge on a vessel and her freight during the period current since the beginning of the last voyage :—

Seamen's pay and allowances for food.

The cost of medical attendance and medicaments.

The cost of repatriation and of travelling expenses in France.

Any grants in lieu of pay which may be due in cases of illness or injury.

The first charges connected with these claims shall apply to the vessel and to the sums owing to the shipowner for freight and for damages and other detriment undergone during the last voyage.

Consequently Art. 191 of the Commercial Code shall be amended as follows :—

" The debts hereinafter mentioned shall be a first charge, in the order in which they are arranged : (Sont privilégiées, et dans l'ordre où elles sont rangées, les dettes ci-après désignées :)

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.....

" Sixthly, the pay and food allowances owing to the captain and other members of the crew employed during the last voyage ; the cost of medical attendance and medicaments, and the cost of repatriating the captain and other members of the crew and of their travelling expenses in France ; and grants in lieu of pay which may be owing to them in case of illness

* *Cf.* Decree of 22nd September, 1891, Art. 19.

† *Cf.* Com. Code, Art. 218.

or injury.* (6° Les salaires et indemnités de nourriture du capitaine et autres gens de l'équipage employés au dernier voyage ; les frais médicaux et pharmaceutiques et les frais de rapatriement et de conduite du capitaine et des autres gens de l'équipage ; les allocations représentatives du salaire pouvant leur être dues en cas de maladie ou de blessure.")

Art. 115.—Furthermore, the claims set forth in Art. 114 shall be a first charge on the whole of the shipowner's property, in case the property and sums specified in the second paragraph of the same Article shall be insufficient.

Art. 2101 of the Civil Code shall accordingly be amended as follows :—

" First charge (privileged) claims on the whole personal estate shall be those hereinafter enumerated, and shall take effect in the following order : (Les créances privilégiées sur la généralité des meubles sont celles ci-après exprimées et s'exercent dans l'ordre suivant :)

.....

.....

" Seventhly, the pay and food allowances of the captain and other members of the crew ; the cost of medical attendance and medicaments, and the cost of repatriation and of travelling expenses in France, owing to the captain and other members of the crew ; and any grants in lieu of pay which may be owing to them in cases of illness or injury. (7° Les salaires et indemnités de nourriture du capitaine et autres gens de l'équipage, les frais médicaux et pharmaceutiques et les frais de rapatriement et de conduite dus au capitaine et autres gens de l'équipage ; les allocations représentatives du salaire pouvant leur être dues en cas de maladie ou de blessure.) "

Art. 116.—Claims for pay which has become due during the periods spent on land referred to in Art. 59 shall, as far as privilege is concerned, be subject to the rules of common law.

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* *Cf.* Com. Code, Arts. 191 and 192.

Art. 117.—Claims for sums owing to seamen in virtue of Art. 46 shall be privileged to the same extent as claims coming within the meaning of Art. 2102, § 3, of the Civil Code.*

Part V.—The termination of articles of agreement.

Art. 118.—A seaman's articles of agreement shall expire, if they have been concluded for a definite period, upon the expiration of the period for which they were concluded.

They shall expire, no matter for what period they may have been concluded, for the following causes :—

The death of the seaman;

Cancellation or breach under the conditions and circumstances specified in Arts. 124–138 hereinafter;

Or cancellation by a court of law in virtue of the provisions of Art. 1184 of the Civil Code.

Furthermore, if the articles were entered into for the term of one voyage, they shall expire owing to the following causes :—

When the voyage is over.

If the voyage be broken off on purpose or of necessity.

Art. 119.—When the contract was concluded for a fixed period, it shall terminate on the expiration of the period for which it was concluded. Nevertheless there may be a stipulation that, unless one or other of the parties shall, within a given time, give notice of his withdrawal from the contract, it shall continue in force for another fixed period.

Art. 120.—When a contract has been entered into for a fixed period and this expires during a voyage, and there is no clause in the contract concerning its prolongation, it shall continue in force for the following periods :—

If it is being carried out on a trading vessel or a fishing boat, until her arrival in the first European seaport where she has some business to transact.

If it is being carried out on any other vessel, then until her arrival at the first European seaport where she makes a call lasting at least twenty-four hours.

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* *Cf.* Civil Code, Art. 2102.

If, however, the vessel is due to arrive at a seaport in France within a month, reckoning from the expiration of the time stipulated in the contract, the latter shall continue in force.*

Art. 121.—In case a seaman die while his articles are still in force, his pay, should he be paid monthly, shall be due to his heirs and assignees up to the day of his death.

If the seaman be engaged for a whole voyage and paid either a lump sum or by a share in profits or freightage, and for an outward-bound voyage only, then the whole of his pay or of his share shall be due if he die after the beginning of the voyage. If he has signed on for both an outward and a homeward-bound voyage, then half of his pay and share shall be due, should he die on the outward-bound journey or at the arrival port. If he die on the homeward voyage, then the whole shall be due.

In deep-sea fishing cruises, half a seaman's pay or share shall be due if he die during the first half of the season, and the whole if he die during the second half.

If a seaman lose his life in the defence of the ship or while risking his life to save her, either at sea or in port, his pay shall be due until the expiration of a period of three months from the date of his death, and this whatever the nature of the contract.†

Art. 122.—Should a ship be lost in unknown circumstances, those entitled to do so can claim not only a seaman's pay until the last news received of his ship, but also the following sums :—

If the seaman were paid by the month, one month's extra pay.

If he were paid by the voyage, half the pay appertaining to the outward or homeward-bound voyage during which the shipwreck occurred.‡

Art. 123.—The provisions of the two foregoing Articles shall apply without prejudice to any agreements to the contrary granting better terms to seamen or those entitled to succeed them, and without prejudice to any grants due to the latter from the Seamen's Provident Fund.

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* *Cf.* D.P. Bill, 1913, Art. 37, para. 1.

† *Cf.* Com. Code, Art. 265.

‡ *Cf.* Com. Code, Art. 258, §§ 4 and 5.

Art. 124.—Articles of agreement shall be cancelled legally and without compensation, whatever term may have been fixed for them, in the following cases :—

(*a*) By mutual consent of the parties.*

(*b*) When a seaman ceases to fulfil the conditions of physical fitness laid down by Art. 9.

Art. 125.—Articles of agreement concluded for a fixed period hall be cancelled legally and without compensation, in case the shipowner or his representative shall, for a legitimate cause, dismiss a seaman.† The following shall be the chief legitimate causes for dismissal :—

Firstly, failure on a seaman's part to appear for embarkation the first time he is required to do so by the shipowner or his representative, and this without prejudice to any damages or refund of moneys advanced which the shipowner may be entitled to claim from the seaman.

Secondly, the arrest of a seaman on charge of some crime or misdemeanour when the ship is just about to leave, or his imprisonment for more than five days when she is not on the point of departure.

Thirdly, disobedience in circumstances rendering it, according to the disciplinary laws in force, a serious breach of discipline.

Fourthly, drunkenness observed more than three times, which constitutes, according to the disciplinary laws in force, a serious breach of discipline.

Fifthly, absence from the ship without leave for more than three days.

Sixthly, absence from the ship or continuation of absence therefrom, no matter for how long, if such absence occur either between the time when the captain has ordered service to be performed in watches with a view to preparing to set sail and the time when he has ordered them to cease service in watches, or else when the seaman left the vessel being already under arrest.

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* *Cf.* Ordinance of 31st October, 1784, Part XIV, Art. 15.

† *Cf.* Ordinance of 31st October, 1784, Part XIV, Art. 15 : and Com. Code, Art. 270.

Seventhly, incurable disease preventing a seaman, whether ill or injured, from ever again resuming service at sea.

Eighthly, incapacity to resume service at sea owing to illness or injury continuing for more than three months, if there be no agreement to the contrary.

Ninthly, an injury or illness incapacitating the seaman from serving at sea, if due, either at sea or ashore, to a serious misdemeanour on the part of the said seaman, or, if it happened on land, while he was absent from his ship without leave.

Tenthly, the capture, shipwreck, or unseaworthiness of the vessel on which his articles ought to be or are being carried out, if there be no agreement to the contrary.

Art. 126.—Should a seaman's articles of agreement concluded for a fixed period be broken because he has been dismissed by the shipowner or captain without just cause, then the shipowner shall be bound to allow him compensation.

The amount of such compensation shall depend upon the nature of the work the seaman was engaged to do; on the time his articles had already run, and on the time they had still to run before their expiry, and, generally speaking, on all circumstances tending to justify a claim for damages and to determine its amount.*

Forfeiture clauses may be included in articles, in order to fix a lump sum for the payment of compensation due by reason of this present Article. Such clauses, however, shall be valid only if they do not amount to a renunciation in disguise of the rights conferred by the first paragraph of this Article.

Art. 127.—Articles of agreement concluded for a fixed period may be cancelled legally and without obligation on the part of the seaman to pay compensation, whenever he takes his leave for a legitimate cause. The chief of such legitimate causes shall be the following:—

Firstly, the non-payment of his wages at the times and on the conditions laid down by the law or by his articles.

Secondly, the fact of his having been the victim of an abuse of authority on the part of the captain, provided such abuse

* Lab. Code, Art. 23 (Art. 1780 of the Civil Code).

has been proven and punished in conformity with the penal and disciplinary laws in force.

Thirdly, the calling up or engagement of the seaman in military or naval service.

Art. 128.—Breach of articles of agreement concluded for a fixed period shall entitle the shipowner to claim compensation from the seaman when such breach has been brought about by the seaman himself, without legitimate cause.

In this case the provisions of the second and third paragraphs of Art. 126 shall be applicable.

Art. 129.—Articles of agreement for an indeterminate period may be cancelled by one of the contracting parties only on the expiration of the period for giving notice stated in the agreement in accordance with Art. 11, and by virtue of the fact that such notice has been given.

Cancellation brought about by one of the parties may constitute a claim for compensation either because such cancellation has been effected suddenly, or even when the period within which notice must be given has been observed, provided it be proved that the party has abused his right of cancellation.

In fixing the amount of compensation to be allowed, custom must be taken into consideration, also the kind of work for which the seaman was engaged, the length of time his agreement has been in force, and, in general, all circumstances calculated to prove that injury was done and determine its extent.*

Moreover, seamen dismissed because a voyage has been interrupted either because of trade prohibition or any similar measure, or because of the ship having been held up or captured, may be entitled, by way of compensation for the injury caused them, to the indemnities which would be granted in cases included in Art. 144.

Art. 130.—In reckoning the time allowed for giving notice as prescribed in agreements for an indeterminate period, the whole of any holiday or of any period of naval drill or military training shall not be counted.†

Art. 131.—The fact of a seaman being called up to undergo a compulsory term of naval drill or military training, may not

* *Cf.* Lab. Code, Art. 23.

† *Cf.* Lab. Code, Art. 26.

constitute a breach of articles of agreement for a fixed or an indeterminate period.

In case of the infringement of the provisions of this Article, the injured party shall be entitled to compensation, the amount of which shall be fixed by the court in accordance with Art. 129.*

Art. 132.—In the case of women who have entered into articles of agreement for a fixed or indeterminate period, Arts. 29 and 29A of the Labour Code shall apply.†

Art. 133.—Neither in French nor in foreign seaports may a seaman make use of the right of cancellation allowed him by Art. 129, after the time when the captain, the ship being on the point of sailing, has ordered the men to begin service in watches, with a view to getting under way. Nevertheless power to leave the ship's service may not be refused him for periods exceeding the following :—

Twelve hours before the time fixed for the ship's getting under way, in the case of a deck hand or one of the engine-room staff, and if the ship has been in port more than forty-eight hours.

Four hours before the time fixed for getting under way, if the seaman comes under the above-named categories of seafarers, and if the ship has been in port less than forty-eight hours.

Two hours before the time fixed for the passengers coming on board in the case of general service hands.

Neither in French nor in foreign seaports shall a seaman be entitled to use the right to cancel his articles allowed him by Art. 129 until the time when, after the ship is in port, the captain orders the men to cease service in watches. Nevertheless, it shall not be allowable to decline to allow him to leave the service for more than four hours after the ship has reached her moorings, where she is in safety, if he be a deck hand or belong to the engine-room staff ; nor for more than two hours after the passengers have left, if he comes under the category of general service hands.

Should a seaman infringe the regulations in the foregoing paragraphs he shall be liable to the disciplinary or penal measures

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* *Cf.* Lab. Code, Arts. 25 and 27.

† *Cf.* Lab. Code, Arts. 29 and 29A.

prescribed by the law,* apart from any compensation which may be due to the shipowner.

Art. 134.—Articles of agreement concluded for the term of a voyage may be cancelled legally and without compensation, in case of a seaman having been dismissed for a legitimate cause, particularly for one of the reasons enumerated under Secondly, Thirdly, Fourthly, Fifthly and Sixthly in the second paragraph of Art. 125.

They may also be cancelled legally and without compensation in the case of a seaman being so ill or so seriously injured as to necessitate his being put ashore, his rights to the medical attendance and grants provided for in Arts. 94 and 99 being reserved.

Art. 135.—Breach of a seaman's articles of agreement concluded for the term of one voyage owing to his being dismissed by the shipowner, or by his having taken his leave without legitimate cause, shall entitle either party, as the case may be, to claim compensation.

In case of a seaman being dismissed without legitimate cause, the compensation which the shipowner shall be bound to pay shall amount to one-third of the pay which would have been due had the voyage lasted a normal time, if the breach of contract occur before the said voyage has been begun ; and if it occur during the voyage, then the compensation shall amount to one-third of the pay still unearned up to the end of such voyage.†

Art. 136.—When a seaman is dismissed or goes on leave, or when notice is given to terminate articles of agreement, a verbal declaration shall be made before or a written statement sent to the maritime authorities, or else a declaration shall be made to the captain, and entered in the ship's log. If need be, this declaration may be made in the presence of two witnesses, or a receipt may be given for it.

The maritime authorities shall at once inform one party of a declaration made or sent in by the other party ; and the period of notice shall commence with such notification.‡

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* *Cf.* D.P. Bill, 1913, Art. 35, § 1.

† *Cf.* Com. Code, Art. 270.

‡ *Cf.* D.P. Bill, 1913, Art. 35, § 4.

Art. 137.—Outside French home ports a declaration concerning cancellation shall not take effect until it has been authorised by the maritime authorities.

When the cancellation is due to the mutual consent of the parties, it shall not be permissible for the maritime authorities to refuse their authorisation.

In cases to which the foregoing paragraphs apply, the maritime authorities, before granting their authorisation, shall, subject to appeal to the courts, determine the payment or deposit of the cost of repatriating the seaman whose contract is cancelled.*

Art. 138.—If the foregoing Article is to be applied to seamen who have set sail upon a vessel fitted out in Algeria, a French colony, or a protectorate subject to the laws of the mother-country, the ports of Algeria or of the said colony or protectorate shall be respectively considered as French home ports.†

Art. 139.—When a contract is concluded for the duration of a voyage, and the voyage is broken off owing to the fault of the shipowner or his representative, the seamen shall be entitled to compensation.

If the voyage be cancelled before the vessel has set sail, the seaman shall keep the advances he has received as compensation.

Failing any such advances, he shall receive a sum equal to at least one month's pay as stipulated in his articles, if he be paid by the month; or, if he be paid so much per voyage, then he shall receive his pay calculated according to the presumable duration of the voyage.

The seaman shall in addition be paid for the days which he has spent in the service of the ship.

If the voyage be broken off after it has been begun, a seaman paid by the month shall receive the pay agreed upon for the time he has served, and, as compensation in addition, half his pay calculated according to the presumable duration of the voyage. If he be paid so much per voyage he shall receive the whole of his pay agreed upon by the terms of his contract.‡

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* *Cf.* Ordinance of 31st October, 1784, Chapter XIV, Art. 15; and D.P. Bill, 1913, Art. 36.

† D.P. Bill, 1913, Art. 36.

‡ *Cf.* Com. Code, Art. 252.

Art. 140.—When seamen are remunerated by a share in profits or freightage, they may be entitled to compensation if, owing to the fault of the shipowner or his representative, either the voyage does not take place or it is broken off after it was begun.*

Art. 141.—When a voyage is cancelled owing to the fault of the freighters, the seamen remunerated by a share in freightage shall share in the compensation allowed the ship.

The proportion of such compensation granted them shall be the same as their share in the freightage.†

Art. 142.—If a voyage becomes impossible before it has begun, owing to trade being prohibited, the vessel being held up, or any other event due to absolutely unavoidable circumstances (*force majeure*), the seamen shall not on that account be entitled to claim any compensation.

Nevertheless, if they were to have been paid by the month or by the voyage, they shall receive pay for the days which they spent in the service of the ship.‡

Art. 143.—If as a result of the circumstances enumerated in the foregoing Article, and of circumstances other than those set forth in Art. 145, it becomes impossible to continue a voyage already begun, seamen paid by the month shall receive the pay due for the time they have served. Those paid a fixed sum per voyage shall receive all the pay mentioned in their agreement; while those remunerated by a share in profits or in freightage shall receive the share falling due to them by virtue of the agreement concerning profits made or freightage earned, during so much of the voyage as has taken place.§

Art. 144.—Whenever compensation is granted by Governments or administrative or judicial authorities, seamen who, by virtue of the two foregoing Articles, have not received the whole of the pay to which they would have been entitled had the voyage lasted as long as was expected, shall share in such compensation. This they shall do both if the compensation were allowed for injury caused by governments or administrative decisions which made the voyage

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* *Cf.* Com. Code, Art. 257, § 4.

† *Cf.* Com. Code, Art. 257, §§ 2 and 3.

‡ *Cf.* Com. Code, Art. 253.

§ *Cf.* Com. Code, Art. 254

impossible, or made its continuation impossible, and also if a capture has been declared illegal.

Art. 145.—In case of a vessel being captured, shipwrecked, or declared unseaworthy, seamen paid by the month or so much per voyage shall be paid their wages until the day their services cease, unless it be proven either that the loss of the vessel is due to their fault or negligence, or that they did not do everything in their power to save her, and also to save her passengers and cargo, or to save the wreckage.

In such case it shall be for the courts to decide whether they are to receive no pay or reduced pay only.*

Part VI.—Special provisions concerning the captain and officers.

Art. 146.—The regulations contained in Parts II, III, IV and V of this Act shall apply to articles of agreement concluded between shipowners and captains and officers, in so far as they contain nothing contrary to the regulations of Part VI.

Art. 147.—Contracts entered into between a shipowner and a captain concerning the latter's duties when acting for the shipowner, may be legally attested without the intervention of the maritime authorities.†

Art. 148.—At sea and in open roadsteads, deck officers and engineering officers shall be divided into watches. There shall be not less than two watches for deck officers, and three for engineer officers, whenever the engine-room staff itself has men enough for three watches.

No officer on board can refuse his services, no matter how many hours' work he may be required to do. The watches, however, must be so arranged that no deck officer has to be more than twelve hours on duty per day, and no engineer officer more than eight hours—that is, whenever the engine-room staff itself has men enough for three watches.

Except in absolutely unavoidable circumstances (*force majeure*) and when the safety of the ship, that of those on board, or of the

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* *Cf.* Com. Code, Art. 258, §§ 1, 2 and 3.

† *Cf.* Com. Code, Art. 250.

cargo is at stake—circumstances of which the captain shall be the sole judge—every hour an officer is ordered to be on duty beyond the limits laid down in the foregoing paragraph shall entitle him to proportional extra pay, which shall not be less than 1 franc per hour on duty over and above the ordinary number.*

Art. 149.—In port or in sheltered roadsteads deck officers shall not be liable for more than ten hours' duty per day, except in cases of absolutely unavoidable circumstances (*force majeure*), nor engineer officers, except in similar circumstances for more than eight hours' duty per day.

Nevertheless on the day of the arrival of a ship, as well as on that of her departure, the accumulated number of hours on duty in the roadsteads or in port and at sea may be as many as twelve for all officers on board, but this shall not necessarily carry the right to additional remuneration, provided always that the days of arrival and departure do not occur more than twice a week. Otherwise the provisions of the second and third paragraphs of the foregoing Article shall apply.†

Art. 150.—Officers shall be entitled to one full day's rest per week.

Compensatory rest-days, whether included in a period of leave or not, shall be granted them on land, in accordance with the arrangements between them and the shipowners, to compensate for the weekly rest-day which it may not have been possible to allow them at sea.

Art. 151.—The provisions of Arts. 41, 42 and 43 of this Act, concerning the payment of salaries in case of a voyage being postponed, prolonged or curtailed, shall not apply to the captain when such events are brought about by his own action.

The provisions of Arts. 49 and 50 shall likewise not apply to the captain.

Art. 152.—In deep-sea fishing cruises the advances prescribed by Art. 70 and paid to the captain and officers must not exceed Frs. 350.

Art. 153.—Art. 71, concerning money paid on account (instalments) shall not apply to the captain.

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* *Cf.* A. 1907, Art. 22, §§ 2 and 3.

† *Cf.* A. 1907, Art. 23.

Art. 154.—The whole of the earnings of a captain, other than his fixed pay, shall be attachable for amounts owing by him to a shipowner in the capacity of the representative of the latter.

His fixed pay shall also be attachable for the same reasons, within the limits of Art. 83.

Art. 155.—Whatever may be the duration of a captain's agreement, he may not cancel it nor break it while a voyage is in progress.*

Art. 156.—Whatever may be the duration of a captain's agreement, the shipowner may always dismiss him without notice, but shall be bound to pay him compensation on account of such sudden dismissal, compensation which in contracts for an indeterminate period shall be equal to the pay owing to him for the period within which notice ought to be given.

If the shipowner finds the captain a position corresponding to that which he previously occupied, and pays him up to the day when he takes up his new position, no compensation shall be due on the ground of his having been suddenly dismissed.†

Nothing in the foregoing provisions shall prevent the captain from receiving a larger amount in respect of damages, either in virtue of the forfeiture clauses which shall be included in agreements entered into for a fixed period or for the term of a voyage, or else in virtue of judicial decisions and in application of Arts. 126 and 129 of this Act, if he has been dismissed without legitimate ground, or if, in case his agreement be for an indeterminate period, the shipowner has made an abusive use of his right of cancellation.

Art. 157.—Should the captain be dismissed by the shipowner elsewhere than in a French home port, such dismissal shall not be subject to the authorisation of the maritime authorities, as laid down in Art. 137.

Art. 158.—Captains and officers who have served the same shipowner for more than ten years shall be entitled to compensation equal to at least six months of their last pay, if they should be obliged to cease working owing to circumstances which are no fault of their own, and this whatever the term of the agreements actually in force.

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* *Cf.* Com. Code, Art. 238.

† *Cf.* Com. Code, Art. 218.

Such compensation shall be increased by a sum equal to three months of their last pay for every additional five years, after the first ten, during which the captain or officer has been in the service of the shipowner. The above-mentioned compensation shall be independent of any compensation which the captain or officer may be entitled to claim on account of sudden dismissal.

Nothing in the provisions of the two first paragraphs of this present Article shall prevent a captain or officer from receiving a larger amount in respect of damages, either by virtue of the forfeiture clauses which must be included in agreements entered into for a fixed period or for the period of a voyage ; or else in virtue of judicial decisions and in application of Arts. 126 and 129 of this Act, if they have been dismissed without legitimate cause ; or if, in case their agreements be for an indeterminate period, the shipowner has made an abusive use of his right of cancellation.

Part VII.—Special regulations applicable to seamen under the age of twenty-one (boys, learners, and apprentices).

Art. 159.—The provisions of Parts II, III, IV and V of this Act shall apply to seamen's articles of agreement concluded with minors still under parental control, in so far as they contain nothing contrary to the provisions of Part VII of this Act.

Art. 160.—If the person invested with paternal powers authorises a minor to put to sea for the first time, the said minor shall thereby become legally capable of all acts connected with articles of agreement. In particular, he shall be legally entitled to receive his pay. He shall cease to have such power if the person invested with paternal authority withdraw his authorisation by a declaration made before the maritime authorities.*

Nevertheless the withdrawal of such authorisation cannot be cited against third parties, unless they were informed of it before the agreement was entered into.

The authorisation cannot be revoked when the minor has reached the age of eighteen.

Art. 161.—Every minor under the age of sixteen shall be considered as a boy.

* *Cf.* Act of 24th December, 1896, Art. 51.

Every minor over the age of sixteen and under that of eighteen shall be considered as a learner.*

Every minor, even above the age of eighteen, shall be considered as an apprentice, if he be engaged for the purpose of being trained as a deck or engineer officer, either at reduced pay, or without any stipulation for pay, and whether or no the shipowner or his representative has been paid a lump sum representing the cost of the apprentice's food and other expenses occasioned by his being on board. The amount to be paid into Disablement and Provident Funds shall be fixed by the laws and regulations concerning such funds.

Boys, learners and apprentices taken on board a vessel shall always be in excess of the number of seamen necessary for the observance of the laws and regulations concerning work on board ship.

Art. 162.—The number of boys and learners who may be taken on board a trading vessel of more than 200 tons gross shall be decided as follows :—

Firstly, for the deck staff, one boy or learner for every fifteen men or fraction of fifteen, and one boy or learner for every ten men or fraction of ten men in addition. In reckoning the number of men, officers shall be included, but not boys and learners already on board. Young seamen, temporarily entered in the maritime registers, and of more than eighteen and under twenty years of age, who hold a theory certificate for long-distance navigation or for coasting, may however, be taken on board as substitutes for learners.

Secondly, for the engine-room staff, one boy or learner, when the staff numbers at least sixteen men, and one boy or learner for every twenty or fraction of twenty men in addition. In reckoning the number of men, engineer officers shall be counted, but not boys or learners already on board. Nevertheless engineer-learners or electrical learners who are temporarily entered in the maritime registers and are more than eighteen and under twenty years of age, and able to prove that they have had two years' training in workshops, may be taken on board as substitutes for learners.

* *Cf.* Decree of 23rd March, 1852, Art. 1.

In spite of the foregoing provisions, the total number of boys and learners to be taken on board compulsorily as deck hands shall in no case exceed five, and the total number of boys and learners to be taken on board compulsorily as engine-room hands shall in no case exceed six.

If, owing to death, disembarkation or other cause, the number of boys and learners on board a vessel is reduced during a voyage to less than the minimum prescribed by the foregoing provisions, the shipowner or his representative shall not be bound to take another boy or learner on board with a view to conforming with the aforesaid provisions, until the ship arrives at a French home port, and on condition that the voyage shall not end within one month from the date of arrival.*

Art. 163.—No child of less than thirteen years of age shall be admitted to employment on board ship. Such children may, however, be entered temporarily on the maritime registers, and taken on board, provided they be not less than twelve years of age and hold a primary school attendance certificate.

Furthermore, they may not be taken on board unless they can produce a certificate of physical fitness, given free by a doctor appointed by the maritime authorities. If such certificate shows that the child is fit only for one category of work on board ship, this shall be the only kind of work he is allowed to do.†

Art. 164.—No boy of less than fifteen years of age at the time of the ship's departure may be taken on board any vessel fitted out for deep-sea fishing off Newfoundland or Iceland.

Nevertheless such prohibition may be removed by a special authorisation issued annually by the Under-Secretary of State for the Mercantile Marine and applying to one vessel and one captain only.‡

Art. 165.—It shall be forbidden to put boys on night watch between 8 p.m. and 4 a.m.

Neither boys nor learners may be employed on work as trimmers or stokers.§

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* *Cf.* A. 1907, Art. 30.
† *Cf.* A. 1907, Art. 29.
‡ *Cf.* A 1907, Art. 30.
§ *Cf.* A. 1907, Art. 30.

Art. 166.—An administrative order shall determine the conditions on which the provisions of Arts. 162 and 165 shall apply to trading vessels of less than 200 tons gross and to fishing boats.

Art. 167.—If there be no agreement to the contrary, a minor engaged as apprentice shall be entitled to the same food as an officer.

Art. 168.—During the two first months of his articles an apprentice shall be considered as being on probation, and during this period the articles can be legally cancelled at the wish of one of the parties without compensation.*

Nevertheless, should the agreement be cancelled within the two first months by the shipowner or his representative, the sum paid by the apprentice, or on his behalf, shall be refunded after deduction of a sum representing the cost of his keep until the day the agreement was cancelled. This sum shall be fixed at Frs. 5 a day, if there be no agreement to the contrary.

If articles of agreement be cancelled within the same period by the apprentice himself or by the person invested with paternal powers over him, no part of the sum paid to the shipowner or to his representative shall be refunded, unless an agreement to the contrary exist.

Part VIII.—Disputes relating to seamen's articles of agreement, competence, procedure, limitation.

Art. 169.—Disputes arising concerning seamen's articles of agreement between shipowners or their representatives and seamen (except captains of trading vessels and fishing boats), shall be submitted to a Justice of the Peace after a preliminary attempt at conciliation has been made before the maritime authorities.

The same shall apply with regard to actions for quasi delicts committed while articles of agreement were being carried out.

Art. 170.—Should there be more than one Magistrates' Court (*tribunal de paix*) in any port, the canton, the Justice of the Peace of which shall deal with litigation arising out of articles of agreement, shall be designated by decree issued on the report of the Minister of

* *Cf.* Lab. Code, Art. 13.

Justice after consultation with the Under-Secretary of State for the Mercantile Marine.

Art. 171.—The Justice of the Peace shall be competent to deal, without appeal, with litigation concerning articles of agreement involving sums not exceeding 300 francs, and, subject to appeal, with similar litigation whatever may be the sum then involved.*

Art. 172.—In cases in which the shipowner brings the action, except in the cases provided for in the first paragraph of Art. 173, the maritime authorities and the Justice of the Peace competent to deal with such disputes shall be those in any port in which the defendant seaman is domiciled or resident, or staying temporarily. Should the seaman be bringing the action, then they shall be those in any port where the shipowner has his head offices or a branch office.

Art. 173.—When the action arises out of the fulfilment of an agreement on board a particular vessel, either at the port of embarkation or a port of call, or at the port of landing, the maritime authorities and the Justice of Peace competent to decide it shall be those of this port.

Nevertheless, if on account of his departure the defendant can no longer be summoned for conciliation purposes nor to appear before a Justice of the Peace, according to the regulations of the foregoing paragraph; or if, after having appeared for conciliation purposes before the maritime authorities in the said port of embarkation, of call or of landing, he can no longer, owing to his departure, be summoned to appear before the Justice of the Peace in the said port, then the competency rules contained in the foregoing Article shall apply respectively.

Art. 174.—The Under-Secretary of State for the Mercantile Marine shall be empowered *ex officio*, and without needing to prove any special authorisation, to act on behalf of seafarers or those entitled to succeed to their claims, in the case of any lawsuits arising out of articles of agreement.

The maritime authorities may, moreover, intervene at any stage in the proceedings in any litigation arising out of articles of agreement.

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* *Cf.* Act of 12th July, 1905, Art. 2.

In case of an action being brought collectively, in accordance with the first paragraph of this Article, on behalf of seamen belonging or having belonged to the crew of one and the same ship, or on behalf of those entitled to succeed to their claims, the Justice of the Peace shall decide, without appeal, if the share falling due to each of the seamen concerned does not exceed 300 francs; while should the share of one seaman only exceed this sum, the Justice of the Peace shall give his decision subject to appeal.*

Art. 175.—When an attempt at conciliation is to be made, if the parties do not both appear spontaneously before the maritime authorities, the said authorities shall summon the party who has not appeared. In case of conciliation, the maritime authorities may, at the request of one of the parties, draw up an official report containing the terms of the understanding reached, and this report shall have the force of a private contract.

Should the attempt at conciliation fail, the said authority shall draw up an official report which shall contain a reasoned statement of their opinions about the dispute. A copy of this report, containing authorisation to summon the defendant before the Justice of the Peace competent in this instance, shall be transmitted to the plaintiff. Should any person be summoned to appear before a Justice of the Peace without the authorisation provided for in the foregoing paragraph, such summons shall render the usher (*huissier*) liable to the application of the provisions of the fifth paragraph of Art. 17, and of Art. 19 of the Act of 25th May, 1838.†

Art. 176.—Any summons to appear before a Justice of the Peace in disputes concerning seamen's articles of agreement may be served on the day on which the case is to be heard.‡ The Justice of the Peace shall decide as to the urgency of the matter.

Art. 177.—Every summons served on board to the person summoned shall be valid.§

Art. 178.—Should judgment be given by default, it shall be lawful to acquaint the defendant seaman with the decision in the port

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* *Cf.* Act of 12th July, 1905, Art. 9.

† *Cf.* Act of 25th May, 1838, Arts. 17, 18 and 19.

‡ *Cf.* Code of Civil Procedure, Art. 418.

§ *Cf.* Code of Civil Procedure, Art. 419.

where he is domiciled or resident, or where he may be staying temporarily. Similarly, a defendant shipowner can be lawfully notified in any port where his head shipping offices, or a branch thereof may be situated. Furthermore, this notice may be legally served on the defendant in person in any place whatsoever.

Art. 179.—If the parties appear, and final judgment is not delivered at the first hearing of the case, the parties not domiciled in the place where the Justice of the Peace sits shall be lawfully deemed to have elected to reside at the office of the maritime authorities even for the purpose of being notified of the final judgment.*

Art. 180.—Every judgment not delivered at the first hearing shall be immediately communicated by the Clerk (*greffier*) of the Justice of the Peace to the maritime authorities by ordinary registered letter. The time within which an appeal may be made by all parties shall begin to lapse from the day following the notification of the judgment.

Art. 181.—The period within which a judgment delivered by a Justice of the Peace may be appealed against in litigation concerning seamen's articles of agreement, shall be calculated in accordance with the first paragraph of Art. 13 of the Act of the 12th July, 1905.

Art. 182.—When, in application of Art. 16 of this Act, the maritime authorities oppose the signing of articles of agreement and refuse to countersign them, any appeal against such decision shall be brought before the President of the Civil Tribunal of the circuit (*arrondissement*), who shall decide the matter in accordance with the rules of procedure followed in such cases, and always subject to appeal being made.

Art. 183.—In case of litigation arising outside French home ports, concerning articles of agreement within the meaning of this Act, the maritime authorities in the area (*circonscription*), in which the colonial or foreign port in question is situated, shall endeavour to conciliate the parties according to the conditions and in the manner prescribed in Art. 175.†

Should the attempt at conciliation fail, the case shall then be tried in France before the Justice of the Peace competent to try it according to Art. 172.

Cf. Code of Civil Procedure, Art. 422.

† *Cf.* Ordinance of 29th October, 1833, Art. 20.

Art. 184.—All actions connected with seamen's articles of agreement shall be lost by limitation five years after the inception of the alleged claim.*

Art. 185.—Disputes arising between shipowners and captains of trading vessels and fishing boats shall remain subject to commercial jurisdiction.†

The two last paragraphs of Art. 633 of the Commercial Code shall consequently be amended as follows :—

" Similarly the law considers as commercial acts : .....
(La loi répute pareillement actes de commerce :)
.....

" All contracts entered into by captains whereby they undertake to command trading vessels and fishing boats, and all arrangements and conventions concerning such contracts. (Tous engagements des capitaines pour le commandement des navires de commerce et de pêche, tous accords et conventions relatifs à ces engagements.) "

Part IX.—Provisions applicable to articles of agreement of foreign seamen on French or foreign vessels, and of French seamen on foreign vessels.

Art. 186.—The provisions of this Act shall apply to foreign seamen engaged either in France or in a French colony or protectorate, or abroad, to serve on a French ship the home port of which is subject to the laws of the mother-country.

Arts. 107 to 112, however, concerning repatriation and travelling expenses in France, shall only apply to foreign seamen engaged in France in so far as they are not modified by any clause to the contrary in their articles of agreement. These Articles 107 to 112 shall not apply to foreign seamen engaged outside France, unless a special clause in their agreement stipulates that they shall apply.

If there be a diplomatic convention between the French Government and the country to which a foreign seaman belongs, imposing an obligation to repatriate to the said country or assist until their

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* *Cf.* Com. Code, Art. 433.

† *Cf.* Com. Code, Art. 633.

return to it foreign seamen put ashore outside France and outside the territory of the country to which they belong, the parties concerned may in every case claim to benefit by such convention in default of the application of the provisions of this Act or of their articles, or in lieu of the application of these provisions.

If no obligation to repatriate or assist a foreign seaman put ashore outside France and the territory of the country to which he belongs be incumbent on the shipowner or his representative in virtue of this Act, of the articles of agreement, or of a diplomatic convention, the shipowner or his representative shall, at least, be bound to hand over the seaman to the nearest consul of his own country.*

Art. 187.—The provisions of this Act concerning the conditions on which seamen's pay, and their property, goods, and drafts, etc., may be attached or transferred, shall apply to French or foreign seamen engaged to serve on a foreign ship.

The other provisions of Parts I to VII of this Act shall not apply to foreign seamen engaged even in France, to serve on a foreign ship. The agreements of such seamen are considered as having been entered into under the law of the flag which flies over the foreign ship.

The same shall apply in the case of French seamen hired, even in France, to serve upon a foreign ship, unless the articles of agreement have been entered into in the manner prescribed by this Act, and unless it be proved that it was the intention of the parties to enter into their contract in accordance with this Act.

Art. 188.—The provisions of Part VIII of this Act shall apply to cases of litigation which arise in a home port concerning the engagement of French or foreign seamen on foreign ships, and which have been submitted to the French authorities, unless clauses to the contrary have been included in diplomatic conventions or in the articles of agreement.

Art. 189.—French seamen shall be forbidden to enter into an agreement to serve on a foreign ship without the consent of the maritime authorities.

Such consent may be refused if the captain of the foreign ship hiring a seaman in France does not bind himself by an undertaking

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* *Cf.* Decree of 22nd September, 1891, Art. 3.

in duplicate to meet the cost of repatriation. One copy of such undertaking shall be handed to the seaman.*

Every agreement entered into in contravention of the provisions of the first paragraph of this Article shall be null and void, and cannot be made the subject of any action at law in the French Courts.

Part X.—General provisions.

Art. 190.—The provisions of this Act shall apply to all maritime agreements concluded between shipowners and French seamen with regard to service on board French ships fitted out in France or in colonies subject to the laws of the mother-country.

Art. 191.—For the purposes of this Act the maritime authorities shall be in France the official in charge of maritime registration in each district; in French colonies and protectorates the official in charge of maritime police; in roadsteads and foreign ports the French consular authority.

The powers conferred by this Act on the maritime authorities or on the Administrator of Maritime Registration may not be exercised by consular agents.†

Art. 192.—The provisions of this Act shall be deemed to be of a public order with the exception of those contained in the following Articles :—

24; 26, paragraph 1; 36; 40, paragraph 4; 49, paragraph 2 (Secondly); 57, paragraphs 2 and 3; 59; 60; 61, paragraph 1; 64; 74, paragraph 2; 86, paragraph 1; 93, paragraph 2; 103; 106; 119; 120; 125, paragraph 2 (Eighthly and Tenthly); 126, paragraph 3; 147; 150, paragraph 2; 167; 168, paragraphs 2 and 3; 186, paragraph 2; 187, paragraph 3; 188.

All agreements contrary to the provisions of Arts. 121, 122, 139 and 142 shall nevertheless be valid in so far as their application would be more favourable to seamen or those entitled to succeed them than the application of the Articles above mentioned.

* *Cf.* Circulars of 15th December, 1891, 28th March, 1893, and 30th July, 1910.

† *Cf.* D.P. Bill, 1913, Art. 2; and Ordinance of 29th October, 1833.

Art. 193.—The penal measures applicable in case of infringements of any of the provisions of this Act to which such measures may apply will be enacted by the law concerning the disciplinary and penal system of the mercantile marine (Book II of the Maritime Labour Code).

Art. 194.—An administrative order shall determine the conditions under which this Act shall apply to fishing boats not usually absent from harbour for more than seventy-two consecutive hours.

Art. 195.—Simultaneously with the promulgation of this Act, the following shall be repealed :—

The provisions of old regulations concerning the hiring of seamen, particularly those of the Edicts of March, 1584, and July, 1720 ; of Art. 18 of the Ordinance of 1681 ; of the Order of 8th March, 1722 ; of the Royal Declaration of 18th December, 1728 ; of the Decree of the King's Council of 19th January, 1734 ; of the Ordinance of 1st November, 1745 ; and of Part XIV of the Ordinance of 31st October, 1784.

Art. 20 of the Decree of the 7th Vendémiaire, year VIII.

Arts. 218, 250, 251, 252, 253, 254, 255, 256, 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, and 319 of the Commercial Code.

Art. 37, paragraph 1, of the Order of 17th July, 1816.

Art. 3, paragraph 3, of the Ordinance of 9th October, 1837 ; the Decree of 4th March, 1852.

Art. 22, paragraphs 1, 3 and 4, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Act of 17th April, 1907 ; and all other provisions of laws or orders contrary to those of this Act.

(2) HISTORICAL NOTE ON EARLY MARITIME CODES.

The evolution of maritime law is a study of great interest. There is evidence that even in very remote times there was general observance of a kind of " code " of custom and rule among seafarers which was not confined to those of one particular country. The sanctions for this seem to have been for the most part religious in character. Among the Greek States, however, the " code " took a more definitely legal form and a certain amount of inter-municipal maritime law developed.

Throughout the Middle Ages and down to the period of the development of the modern European State there could, of course, be no " international " maritime law in the strict sense of the term, since there was no international community of States based upon a general recognition of the fundamental principles of territorial sovereignty and the legal equality of the independent States. Nevertheless, the general observance of rules and customs, which obtained in ancient times, persisted through the Middle Ages also, and it is not until the commencement of modern times, and after the definite development of the modern State system, that a beginning was made in the codification of *national* maritime law. This beginning took place in France with the establishment in 1681 of the '*Ordonnance de la Marine.*"

During the eighteenth century the maritime codes remained national in consonance with the general characteristics of the epoch. In the nineteenth century the elaboration of commercial codes brought in elements of internationality which developed as the century grew older, and which in the twentieth render possible the elaboration of more comprehensive and more specifically international codes. Thus, though it is only within the last generation that the International Maritime Committee has undertaken the task of bringing together representatives of the seafaring nations in an attempt to unify maritime law, the international acceptance of customs laws and regulating affairs of common interest among overseas travellers and traders is far from new.

If it cannot be said that there was an international code, in the strict sense of the word, during the period which saw the rise of

modern commerce, the fact that trade by water transcended the limits of the little mediæval States, and linked politically independent States and countries for mercantile purposes, had, as its natural consequence, a tendency to uniformity in the settlement of maritime cases, even where formal agreements for trade (*e.g.*, the Hanseatic League) did not exist. Decisions and customs which were at first carried from one centre to another by the reports of merchants and seafarers, were in time reduced to writing; and the process of assimilation thus facilitated enabled judicial authorities to make serious study of foreign practices.

Six different collections of laws stand out as of wide international interest:—

(1) The Laws of Rhodes;
(2) The Ordinances of Trani;
(3) The Judgments of Oleron;
(4) The Laws of Wisby;
(5) The Laws of Damme;
(6) The Consolato del Mare.

(1) The Laws of Rhodes, dating from the third century B.C., were a code of maritime practices for the Island of Rhodes, on the south-west coast of Asia Minor, at the entrance to the Ægean Sea. At the height of its prestige as a shipping centre, the maritime customs and decisions of Rhodes were codified, and under Antoninus Pius were adopted by the Roman Empire to the extent that they did not conflict with existing Roman Law. With the extension of Roman Law in the early Christian world, this body of maritime customs and decisions achieved almost world-wide authority.

(2) The Ordinances of Trani, drawn up by the Guild of Navigators of Trani, a city on the Italian Adriatic Coast, about 1063, embodied the maritime customs and verdicts of the Adriatic and held a position of influence in the eleventh and twelfth centuries. A fifteenth century Venetian text of the Code, with an English version, is given in the "Black Book of the Admiralty," edited by Sir Travers Twiss, in Vol. IV, page 522.

(3) The Judgments of Oleron have made famous the Island of Oleron off the French coast, which quite early in the Middle Ages was famous for its settlement of maritime disputes. Some of the important verdicts were collected in writing in 1266, and during

the following century were circulated through Northern Europe and the Western Mediterranean, and were adopted into the maritime law of most of the countries bordering on the Atlantic and North Sea. These decisions were adopted in England for use in conjunction with the customs already there established. The Norman and Breton courts also took up the Oleron Code (with certain modifications) in the fourteenth century, while the Kings of Castile in the thirteenth and early fourteenth centuries developed maritime laws on the basis of this and other similar records. The Judgments of Oleron reappear in the Gotland Sea Law and in the Maritime Laws of Damme in Flanders. An English text of these Judgments dating back to the fourteenth century is given in the "Black Book of the Admiralty," edited by Sir Travers Twiss, Vol. I, page 89, and the Coutumier of Oleron (about 1340) is to be found in the same work, Vol. II, page 211.

(4) The Maritime Laws of Wisby were perhaps the most influential of the earlier codes. Wisby in Gotland commanded the entrance to the Baltic, and was an important centre of North Sea trade, and its maritime customs had widespread influence as far back as the twelfth century. The earliest known record of them dates from the early fourteenth century. An English text of the Laws of Wisby, or the Gotland Sea Law, is to be found in the "Black Book of the Admiralty," edited by Sir Travers Twiss, Vol. IV, page 55.

(5) The Maritime Laws of Damme in Flanders, which were circulated in Northern Europe in the fifteenth century, show the influence of both the Wisby and Oleron Codes.

(6) The Consolato del Mare, though its origin is in dispute, records the ancient maritime laws of the various Mediterranean Courts of the Consuls of the Sea. The Spanish version, compiled at Barcelona in the fourteenth century, and printed there in 1494, formed a part of the code of procedure issued by the Kings of Aragon for the guidance of Maritime Consular Courts. The Spanish and English texts of the Valencia Code are to be found in the "Black Book of the Admiralty," Vol. IV, page 451, and both the Spanish texts and English translation of the Consolato del Mare are given in the "Black Book of the Admiralty," Vol. III, page 50. During the sixteenth and seventeenth centuries this Code was

translated into Italian, French, Dutch, German and English, and its substance forms a large part of modern maritime law. The French Maritime Code of 1681 (*Ordonnance de la Marine*) embodied most of its provisions.

The ecclesiastics who busied themselves with earlier law records had, until the twelfth century, little knowledge of the sea or trade, or of the *lingua franca* which was the convenient language in many maritime courts. The Crusades brought the ecclesiastics into closer touch with the seaports, and during the twelfth and thirteenth centuries progress was made in the records of maritime law. Maritime customs naturally remained long in a state of flux, as trade centres changed and trade connections were extended and new problems arose with the introduction of new types of vessel or of cargo; *cf.*, the provision in the Valencia Code (1336–1343), where the Consuls of the Sea are instructed to give judgment according to the written Customs of the Sea—"And there where the customs and chapters are not sufficient they give them open consultation with the *prud'hommes* of the merchants and of the sea, that is, always according to the majority of the voices in council, regard being had to the persons who give their advice."* This is a picture of the way in which maritime laws developed during the Middle Ages.

From the earliest times merchants and seafarers were governed by customs and rules independent of and different in origin from those under which ordinary stay-at-home people lived. Special courts developed in many seaports during the early Middle Ages for the convenience of traders and seamen, much as the Courts of Piepoudre† arose for the settlement of questions affecting travelling merchants within England. They administered customs which grew up as trade developed round different centres after the decline of the Roman Empire and of its maritime law.

Though local customs were not reduced to writing in an orderly

* "The Black Book of the Admiralty," edited by Sir Travers Twiss (Rolls Series, 1871), Vol. IV, p. 493.

† Courts of *pied poudré* (the dusty foot)—the special courts established in England during the Middle Ages to deal with cases arising between merchants and townsfolk during fairs and markets. Buyer and seller would come in, dusty with travel (hence the name of the court), to obtain an immediate decision before one or both left for another district.

manner until well into the Middle Ages, they were firmly established long before they were recorded even in the form of collected judicial decisions. The " Black Book of the Admiralty," for instance (the earliest English record of sea law, about 1338) mentioned confidently and without explanation " the ordinance or law of the sea " (B, Section II)* and the " laws and customs " of mariners (A, Section II)† as a standard of reference. These customs, though local in origin, spread over wide areas more readily than those regulating non-maritime affairs. The parties to disputes, especially in mercantile cases, would often be of different nationalities ; and so a decision in any court would become an influence in forming customary law through judicial verdicts in at least two communities, those of the two parties to the dispute, who would carry home reports of the case.

The Judgments of Oleron, probably first written down in the thirteenth century have contributed liberally — more than any others—to the early development of modern shipping law, and to the points of likeness between national codes. The Maritime Laws of Wisby governed much of the Baltic trade from the twelfth century onwards, owing to the position of Wisby at the mouth of the Baltic ; while trade entirely within the Baltic was dominated by Lübeck after the decline of the Wendic towns in the thirteenth century. In the Mediterranean the decisions of the Levantine courts were codified during the twelfth century, while the Ordinances of Trani (1063) exercised considerable influence. Out of these developed a written Custom of the Sea (*Consolato del Mare*) based on judgments of the maritime courts, which was eventually codified, in combination with the Valencia rules of procedure and other collections of customs, by the Government of Aragon, and later was printed at Barcelona in 1494.

As voyages became longer and more distant countries were linked by trade, maritime law tended more and more to be assimilated throughout Europe. Each State (and as the many petty States united, each league of cities or nation) had its own code, but differences were more in language than in substance. Community

* " The Black Book of the Admiralty," edited by Sir Travers Twiss (Rolls Series, 1871), Vol. I, p. 33.

† *Ibid.*, Vol. I, p. 13.

of sources was largely responsible for the similarity. Every country with an Atlantic or North Sea coast was indebted to the Court of Oleron, while the practice of the Consuls of the Sea was uniform throughout the Mediterranean under the influence of the Ordinances of Trani and the Barcelona codification (which latter embodied the early customs of Oleron). In Russia and other outlying regions, the western maritime codes were made use of for the regulation of the factories established by the trading companies of England, Flanders and the North German towns. In one way and another similar customs spread through the western world, were recognised in legislation as well as in the practice of the courts, and were carried beyond Europe when colonisation began. Thus the principles, though not details, of modern national codes can be traced to a comparatively small number of common sources, while some at least of their differences date from the period when commerce began to be regarded as an element in the national balance-sheet rather than a private adventure of the individual merchant.

The relations between merchant and shipowner bulk large in the mediæval maritime judgments and customs. Even in the earliest records we find not only the seaman's duties but his rights considered. International protection for the seaman, indeed, is by no means a development of the twentieth century, but can be traced back as far as the oldest of the mediæval codes which found acceptance throughout fields of trade which included many independent States. Special attention is given in these codes to the questions of dismissal and of punishment. In the Ordinances of Trani only four causes of justifiable dismissal are recognised*—blasphemy against God (which would, no doubt, bring divine vengeance on the ship), quarrelling, theft and excess—and in which a quaint and precise direction is given for dealing with a brutal master.† On this latter point, the Judgments of Oleron are less generous, for the mariner

* "The Black Book of the Admiralty," edited by Sir Travers Twiss (Rolls Series, 1871), Vol. IV, p. 529.

† "Art. 28. No master may beat a mariner, but the mariner ought to escape and pass from the bow to the chain of the rowers and ought to say: 'In the name of my Lord do not touch me,' three times, and if the master should pass the chain in order to beat him, the mariner ought to defend himself, and if the mariner kills the master, he is not to be banished on that account." *Ibid.*, Vol. IV, p. 541.

is required to " abide the first buffet, be it with his fist or flat with his hand."* The English practice was more liberal, and orderly— " Black Book of the Admiralty," B, Section II, " Item, that no captain or master of a ship shall suffer any mariner of his ship to be ill-used or beaten, but if any mariner doth trespass or do anything against the ordinances or law of the sea, then the captain or master shall send or bring such mariner offending before the Admiral or Under-Admiral there to undergo and receive what the law and custom of the sea will and require."†

In spite of the differences of detail, there is clearly a general recognition of the rights of the mariner as a free person and not merely an item in the ship's equipment—a point on which maritime law was in the Middle Ages well in advance of most national laws, and uniform throughout Europe.

The wages of seamen are also a matter of serious consideration and of more or less international regulation. Rates of pay are specified as much for the protection of shipowners as of men; provision is made for the protection of the seaman in cases where the employer might regard reduction from wages as justifiable, and for allowances to meet various contingencies. For instance, in Section 14 of the Judgments of Oleron, it is provided that a mariner dismissed against the judgment of the crew after a dispute with the master " may follow the ship till it come to the right discharge, and ought to have as good wages as if he had gone with the ship, amending the trespass at the verdict of his fellows."‡

While there is no obligation on a seaman to do anything for which he was not specifically engaged (Customs of Oleron, about 1340 Section 65§; Coutumes de la Mer, 1494, Sections 108–137‖), the obligation on an employer to pay wages when due and to make no unauthorised deductions is emphasised in the early codes. This is made particularly clear in the Coutumes de la Mer, where it is laid down that the payment of wages is the first charge upon a venture and must be met by borrowing if necessary: " for it is

* *Ibid.*, Vol. I, p. 105.

† *Ibid.*, Vol. I, p. 33.

‡ " The Black Book of the Admiralty," edited by Sir Travers Twiss (Roll Series, 1871), Vol. I, p. 107.

§ *Ibid.*, Vol. II, p. 345.

‖ *Ibid.*, Vol. III, pp. 217–239.

incumbent that the mariner should have his wages" (Sections 92 and 94).* In the "Black Book of the Admiralty," which dates probably from the early fourteenth century, part of the duty of the Admiral in defending the mariners is "if need be to sue for their wages and cause them to be paid the same,"† It is significant and interesting that claims for wages in courts guided by the Coutumes de la Mer need not be presented in writing.

A point of special interest is the recognition of the employer's liability for accidents occurring in the course of employment, which appears in the earliest form of the Judgments of Oleron and remains in almost all modern codes.‡

In the Customs of Oleron, 1340, the injured mariner must not only "be healed at the cost of the ship," but must be "provided for."§ The Coutumes de la Mer, in use in a region where piracy and enslavement were frequent, add a further instance of responsibility—Section 137: "A mariner whom the managing owner of the ship sends to any place is bound to go there, and if he is taken prisoner or incurs any harm, the managing owner is responsible to him."‖

Under the Oleron Code, the master is responsible for seeing to the lodging on shore and proper care of sick mariners, though different versions vary as to the possibility of deductions from wages in consideration of certain provisions.

On the whole, the mediæval seaman enjoyed a fair measure of protection as against his employer in all countries, in spite of such

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* *Ibid.*, Vol. III, pp. 199–201.

† *Ibid.*, Vol. I, p. 14.

‡ Section 6. "Maryners bynd them with theyr mayster, and any goo out withoutte leave of the mayster and drynke dronken, and make noyse and stryfe so that any of them be hurte, the mayster is not bounde to cause them to be healed nor to purvey ought for them, but he may well put them out of the shyp (and hire others in their place, and if any cost more than the mariner put out, he ought to pay, if the master finds anything belonging to him), but yf the mayster sende them in any erande for the prouffyte of the shyppe, and that they shulde hurte theym, or that any dyd greve them, they oughte to be healed at the costes of the shyppe. This is the judgement." "The Black Book of the Admiralty," edited by Sir Travers Twiss (Rolls Series, 1871), Vol. I, p. 95.

§ *Ibid.*, Vol. II, p. 217.

‖ *Ibid.*, Vol. III, p. 239.

little drawbacks as being allowed only one meal a day if he had "drinks coming and going," or being forbidden under severe penalties to undress except when the ship was in winter quarters (Coutumes de la Mer, 1494, Section 125).*

This was no doubt at least in part owing to his position, since he was not merely a person engaged to help navigate the ship, but often a partner in the venture, though his participation was limited by custom in accordance with the size of the vessel and of the crew. The conditions of his employment, however, were an important factor in ensuring him a status in many instances superior to that of this fellow-workmen on land. Going to and fro, coming into contact with seamen of other nations, and being involved in cases decided in foreign courts, he could learn at an early date of improvements in the treatment of mariners in any field of trade, and could have opportunities of passing on his information—the first step towards unifying laws in an international standard.

* *Ibid.*, Vol. III, p. 233.

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