

THE INDIAN MERCHANT SHIPPING ACT, 1875.

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[*Price four annas*].

CHAPTER III.

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1875.]

ACT No. IV OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th February 1875).

An Act for the further amendment of Act No. I of 1859, and for other purposes.

WHEREAS Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*), section one hundred, provides that, in the cases of loss, abandonment, damage, or casualty therein mentioned, it shall be lawful for the Local Government, if a formal investigation appears to it to be requisite or expedient, to appoint two persons to make the same, and declares that one of such persons shall be a Magistrate acting in or near the place where the investigation is made, and that the other may be any person conversant with maritime affairs : Preamble.

And whereas it is expedient in many cases that such investigations shall be made by persons more in number and of more varied qualifications :

And whereas it is also expedient to provide efficient means for enforcing the attendance of witnesses in such investigations and in trials under Act No. XII of 1859 (*to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) ;

And whereas it is expedient to repeal Act No. XV of 1863 (*to amend Act I of 1859*) and to re-enact certain of its provisions with the amendments hereinafter appearing :

And whereas it is provided by Act No. X of 1841, sections two, fifteen, seventeen and twenty-three, that the persons guilty of the offences therein respectively mentioned

mentioned shall be liable upon conviction by information by the Advocate General to the penalties therein respectively provided :

And whereas it is expedient to render the said penalties recoverable otherwise than on information by the Advocate General;

It is hereby enacted as follows :—

CHAPTER I.
PRELIMINARY.

- Short title. 1. This Act may be called "The Indian Merchant Shipping Act, 1875;"
- Extent. It extends to the whole of British India ;
- Commencement. And it shall come into force at once.
- Repeal of enactments. 2. Sections one hundred, one hundred and one and one hundred and two of Act I of 1859 and the whole of Act XV of 1863, are hereby repealed.
- But every enquiry now pending, which has been commenced under any enactment so repealed, shall be deemed to have been commenced under this Act.

CHAPTER II.

INVESTIGATIONS INTO LOSSES OF SHIPS AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

- Notice of accidents to be given to Local Government.
3. In any of the cases following (namely) :—
- (a) whenever any ship is lost, abandoned or materially damaged on or near the coasts of India ;
- (b) whenever any ship causes loss or material damage to any other ship on or near such coasts ;
- (c) whenever by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues ;
- (d) whenever any such loss, abandonment, damage or casualty happens elsewhere to or on board any ship registered at any port or place in India, under the Merchant Shipping Act, 1854, or under Act X of 1841 ;

the

the master, pilot, harbour-master, or other person in charge of the ship, or, in cases under clause (b) of this section, of each ship, at the time of the loss, abandonment, damage or casualty, or, where any ship above referred to arrives in British India, the person then in charge of her, shall, on arriving in British India, give immediate notice of such loss, abandonment, damage or casualty to the nearest Magistrate, or, if he arrive at any port, then to such officer as the Local Government appoints in this behalf.

Any person bound to give notice under this section and wilfully failing to give the same shall be liable to fine not exceeding five hundred rupees and, in default of payment, to simple imprisonment for a term which may extend to three months.

The Magistrate or officer receiving such notice shall without delay communicate the same to the Local Government.

4. If in any such case a formal investigation appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, to make such investigation, and may fix the place for making the same.

Power to
appoint
special Court
of Enquiry.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made, another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

5. Every Court having admiralty jurisdiction in India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, at the instance of the Local Government, or of such officer as the Local Government may have empowered in this behalf, to investigate charges of incompetency or misconduct on the part of any Master, Mate or Engineer of any ship, who holds a certificate granted by the Board of Trade, or as to shipwreck or other casualties affecting ships.

Courts
authorized to
investigate
charges
against
Masters, &c.

Every

Assessor.

Every such Court may, if it think fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing to be recorded on the proceedings. But the decision of the case shall rest with the Court.

Communication to Court of grounds for charging Master, &c., with incompetency, &c.

6. If the Local Government has reason to think that there are grounds for charging any Master, Mate or Engineer holding a certificate granted by the Board of Trade with incompetency or misconduct, it shall transmit a statement of such grounds to the Court making the investigation.

Communication of grounds of charge to certificate-holder.

7. If the investigation involves a charge of incompetency or misconduct against any person holding such certificate as aforesaid, the Court shall, if practicable, before commencing the investigation, cause the holder of such certificate to be furnished with a copy of the statement transmitted by the Local Government as aforesaid.

Powers of special Court.

8. For the purpose of the investigation the special Court, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have the same powers as if such investigation were a proceeding relating to an offence or cause of complaint upon which the said Magistrate has power to convict.

Procedure on discovery in course of investigation of grounds for charging with incompetency, &c.

9. If, in the course of an investigation under this Act by any of the Courts hereinbefore mentioned, it appears that there are grounds for charging with incompetency or misconduct any holder of such certificate as aforesaid not so charged by the Local Government, the Court may cause a statement of such grounds to be furnished to such holder, and may then commence an investigation into such charge of incompetency or misconduct.

Powers of Court in making investigation.

10. For the purpose of such investigation such Court may summon the Master, Mate or Engineer to appear, and shall give him full opportunity of making a defence,

a defence, either in person or otherwise,
and may summon and examine witnesses.

11. The Court shall in all cases transmit to the Local Government a full report of the conclusions at which it has arrived.

Report by Court to Local Government.

12. If the Court decide that any such certificate as aforesaid shall be cancelled or suspended, it shall so state in open Court, at the conclusion of the case or as soon afterwards as possible.

Statement of decision in open Court.

13. When the Court decides to cancel or suspend a certificate, it shall send a full report upon the case with the evidence and the suspended or cancelled certificate through the Local Government to the Board of Trade.

Transmission of report and certificate to Board of Trade.

14. Provided that no certificate shall be cancelled or suspended—

Preliminaries to cancellation or suspension.

(a) unless the person holding the certificate has before the commencement of the investigation been furnished with a copy of the statement of the case upon which the investigation has been ordered;

(b) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, unless the report be confirmed by the Local Government;

(c) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, attended by an assessor, unless the assessor expresses his concurrence in the report.

15. If any Court making an investigation under this Act thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject nevertheless to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

Any officer so authorized to enter a vessel may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest;

and

and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section one hundred and eighty-six.

No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial.

16. Whenever in course of any investigation under this Act, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may for the purposes of this section exercise all the powers of a Magistrate of the first class or of a Justice of the Peace:

Power to bind over persons to give evidence.

Depositions.

And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making investigations under this Act shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

Chapter II applied to charges against holders of certificates from Local Government.

17. All the foregoing provisions of this chapter, except such as require reports to and communications with the Board of Trade, or relate to the actual cancellation or suspension of certificates, shall be applicable also to charges of incompetency or misconduct against any Master, Mate or Engineer who holds a certificate granted by any Local Government.

CHAPTER III.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES
GRANTED BY LOCAL GOVERNMENTS.

18. The Local Government may suspend or cancel the certificate (whether of competency or service) granted by such Local Government, or by any other Local Government, to any Master, Mate or Engineer, in the following cases; (that is to say)—

Local Gov-
ernment may
suspend or
cancel certi-
ficates—

(a.) If upon any investigation made under this Act, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, or the Master, Mate or Engineer is reported to be incompetent, or to have been guilty of any gross act of drunkenness, tyranny or other misconduct:

(a) after in-
vestigation
under this
Act;

(b.) If upon any enquiry made under the provisions of the Merchant Shipping Act, 1854, or the Merchant Shipping Amendment Act, 1862, or upon any enquiry made by a Naval Court constituted as is provided by any law for the time being in force, or upon any enquiry made by any Court or tribunal for the time being authorized in any British possession to enquire into charges of incompetency or misconduct on the part of Masters, Mates or Engineers of ships, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by the wrongful act or default of the Master, Mate or Engineer; or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct:

(b) after en-
quiry under
Merchant
Shipping
Act, 1854, or
by Naval
Court;

(c.) If he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

(c) after su-
persession;

(d.) If he is shown to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony:

(d) after con-
viction of any
offence.

Provided that no certificate shall be suspended or cancelled under clause (a) of this section unless the Local Government is satisfied that the holder of the
certificate

certificate had before, or within a reasonable time after, the commencement of the investigation notice of the nature of the charge made and established against him.

The Local Government may, if it thinks the justice of the case requires it, re-issue and return any certificate which has been cancelled or suspended under this section, or shorten the time for which it has been suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended.

Master, &c.,
to deliver up
certificate.

19. Every Master, Mate or Engineer whose certificate is cancelled or suspended under this chapter, shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default shall, for each offence, incur a penalty not exceeding five hundred rupees.

Report to
other Local
Governments.

20. If the Local Government which cancels or suspends a certificate of a Master, Mate or Engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancelment or suspension, to the Local Government which granted such certificate.

Report to
Board of
Trade.

21. Every Local Government cancelling or suspending under this chapter the certificate of a Master, Mate or Engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Whenever it is reported to the Local Government that the loss or abandonment of, or serious damage to, any ship has been caused by the wrongful act or default of a Master, Mate or Engineer holding a certificate from the said Board, or that such Master, Mate or Engineer is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, the Local Government, if it concur in such report, shall send a copy of the same to the Board of Trade.

22. Any

22. Any Local Government may at any subsequent time revoke any order of cancellation or suspension which it may have made under this Act, or grant to any person whose certificate it has cancelled under this Act, a new certificate of the same or of any other grade.

Power to revoke cancellation or suspension.
Power to grant new certificate.

Notice of every revocation and of every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

23. Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of the said Act I of 1859, on Courts having admiralty jurisdiction in India.

Saving of powers conferred on certain Admiralty Courts.

The said powers may be exercised by the principal Court of ordinary criminal jurisdiction at any port in India where there is no Court having admiralty jurisdiction, if the Master, Mate or Engineer has received his certificate from any Local Government.

Exercise of such powers by chief criminal Courts in Indian ports.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

24. The Master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements with seamen.

25. Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the Master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say)—

Form and contents of agreement.

(a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(b) the

(b) the number and description of the crew, specifying how many are engaged as sailors ;

(c) the time at which each seaman is to be on board or to begin work ;

(d) the capacity in which each seaman is to serve ;

(e) the amount of wages which each seaman is to receive ;

(f) a scale of the provisions which are to be furnished to each seaman ; and

(g) any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by Government as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of this Act), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

Provision
where lascars
are shipped.

26. When it is agreed that the service of any lascar or other Native seaman shall end at any port not in India, the agreement shall, in addition to the particulars specified in section twenty-five, contain stipulations for providing for him fit employment on board some other vessel bound to the port at which he was shipped, or such other port as may be agreed on, or for providing for him a passage to some such port as aforesaid free of charge, or on such other terms as may be agreed on ; and every such stipulation shall be signed by the owner of the vessel, or by the Master on his behalf.

EXPLANATION:—In this section the word ‘seaman’ includes also a Native of India carried to sea from any port in India as one of the crew of a ship.

Forms for
British or
Colonial
ships.

27. If the Master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to

to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman in any port in India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

CHAPTER V.

MISCELLANEOUS.

28. Sections three to twenty-seven (both inclusive) shall be read with and taken as part of the said Act No. I of 1859.

Sections 3 to 27 to be taken as part of Act I of 1859.

29. Sections nine to sixteen (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under the said Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

Provisions as to examinations, &c., of Masters not to apply to certain ships.

30. In the said sections two, fifteen, seventeen and twenty-three of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted (namely):—"on conviction before a Justice of the Peace or a Magistrate of the first class."

Amendment of Act X of 1841, secs. 2, 15, 17 and 23.

31. The Court conducting a trial under the said Act No. XII of 1859, shall have the same powers to compel the attendance and examination of witnesses as are conferred by this Act on Courts making investigations under section four.

Powers of Pilot Court.