

No. 19 of 1970.

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N

ARNOLD MALABRE AND COMPANY LIMITED Appellants

AND

REGINA, ats KINGSTON PILOTAGE AUTHORITY

Respondents

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CASE FOR THE RESPONDENTS

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RECORD

1. This is an Appeal, by leave, from a Judgment and decision of the Court of Appeal of Jamaica, (Waddington, Shelley and Luckhoo JJA.), given on the 5th April, 1968, affirming by a majority (Waddington JA. dissenting), the judgment of the Resident Magistrate for the Parish of Kingston awarding the Respondents:-

pp 53-81

pp 53/62

pp 34/43

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(a) The sum of £27.1.4. being pilotage fees due for pilotage services rendered to the ship or vessel "Koei Maru" by Harold Mortimer Brown a Kingston choice pilot, while the ship was inward bound in the optional pilotage area of the port of Kingston on the 7th November, 1965; and

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(b) The sum of £27.16.10. being pilotage fees due for pilotage services rendered to the same ship by the same pilot while she was outward bound in the optional pilotage area of the port of Kingston on the 9th of November, 1965.

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These sums were awarded by the Resident Magistrate to the Respondents upon complaints made by them on the 29th April 1966, under the Pilotage Law (Law 28 of 1957).

2. The principal statutory provisions are set out in an Appendix to this Case.

3. Prior to the coming into operation of Law 28 of 1957 pilotage in Jamaica was governed by the Pilotage Law Cap. 293 of the 1953 Revised Laws of Jamaica. 10

Under the old Law, there was no Pilotage Authority as such neither was pilotage compulsory. The master of a vessel inward bound to the port of Kingston was obliged to receive the first pilot who offered his services within a prescribed distance from the port. If he refused the services of that pilot and used another pilot of his own choice or none at all, he was obliged to pay the first pilot to offer his services the fee appointed by Law for pilotage of the vessel; provided that that pilot hailed the vessel before it had reached an inner limit called the "excused limits". 20

4. The Pilotage Law, Law 28 of 1957 set up a general scheme for regulating pilotage into and out of all the ports in the island of Jamaica, and of Kingston in particular. The Law introduced to Jamaica the concept of compulsory pilotage in specified areas of each port, and of optional pilotage in other specified areas of the same port. It further enabled ship owners to engage pilots of their choice to pilot their vessels into and out of the port of Kingston, and it established for the port of Kingston (which includes Port Royal) an Authority to employ all Kingston pilots and to superintend all business connected with pilotage at the port of Kingston. 30

5. Power to make Regulations to implement the general scheme of the Law was conferred upon two separate bodies, the first being the Marine Board a body established under the Marine Board Law, and the other being the Kingston Pilotage Authority established and constituted by Sections 15 and 16 of the Pilotage Law. 40

10 6. The power of the Marine Board to make Regulations defining pilotage areas is contained in Section 4 (1) (a), they being authorised to distinguish in their Regulations, between areas in which pilotage is compulsory and areas in which it is optional. By Section 32 (1), save for exceptions, every ship navigating in a compulsory pilotage area is required to be under the control of a pilot licensed for such area, and Section 32 (4) provides penalties for breach. By Section 34, the master of a ship may pilot his ship within optional pilotage limits (sic.); it is not compulsory for him to take or employ the services of a pilot when his ship is not navigating in a compulsory pilotage area.

20 7. Until varied or revoked the Regulations contained in the First and Second Schedules of this Law were to be in force as the Regulations of the Marine Board and the Kingston Pilotage Authority respectively. Variations have in fact been made to both Schedules; in the case of the First Schedule, the variations inter alia confirmed the general intention that the optional area of any particular port should be the area of sea inshore of a defined line, and that the compulsory area should be a defined area of the port seaward of that given line.

30 8. Regulation 30 of the First Schedule, with its variations, defines for each port, including Kingston, the limits of pilotage areas, the definitions being by way of stating the geographical compulsory and optional limits.

40 9. The natural harbour of Kingston comprises a bay partially enclosed by a peninsula terminating in the town of Port Royal. The optional limit of the port is a line joining the Fort Charles flagstaff (which is at Port Royal) across the entrance to the bay to the Jetty at Small Point on the mainland. The compulsory limit lies seaward of the optional limit and is a line from Healthshire Point, on the mainland, to the southern point of South Cay to the east, produced to the Meridian of  $76^{\circ} 44$  mins. 10 secs. west, passing through the Red Cliff at Rockfort and thence along this Meridian northwards to the foreshore of the Palisadoes.

RECORD

10. The inner limits of the two pilotage areas are not expressly defined, but it was not in dispute that the inner limit of the optional area is the foreshore of Kingston Harbour. The harbour and the two limiting lines are shown on Admiralty Chart Exh. 2. There was no dispute about the Chart or the de-limiting lines.

11. The present case stems from a dispute between the Pilotage Authority on the one hand and the ship owners and agents as a collective group on the other. 10

12. Consequent on an Opinion given by a Crown Counsel in the Attorney General's Department in 1958, the Pilotage Authority had, until 1st October, 1965, charged one fee for piloting a vessel from the outer limit of the compulsory area to berth in Kingston, and similarly from berth in Kingston to the outer limit of the compulsory area.

13. As a result of representations made to the Authority by the pilots, the Authority thereafter demanded from ship owners for piloting a vessel from the outer limit of the compulsory area to berth in Kingston (and vice versa) two sets of fees, being fees appropriate to piloting in the compulsory area plus fees appropriate to piloting in the optional area. The ship owners contested this demand. Hence the two complaints which are in the nature of a test case. 20

14. The principal question for determination on this appeal is whether upon a proper interpretation of the Pilotage Law :- 30

(a) The compulsory pilotage area and the optional pilotage area of the port of Kingston are mutually exclusive with the result that the inward or landward limit of the compulsory area is the outer or seaward limit of the optional area, OR

(b) The compulsory pilotage area of the said port embraces and/or includes the optional pilotage area with the result that the inner or landward limits of the compulsory area include those portions of the foreshore of Kingston Harbour which form the inner or landward limits of the optional area. 40

15. Facts which were not in dispute were that:-

10 (a) Harold Mortimer Brown, a Kingston choice pilot, whose services had been retained by the Appellants, Shipping Agents, had picked up on the 7th November 1965 an inward bound ship, the "Koei Maru" seaward of the compulsory limit, and had piloted her to her berth at the Esso Refinery. On the 9th November, 1965, he had piloted the same ship outward bound, from her berth, at the said Refinery to a point seaward of the compulsory limit. The Appellants had paid the Authority only those pilotage dues prescribed under Regulation 33 (1), for pilotage within the compulsory area. The Authority then made formal demand in writing as required by Section 35 (1) for additional dues in respect of pilotage within the optional area (being the fees prescribed by Section 33 (3) ). Upon the Appellants failing to satisfy the demand the Authority on the 29th April, 1966, laid complaints under Section 35 for the recovery of such dues.

pp. 1, 2

30 (b) The services rendered by the said Harold Mortimer Brown had been rendered within areas of sea that fell within the "optional pilotage area," or limits of the port of Kingston as well as within the compulsory pilotage area or limits of the port.

(c) The sums claimed were proper and accurate computations of the fees that were collectable for services within the optional area, if on the proper interpretation of the Law and Regulations such fees were due and payable.

16. Evidence for the Authority was given as follows :-

40 (a) Cleveland Ivanhoe Levy, the Secretary of the Authority, said that one of his duties was the billing and collection of pilotage fees. Until the 1st October, 1965, the Authority had billed ship owners and agents

pp. 6-9

p.6 line 21

RECORD

- with one set of fees (that is those under Regulation 33 (1) ). In so doing they had followed an Opinion given by the Attorney General in 1958. As a result of of representations made to the Authority by the pilots he had billed the Appellants in respect of Mr. Brown's pilotage services with fees under Regulation 33 (1) and (3) for services in both the optional and compulsory areas. The Appellants had paid only one fee as hitherto and had lodged the difference to the Shipping Companies special account with the Bank of Canada pending the outcome of the matter. 10
- p. 7
- p.8 line 2
- pp.9-15
- p.10 line 23.
- p.10 line 30
- p.10 line 32
- p.12 line 23
- pp. 15-18
- p.16 line 3
- pp. 18-26
- (b) Albert Eric Jensen said he was a choice pilot and had a master's foreign-going certificate. He had marked Exh. 2 (a). There were less navigational aids in the compulsory area where there is open sea. Landwards of the optional line the ground was soft and muddy and less dangerous to ships than to seawards where there is open sea and rocky coast line. There were more disastrous accidents seawards of the optional line than landwards of it. On the other hand navigational aids landwards of the optional line could easily be confused with the lights of Kingston especially to a master unfamiliar with the port, and coming in by night. In cross-examination he said that in his view it was for the ship's master to decide whether he wanted pilotage once the optional line was reached. 20
- (c) Harold Mortimer Brown, the choice pilot gave evidence of piloting the "Koei Maru". For the inward voyage he was instructed to dock at the Esso Refinery. For the outward journey he was instructed to take charge at the Esso Refinery. 30
17. Evidence for the Appellants was given as follows :- 40
- (a) Captain S. H. Williers said he had been Harbour Master at Kingston and a member of the Pilotage Authority from 1958 until 1965. He had sailed as Chief Officer and

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10 Master, to and from Kingston frequently before 1958. The practice was for pilots to dock their ships and to pilot outwards from the dock. In his opinion pilotage between Kingston and Port Royal was more difficult than between Port Royal and Plumb Point. While he was Harbour Master more accidents occurred landwards of the optional line than seawards of it. In his view docking and un-docking required a pilot. In cross-examination he agreed that if a ship went aground between the optional and compulsory limit, the consequences to the ship would be more serious because of ground and swell, than if it went aground landward of the optional limit.

20 (b) Walter George Chevannes said he was employed to Western Terminals Limited as a Berthing Officer. Before 1963 he had been for eight years a pilot, and he spoke of his experience at Kingston. In cross-examination he spoke of the pilotage practice before the 1957 Act came into force. He had never gone aground inland of the optional line, but he had had accidents seawards of it.

30 18. The Learned Resident Magistrate considered the conditions prevailing before the 1957 Law was introduced and surveyed the evidence. He concluded that the 1957 Law had effected several significant and new changes in pilotage in Jamaica which he summarised. In this context he referred to the provisions of the 1957 Law which required a vessel to take a pilot in a certain area (the compulsory area) under penalty of prosecution, while in another area (the optional area), the master need not have a pilot. He spoke of the care that had been taken to define these areas and attached to optional the meaning that someone must be given the use and benefit of the option. He conceived that it was the duty of the Court to say what was the landward limit of the compulsory area, and rejected the argument that that area extended to the foreshore passing over the optional line or limit. He found that the optional and compulsory pilotage areas of

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p.18 line 26  
p.19 line 16

p.19 line 34

pp.26-34

p.29  
p.30 line 30

pp. 34-44

p.41 line 21

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the port of Kingston were mutually exclusive, and observed that the master of a vessel could never be prosecuted if the limits were not defined and set apart. He concluded that the inshore limit of the compulsory area must be the optional limit that there was nothing in the evidence as to the comparative dangers of navigation in various sections of the port to upset the intention of the Law, and that if the master of a ship chose to use a pilot inshore of the optional limit, as had been done in the present case, a second fee was due and payable.

p.42

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He therefore found both complaints proved, and ordered payment by the Appellants of £27.1.4. for the inward voyage and £27.16.10 for the outward voyage.

p.43 line 9

pp.53-62

19. In the Court of Appeal the first judgment was given by Waddington JA. He considered the Law as it stood prior to the Law of 1957 and then the changes made by that Law. He then considered Sections 4 (1), 32 (1) and 34 with their references to "areas" and Regulations 15 and 30 with their references to "limits". He took the view that the draftsman of Regulation 30 was seeking to define the limits of the Kingston pilotage area and then distinguish that part of the area in which pilotage was to be compulsory from that part in which it was to be optional. He concluded from this that the compulsory pilotage area extended from the outer defined limit to the foreshore, but that from the area then enclosed there was excluded as the optional area, the area landwards of the inner limit.

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p.59 line  
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p.59

Thus the area between the outer and inner limits was the compulsory area, and the area between the inner limit and the foreshore, the optional area. As to fees he said that Regulations 15 (1) and 15 (2) of the First Schedule required that the fees specified in Part IV should be paid for pilotage services within the compulsory limits and the optional limits respectively. He next referred to Regulation 33 (1) of Part IV of the First Schedule which sets out the fees payable for pilotage services within the compulsory pilotage limits of first class ports. He then went on to say that the fees prescribed by Regulation 33 (1) were for pilotage services not merely within the compulsory pilotage area, but

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p.60 line  
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within the compulsory pilotage limit of the port which he said meant services anywhere in the port between the outer line and the foreshore.

p.60 line  
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In his view the fees that were payable in any given case depended on the services which the pilot was engaged to perform. In the instant case the pilot was engaged to pilot the "Koei Maru" from the compulsory pilotage limit into a dock in Kingston, and from the dock to an appropriate place near the compulsory pilotage limit. In the circumstances the services rendered by the pilot when the vessel was inward bound, were performed "within the compulsory limit" as he had previously defined that term. The fact that in performing the said services the pilot had to navigate through the optional area was quite irrelevant, since at that time he was still performing services within the compulsory limit for which he had been engaged. He referred to Regulations 14 (1) (f), (j) and 14 (2) which he said cast a duty on the pilot to pilot the ship on its entire passage into and out of the port, and concluded that the fees prescribed by Regulation 33 (3) were only intended to be payable for services which a pilot was engaged to perform exclusively within the optional area.

p.61 line 3

p.61 line 11

p.61 line 30

p.61 line 35

p.61 line 45

20. It is respectfully submitted that Waddington J.A. having correctly found that the compulsory pilotage area of the port of Kingston was contained between the compulsory pilotage limit and the optional pilotage limit as defined in Regulation 30, erred in :-

(a) Construing Regulation 33 (1) as prescribing fees for pilotage services within "the compulsory pilotage limit" of a port, instead of within the "compulsory pilotage limits" of that port.

p.60 line 25

(b) Holding that the payment of the fees prescribed by Regulation 33 (1) fully discharges the liability to pay for pilotage services rendered between the inner or optional pilotage limit and the fore-shore, notwithstanding the fact that

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such services involve navigation both within the compulsory limits and within the optional area.

- (c) Holding that for the purposes of pilotage fees due for services rendered within the compulsory pilotage limits, the inner compulsory pilotage limit was the foreshore, rather than the optional pilotage limit.
- (d) Finding that where a pilot was engaged to pilot a ship inward bound to a dock in the port of Kingston, and outward bound to the outer limit of the compulsory area, the effect of Regulations 14 (1) (f), (j) and 14 (2) was to deprive the pilot and/or the Authority of the right to collect fees for services rendered in the optional pilotage area - alternatively in failing to appreciate that if the Regulations did have that effect they were inconsistent with and repugnant to the Law.
- (e) Concluding that the fees prescribed by Regulation 33 (3) could only be earned for services rendered exclusively within the optional area.

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pp. 62-71

21. Shelley J.A. was in favour of dismissing the appeal. He pointed out that whereas Section 3 (c) of the 1957 Law required the Board to define the limits of pilotage areas, by Section 4 (1) (a) they were, in Regulations, to distinguish those parts of an area where pilotage was compulsory and those where it was optional. Giving the word "distinguishing" its plain and ordinary meaning, he found it impossible to conclude that part of an area distinguished as compulsory, included the optional part from which it was distinguished as optional. His Lordship then turned to the question of fees. He noted that, under the pre-1957 Law, a pilot was exposed to a penalty if he left a ship before it arrived at the place for which it was bound. The wording in the 1957 Law had been changed significantly in Section 45 (1) (k) to "leaving before the service for which he was engaged is performed".

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p.67 line 6

p.67 line 12

p.68 line 40

p.69 line 39

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10 Moreover Regulation 14 (1) (f) contemplated a ship berthed alongside a wharf or jetty, or brought to a safe anchorage. Again, Section 19 (2) spoke of an application for a pilot as being required to state the place where the pilot was required to board the ship. All these changes in language seemed in keeping with the view that services in the compulsory area and in the optional area were separate services for which the pilot was entitled to separate fees. p.70 line 17

If at first sight this view appeared to conflict with the provisions of Regulations 14 (1) (f) and (j), then the answer was that those Regulations assumed a different meaning when read in the light of the 1957 Law, than if read in the light of the pre-1957 Law. From the evidence it was clear that a pilot could bring a ship to a safe anchorage at the inner limit of the compulsory area, for example, at Port Royal. Equally, a pilot could board there. p.70 line 38

20 If the interpretation thus given to the Regulations was wrong, and they conflicted with the 1957 Law, then, as subordinate legislation, they must give way to the provisions of that Law. He held that the compulsory pilotage area and the optional pilotage area of the port of Kingston are mutually exclusive. p.70 line 43

30 22. Luckhoo J.A. also was in favour of dismissing the appeal. Like Shelley J.A., he he attached importance to the use of the word "distinguished." He then turned to Sections 32 and 34 of the 1957 Law and expressed the view that they did not appear to contemplate an optional pilotage area of a port being part of a compulsory pilotage area, or vice versa. He did not think that arguments based on the amounts in the scale of the fees prescribed assisted in the determination of the question in issue. It was to be borne in mind that the 1957 Law had set up a pilotage Authority, the working expenses of which must be defrayed from pilotage fees. A more substantial argument put forward by the Appellants was based on Regulations 14 (1) (f) and (j) and 14 (2). Those Regulations require a pilot not to leave a ship piloted by him unless she is berthed or p.71 line 14

pp.71-81.

40 p.74 line 27

p.78 line 40

p.79 line 12

p.79 line 16

RECORD

brought to holding anchorage within the harbour. They also require the pilot of an outward bound ship to go aboard before she leaves her berth or anchorage and to commence his duties as soon as she unmoored. However, Regulation 14 must be read subject to Sections 32 and 34, and they apply only in so far as they do not conflict therewith. They cannot extend the area of obligation of compulsory pilotage laid down in those Sections. In his Lordship's view the compulsory area did not extend landward beyond the optional pilotage limit, and if the services of a pilot were utilised between this latter limit and the foreshore, then the appropriate fee under Regulation 15 (2) becomes payable.

p.80 line 23  
p.80 line 28  
pp. 80-81

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23. It is respectfully submitted that on a true interpretation of the Law of 1957 and the Regulations made thereunder, there are in respect of the port of Kingston two pilotage areas defined and distinguished - namely the compulsory area being the area between the compulsory pilotage limit and the optional pilotage limit as defined in Regulation 30, and the optional pilotage area being the area between the optional pilotage limit and the foreshore; as all their Lordships in the Court of Appeal held. Further, as was held by Shelley and Luckhoo JJ.A. the two areas are mutually exclusive. It is also submitted, respectfully, that, as Shelley and Luckhoo JJ.A. held, a pilot earns a fee for piloting a ship through the compulsory area, and a further fee if he is engaged to and performs pilotage services within the optional area. It has already been submitted that Waddington J.A. was wrong to the extent that he disagreed with Shelley and Luckhoo JJ.A. in this respect, and the reasons for this submission are contained in paragraph 20.

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24. It is respectfully submitted that the Regulations particularly those contained in Regulation 14 are in due conformity with the Law of 1957, and that Shelley J.A. was right in so holding. The Regulations accurately reflect the provisions of the Law of 1957, and in no sense conflict with those provisions. If, contrary to the Respondents' contention, the Regulations are in conflict with the Law of 1957, then the Law

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over-rules the Regulations to the extent of any conflict, and Shelley and Luckhoo JJ.A., were right in so holding.

25. It is therefore submitted, respectfully, that the decision of the Court of Appeal was right and that this appeal ought to be dismissed with costs, for the following among other

R E A S O N S

- 10 1. That on a true interpretation of the Pilotage Law 1957 and the Regulations made therein the pilotage area of the port of Kingston comprises first an area in which pilotage is compulsory, and another area in which pilotage is at the option of the ship owner.
2. That the optional area lies landwards of the compulsory area, and the said two areas are mutually exclusive.
3. That for any pilotage services rendered by a pilot within the optional area of the port of Kingston pursuant to an engagement to perform pilotage services within such  
20 area, he earns a fee in accordance with the scale referred to in Regulation 33 (3), which fee is due and payable to the Kingston Pilotage Authority.
4. That such fee is wholly independent of and separate from the fee earned by such pilot if he performs pilotage duties for the same ship within the compulsory area, even  
30 though services in both areas are rendered in the course of one continuous inward or outward voyage.

V. O. BLAKE Q.C.

GERALD DAVIES

H. D. CARBERRY

A P P E N D I X

THE PILOTAGE LAW (Law 28 of 1957)

Section 2

In this Law, unless the context otherwise requires - "Authority" means the Kingston Pilotage Authority constituted under this Law;

"Board" means the Marine Board constituted under the Marine Board Law;

"compulsory pilotage area" means the area within the limits fixed by regulations under section 4 of this Law within which it shall be compulsory for a ship to take a pilot;

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"excepted ships" means -

- (a) ships belonging to Her Majesty or to the Government;
- (b) commissioned ships belonging to any foreign Government;
- (c) pleasure yachts;
- (d) fishing vessels;
- (e) ships of less than fifty tons registered gross tonnage;
- (f) cable laying vessels;
- (g) a coasting ship as defined in section 167 of the Customs Law engaged solely in the coasting trade as therein defined, except when towing another ship;

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"Kingston" in the expressions "Kingston choice pilots", "Kingston pilotage area", "Kingston pool pilot", and "port of Kingston" shall connote a reference to the ports of Kingston and Port Royal;

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"Kingston choice pilot" means a pilot licensed for the Kingston pilotage area who is detailed by the Authority for a period of one year renewable annually to work exclusively as a pilot for a shipowner, shipping company or shipping agent at the port of Kingston and any other port for which he may be licensed;

"Kingston pool pilot" means a pilot licensed for the Kingston pilotage area who is engaged by the Authority to work exclusively under the control and direction of the Authority;

"optional pilotage area" means the area within the limits fixed by regulations made under section 4 of this Law within which it shall not be compulsory for a ship to take a pilot;

10 "outport" means any port in the Island outside of the port of Kingston;

"outport pilot" means a pilot licensed for an outport and not engaged by the Authority;

"pilotage area" means an area the limits of which are defined pursuant to paragraph (c) of section 3 of this Law;

"pilotage dues" include pilotage fees, detention fees, travelling and subsistence allowances and any other prescribed payment relating to the services of pilots, other than premium fees;

20 "premium fees" means fees, fixed by the Authority over and above the prescribed pilotage fees, payable to Kingston pilots in respect of services rendered as follows :-

- (a) in the case of Kingston choice pilots, all pilotage performed by them;
- (b) in the case of Kingston pool pilots, pilotage services at outports and coastal pilotage performed by them;

30 Subject to the provisions of this Law the Board shall -

Section 3.

- (a) have power to grant, suspend, alter or revoke pilots' licences;
- (b) have the government and control of all outport pilots and apprentices to such pilots and the superintendence of all business connected with the pilotage at all outports and of the channels thereto;
- (c) define the limits of pilotage areas and classify the ports of the Island for the purposes of this Law;

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- (d) fix the fees and charges in respect of pilotage services at all ports in the Island;
- (e) have power to do all such things as may be necessary or expedient for carrying into effect its powers and duties

Section 4

- (1) The Board may with the approval of the Governor in Council make regulations generally for the better carrying out of the purposes of this Law and in particular but without prejudice to the generality of the foregoing may make regulations - 10
  - (a) defining the limits of pilotage areas, distinguishing as respects any pilotage area in part of which pilotage is compulsory and in part of which pilotage is optional, the part of the area in which pilotage is compulsory;
  - (e) providing for the training of apprentices for the pilotage service of the Island and fixing the limit (if any) on the number of apprentices to be trained and the qualifications to be required from persons applying for such training; 20
  - (f) providing generally for the good government of all outport pilots and of apprentices to outport pilots, and in particular for ensuring their good conduct and constant attendance to and effectual performance of their duties whether at sea or on shore; 30
  - (g) prescribing the conditions under which the Board from time to time may require any pilot to submit to such examination as it may deem necessary in order to determine his ability to pass the standard examination prescribed by regulations made under this Law or as to his mental or physical capacity to take pilotage charge of ships;
  - (j) fixing the rates of pilotage dues; 40



- (2) Until varied or revoked by regulations made by the Board with the approval of the Minister under the provisions of subsection (1) of this section the regulations contained in the First Schedule to this Law shall be in force. Section 4
  
- (1) There shall be established for the purposes of this Law a body to be called the Kingston Pilotage Authority. Section 15
  
- 10 On the commencement of this Law and subject to the provisions thereof all Kingston pilots shall be employed by the Authority and the Authority shall have the government and control of all such pilots and their apprentices and the superintendence of all business connected with the pilotage at the port of Kingston. Section 17
  
- (1) The Authority may with the approval of the Minister make regulations - Section 18

  - 20 (a) providing generally for the good government of all Kingston pilots and of apprentices to such pilots and in particular for ensuring their good conduct and constant attendance to and effectual performance of their duties whether at sea or on shore;
  - (c) determining the system to be adopted with respect to the supply and employment of Kingston pool pilots;
  - 30 (d) determining the terms and conditions under which Kingston choice pilots may be engaged by ship-owners, shipping companies or shipping agents who require their particular service;
  - (e) fixing the rates of the premium fees;
  - (f) providing for the collection by the Authority of all pilotage dues and premium fees earned by Kingston pilots, the pooling of all such dues and fees and their distribution among Kingston pilots.
  
- 40 (5) Until varied or revoked by regulations made by the Authority with the approval of the Minister under the provisions of subsections (1), (2), (3) and (4) of this section the regulations Section 18

contained in the Second Schedule to this Law shall be in force.

Section 19

(1) Any shipowner, shipping company or shipping agent requiring the exclusive services of a Kingston pilot of their choice for the period of one year may apply in writing to the Authority for the services of such pilot and the Authority may detail such pilot for such exclusive service on conditions to be approved by the Authority.

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(2) Applications for the service of a Kingston pool pilot shall be sent in writing to the Secretary of the Authority stating the hour required, tonnage of the ship, and the place where the pilot is required to board the ship and giving such other information as may be required by the Authority.

Section 20

(1) All pilotage dues, premium fees and all other charges in connection with the services of Kingston pilots shall be paid by the master of the ship, or by the owner, agent or consignee, as the case may be, to the Authority.

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Section 32.

(1) Every ship (other than as excepted ship) while navigating in a compulsory pilotage area shall be under the pilotage of a pilot licensed for such area.

(2) A ship while being moved within a harbour which forms part of a pilotage area shall be deemed to be a ship navigating in a pilotage area, except so far as may be provided by regulation in the case of ships being so moved for the purpose of changing from one mooring to another mooring or of being taken into or out of any dock.

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(3) At any outport the master of an incoming ship with no pilot on board shall take the first pilot who shall offer his services as pilot within the pilotage area of the port and if he refuses the services of such pilot, such master or the owner, agent or consignee of the ship shall nevertheless pay to the pilot the pilotage dues for the pilotage of such ship.

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(4) If any ship (other than an excepted ship) in circumstances in which pilotage is compulsory under this Law, is not under pilotage as required by this section, the master of that ship shall be liable, on summary conviction, to a fine not exceeding double the amount of the pilotage that could be demanded for the conduct of the ship.

10 It shall not be compulsory on the master or other person in charge of a ship to take or employ the services of any pilot when such ship is not navigating in a compulsory pilotage area, and every such master or other person may lawfully pilot and conduct his own ship within the optional pilotage limits as defined in the regulations made under this Law, so long as he does so without the aid or assistance of any person other than the ordinary crew of such ship. Section 34

20 (1) The owner or master of any ship which shall arrive in the Island or the consignee of or agent for such ship shall on completion of the pilotage services, in the case of a Kingston pilot, pay to the Authority and in the case of an outport pilot, to the pilot entitled, all pilotage dues within twenty four hours after the performance of the service for which such pilotage dues shall be payable. In default of such payment the pilotage dues may be recovered summarily on complaint before a Resident Magistrate, but such recovery shall not take place until a previous demand has been made in writing. Section 35

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(l) If a pilot - Section 45

(k) quits the ship, which he is piloting, before the service for which he was engaged has been performed and without the consent of the master of the ship,

40 that pilot shall in addition to any liability for damages, be liable in respect of each offence to a fine not exceeding one hundred pounds.

FIRST SCHEDULE (Section 4 (2) )

PART I

THE PILOTAGE (BOARD) REGULATIONS, 1957.  
(General)

Regulation  
3

The limits of the pilotage areas of the Island shall be as defined in Part II of these Regulations.

Conduct and Duties of Outport Pilots

Regulation  
14

(1) The pilotage services at outports shall be under the general supervision of the Marine Superintendent, and an outport pilot shall -

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(a) obey and execute all lawful orders and directions given and issued by the Board, the Marine Superintendent or the Wharfinger;

(b) observe strict sobriety;

(c) throughout the time he is in charge of a ship, use his utmost care and diligence for her safety and the safety of other ships or property;

(d) when necessary, keep the lead going while the ship is under way;

20

(e) not lay a ship aground without a written order from the owner or master of such ship or the agent of the owner;

(f) not leave a ship piloted by him unless she is berthed alongside a wharf or jetty or brought to a safe anchorage or if outward bound, until the appropriate limits have been reached;

Provided that in the case of an outward bound ship, the pilot may, with the approval of the master, leave the ship before the appropriate limits are reached if, by reason of weather conditions his return to shore will be endangered by remaining on such ship until such limits are reached.

30

- (g) before leaving a ship piloted or attended by him, obtain from the officer in command a signed certificate which shall contain particulars of the services rendered by the pilot;
- 10 (h) not bring a ship alongside any wharf or jetty should the signal for the wharf or jetty be against him or if no signal is usually used, unless he shall have first received permission from the person in charge of the wharf or jetty;
- (i) behave with due civility towards the owner, master and officers of any ship under his charge;
- 20 (j) when he is about to take charge of a ship which is outward bound or which is about to be moved from where she is lying, go on board and report himself to the master or officer in command before the appointed time so as to enable her to be moved out from the wharf or jetty or to proceed to sea or to her destination;
- (k) when on duty, always have with him a reliable watch, a copy of the Pilotage Law and all regulations made thereunder, and his licence;
- 30 (l) not attend to give evidence at any trial or enquiry to which he is not a party (unless under subpoena) without permission of the Marine Superintendent and, if subpoenaed to give evidence, at once report the fact in writing to the Marine Superintendent;
- (m) keep the Board informed at all times of the address of his residence and of any change of such address;
- 40 (n) when he notices within the pilotage area for which he is licensed any alteration in any of the banks or channels or any buoys or beacons which have been driven away, broken down, damaged or displaced, or any circumstances affecting the safety of navigation, forthwith give a correct statement thereof in writing to the Marine Superintendent;

- (o) when any accident has happened to or been caused by a ship while in his charge, as soon as possible report the facts in writing to the Marine Superintendent;
- (p) not hold directly or indirectly any share or interest in any tug company or in any ship used regularly or occasionally for towing ships in the pilotage areas;
- (q) make himself thoroughly acquainted with the provisions of the Pilotage Law and all regulations made thereunder. 10

(2) The duties of any outport pilot in regard to an outward bound ship shall commence as soon as such ship begins to unmoor for the purpose of proceeding to sea.

(3) In the event of an outport pilot refusing to proceed to sea from any anchorage or from any wharf or jetty with any ship which he is qualified to pilot when requested to do so by the master, owner or agent of such ship, he shall at once give his reasons therefor in writing to the Marine Superintendent. 20

(4) If an outport pilot mislays his licence, he shall forthwith give notice thereof to the Board stating the circumstances in which the licence was lost and shall forthwith apply to the Board for a duplicate licence.

(5) Outport pilots shall be available at the shortest possible notice and, if telephone service is available, shall be connected by telephone at their residences. 30

Regulation  
15

(1) There shall be payable in respect of pilotage services within the compulsory limits of any port, the fees specified in Part IV of these Regulations for such services.

(2) There shall be payable in respect of pilotage services within the optional limits of any port, the fees specified in Part IV of these Regulations in respect of such services.

Regulation  
19.

Subject to the provisions of regulation 15 and 18 of these Regulations a pilot piloting a 40

ship from any one part of any port to any other part thereof shall be entitled to a fee equivalent to one-half of the appropriate fee specified in Part IV of these Regulations in respect of such ship.

## PART II. Pilotage Areas

The limits of the pilotage areas in the Island are hereby defined as follows :-

Regulation  
30.

### Port of Kingston

10 Compulsory pilotage limit. A line from Healthshire Point to the Southern Point of South Cay and produced in the same direction to the Meridian of 76° 44'10"W. passing through the Red Cliff at Rockfort and thence along this Meridian to the foreshore of the Palisadoes.

Optional pilotage limit. A line joining the Fort Charles Flagstaff at Port Royal to the jetty at Small Point.

## PART IV. Pilotage Fees.

20 (1) The fees payable in respect of pilotage services within the compulsory pilotage limits of first class ports shall be as follows :-

Regulation  
33

(HERE FOLLOWS A TABLE OF FEES ASSESSED ON REGISTERED GROSS TONNAGE).

(3) The fees payable in respect of pilotage services in optional pilotage areas shall be the same as are prescribed by paragraphs (1) and (2) above.

## SECOND SCHEDULE (Section 18 (5) )

30 THE PILOTAGE (AUTHORITY) REGULATIONS, 1957.

(1) The pilotage service at the port of Kingston shall be under the general supervision of the Marine Superintendent and all Kingston pilots or outport pilots when such outport pilots are on pilotage duty in the port of Kingston shall obey and exercise all lawful orders and directions given and issued by the Authority, the Marine Superintendent or a Wharfinger.

Regulation  
3

(2) The provisions of regulation 14 contained in the First Schedule to the Law shall apply (substituting the word "Authority" for the word "Board" whenever the latter occurs in that Regulation) in relation to the conduct and duties of Kingston pilots as they apply in relation to the conduct and duties of outport pilots.

Regulation  
5.

(1) Subject to the provisions of paragraph 3 of this regulation, Kingston pool pilots shall perform pilotage duties within the Kingston pilotage area on a turn or rotary basis in the order in which their names appear in the roster. 10

Regulation  
6

On the written application to the Authority by a shipowner, a shipping company or a shipping agent, or of two or more ship-owners or shipping companies, whose ships are associated in management, or are worked in a joint or common service (in this regulation called "the applicant") for permission to engage a Kingston pilot of their choice to perform exclusively pilotage duties in respect of ships belonging to or the employment of which is directed and controlled by the applicant, the Authority may approve the application upon such terms and conditions as the Authority may prescribe: 20

Provided that -

(d) the applicant shall pay to the Authority all pilotage dues, premium fees and other charges in connection with the services rendered by the choice pilot; 30

(g) in addition to pilotage dues there shall be paid by the applicant to the Authority on behalf of the choice pilot premium fees calculated at the rate of not less than fifteen per cent of the prescribed pilotage fees earned by the choice pilot in respect of all pilotage performed by him during the month, whether such pilotage is performed in the Kingston pilotage area or on coastal or outport pilotage duty. 40

Regulation  
7

(1) All pilotage dues, premium fees and other earnings by Kingston pilots shall be collected by the Authority and placed to the credit of the pool fund.



(2) At the end of each month the Authority shall make the following disbursements and payments from the pool fund -

(a) to the Kingston choice pilots -

- (i) all premium fees earned by them individually during the month;
- (ii) all pilotage and premium fees earned by them individually on coastal or outport pilotage during the month;
- 10 (iii) all detention fees, travelling and subsistence allowances due to them individually in respect of their services during the month;
- (iv) any other earnings to which they might be entitled in respect of their services during the month excepting pilotage fees in respect of Kingston pilotage;

(b) to Kingston pool pilots -

- 20 (i) all pilotage and premium fees earned by them individually on coastal or output pilotage during the month;
  - (ii) all detention fees, travelling and subsistence allowances due to them individually in respect of their services during the month;
  - (iii) any other earnings to which they might be entitled in respect of their services during the month excepting pilotage fees in respect of Kingston pilotage.
- 30

