

The power of a Court of formal investigation to cancel or suspend the certificate of a ship's officer is defined and limited by section 470.

The Court must find that the loss or abandonment of or serious damage to a ship, or loss of life, has been caused by the officer's wrongful act or default. The latter words have received interpretation in cases of appeal to the Admiralty Division of the High Court in England.

The Court is prohibited by subsection (1 *a*) from dealing with any certificate unless one at least of the Assessors concurs in the finding of the Court.

It is made imperative by subsection (2) that the decision of the Court upon the question of cancelling or suspending a certificate shall be stated in open Court.

The Court are required by subsection (3) in all cases to send a full report on the case with the evidence to the Board of Trade, and, where they have cancelled or suspended a certificate, that document is to be sent to the Board of Trade with the report.

No certificate is to be cancelled or suspended unless a copy of the report or a statement of the case on which the investigation has been ordered has been furnished to the holder of the certificate before the commencement of the investigation. (Subsection 4.)

A master, mate, or engineer whose certificate is cancelled or suspended is required to deliver his certificate for that purpose, under a penalty not exceeding £50.

Power is given to the Board of Trade by section 474, if they think that the justice of the case requires it, to reissue and return the certificate of a ship's officer which has been cancelled or suspended in the United Kingdom or in a British possession, or to shorten the time of suspension, or to grant in place thereof a certificate of the same or any lower grade.

Power is given to the Board of Trade by section 475 to order in any case the rehearing of a formal investigation, and it is imperative upon them to do so,—

- (a.) If new and important evidence which could not be produced at the investigation has been discovered; or
- (b.) If for any other reason there has in their opinion been ground for suspecting that a miscarriage of justice has occurred.

The Courts before whom the rehearing takes place, which include the Court or authority by whom the case was heard in the first instance, are defined in subsection (2).

An appeal will also lie under subsection (3) in cases where a decision has been given with respect to the cancelling or suspension of a certificate of a ship's officer, and an application for a rehearing under this section has not been made or has been refused.

An appeal lies to the High Court if the decision is given in England, to the Court of Session if in Scotland, and to the High Court in Ireland if in Ireland.

Under subsection (4) any rehearing or appeal under this section is to be conducted in accordance with the rules made under the Act by the Lord Chancellor.

#### *Inquiries into Incompetency or Misconduct of Masters, Mates, and Engineers.*

Another form of inquiry is provided for by section 471, which empowers the Board of Trade, if they have reason to believe either by the report of the Local Marine Board or otherwise that a certificated officer is from incompetency or misconduct unfit to discharge his duties, or that in the case of a collision\* has failed to render such assistance or give such information as is required by section 422 of "The Merchant Shipping Act, 1894," to cause an inquiry to be held.

The powers of the Board of Trade in relation to the constitution of the Court of inquiry are defined by subsection (2).

By subsection (3 *b*) the Court is invested with all the powers of a Board of Trade Inspector under "The Merchant Shipping Act, 1894," sections 728–730, and is required by subsection (3 *c*) to give any ship's officer against whom a charge is made an opportunity of making his defence, either in person or otherwise, and may summon him to appear, and by subsection (3 *d*) may make such order as to the costs of the inquiry as they think just, and by subsection (3 *e*) is required to send a report upon the case to the Board of Trade.

When a Court of summary jurisdiction holds the inquiry, it is assimilated by subsection (4) in all respects to the procedure of a formal investigation into a shipping casualty already dealt with; but, if the Board of Trade so direct, the person who has brought the charge against the ship's officer to the notice of the Board of Trade is required to conduct the case.

Under section 470, subsection (1 *b*), the certificate of a ship's officer may be cancelled or suspended by a Court holding an inquiry under this part of "The Merchant Shipping Act, 1894," into the conduct of a ship's officer if they find that he is incompetent, or has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that in a case of collision he has failed to render such information as is required under section 422.

The remaining subsections of section 470 apply alike to formal investigations into shipping casualties and to inquiries into conduct, and require:—

- (a.) That a decision with respect to the cancelling or suspension of a certificate shall be stated in open Court;
- (b.) That in all cases a full report with the evidence is to be sent to the Board of Trade with the certificate cancelled or suspended; and
- (c.) That a certificate is not to be cancelled or suspended unless a copy of the report or statement of the case on which the inquiry has been ordered has been furnished, before its commencement, to the holder of the certificate.

Section 473, with respect to the delivery-up of a certificate cancelled or suspended, and section 474, empowering the Board of Trade to restore the certificate, or to shorten the time of

\* Misconduct of this kind is usually dealt with in a formal investigation where a collision is the subject of inquiry.