

THE INDIAN MERCHANT SHIPPING ACT,
1883.

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ACT No. V OF 1883.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.
(Received the assent of the Governor General on the 23rd February, 1883.)

An Act for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of Merchant Shipping;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Merchant Shipping Act, 1883. Short title.

(2) It extends to the whole of British India; Extent.

(3) and it shall come into force on the first day of January, 1884. Commencement.

V of 1875. 2. (1) The Indian Merchant Shipping Act, 1875, and Act XIII of 1878 (*an Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed. Repeal of enactments.

(2) But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons

persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Definitions.

3. In this Act—

“ship” includes every description of vessel used in navigation not propelled by oars; and

“master” means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Saving and provision as to powers for removal of master.

4. (1) Nothing in this Act shall affect the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty jurisdiction in India.

17 & 18 Vic
c. 104.

(2) The powers conferred by the last mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction at that port.

CHAPTER II.

INVESTIGATIONS INTO SHIPPING CASUALTIES.

Chapter not to apply to certain ships.

5. Nothing in this chapter shall apply to any ship belonging to, or in the service of, Her Majesty or of the Government of India, or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government.

6. (1) Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that—

(a) any ship has been lost, abandoned, stranded or materially damaged on or near the coasts of British India; or

(b) by reason of any casualty happening to, or on board of, any ship on or near those coasts, loss of life has ensued; or

(c) any

(*Chap. II.—Investigations into Shipping Casualties.*)

(*c*) any ship has caused loss or material damage to any other ship on or near those coasts; or

(*d*) any such loss, abandonment, stranding, damage or casualty has happened elsewhere to, or on board of, any British ship, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing the information to the Local Government.

(2) In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master, or other person in charge of the ship, or (where two ships are concerned) in charge of each ship, at the time of the loss, abandonment, stranding, damage or casualty, and

in cases under clause (*d*), where the master of the ship concerned, or (except in the case of a loss) where the ship concerned, proceeds to any place in British India from the place where the loss, abandonment, stranding, damage or casualty has occurred, the master of the ship,

shall, on arriving in British India, give immediate notice of the loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port in British India, to the officer appointed as aforesaid at that port.

(3) Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

7. (1) If in any such case a formal investigation into the facts mentioned in section six, clause (*a*), (*b*),

Power for
Local Gov-
ernment to
appoint spe-

(Chap. II.—Investigations into Shipping Casualties.)

cial Court of
Investiga-
tion.

(b), (c), (d) or (e), appears to the Local Government to be requisite or expedient, the Local Government (whether the notice is given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same.

(2) One of the members of the Court shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

Power for
other Courts
to hold inves-
tigations
into casual-
ties when so
directed.

8. Every Court having admiralty jurisdiction in British 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, when so directed by the Local Government, to make the investigations referred to in section seven.

Power for
Court of In-
vestigation
to inquire in-
to charges
against mas-
ters, mates
and engin-
eers.

9. (1) Any Court making an investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

Power for
Local Gov-
ernment to
direct inves-
tigation into

10. (1) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, holding a certificate granted by the
Board

Board of Trade or a Local Government, with incompetency or misconduct, otherwise than in the course of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an investigation into that charge.

charges of
incompetency
or miscon-
duct.

(2) Before commencing the investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

11. For the purpose of an investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Person ac-
cused to be
heard.

12. For the purpose of any investigation under this chapter, the Court making the investigation, 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—

Powers of
Courts as to
evidence and
regulation of
proceedings.

(a) if the Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made ;

(b) if the Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by that Court in the exercise of its admiralty or criminal jurisdiction (as the case may be).

13. (1) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the investigation shall constitute as its assessors for the purpose of the investigation two persons having experience in the Merchant Service ; and in every other investigation the Court making it may, if it thinks fit, constitute as

Assessors.

its

its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as its assessor.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

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

14. (1) If any Court making an investigation under this chapter 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 the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(2) Any officer so authorized may, for the purpose of enforcing the 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 every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

XLV of 186

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

Power to commit for trial and bind over witnesses.

15. (1) Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India 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 the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate.

(2) For

(2) For the purposes of this section the Recorder of Rangoon shall, within the local limits of his ordinary civil jurisdiction, be deemed to be the High Court.

16. (1) Whenever, in the course of any 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 an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

Depositions.

(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 and that he had an opportunity of cross-examining the witness.

(2) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

17. (1) The Court shall, in the case of all investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

Report by Court to Local Government.

(2) In cases in which, under the Merchant Shipping Acts, 1854 to 1882, the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

18. Nothing in this Act shall affect the powers conferred

Saving of power to

cancel and suspend certificates under English Acts.

conferred by the Merchant Shipping Acts, 1854 to 1882, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

32 & 33 Vict.
c. 11.

Power to issue local certificates in lieu of cancelled or suspended certificates.

19. (1) When any such Court cancels or suspends any such certificate, the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be, of a grade lower than that which he held at the time of the cancellation or suspension.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under that Act.

32 & 33 Vict.
c. 11.

(3) The Local Government may act under this section either in pursuance of a recommendation from the Court, or of its own motion.

Power for Local Government to suspend or cancel certificates in certain cases.

20. Any certificate (whether of competency or service) which has been granted by any Local Government to any master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say :—

32 & 33 Vict.
c. 11.

(a) if, on any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been

been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

(b) if, on any investigation made under the Merchant Shipping Acts, 1854 to 1882, or on any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that the master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(c) if he is proved 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; and

(d) if (in case of a master) 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:

17 & 18 Vic.,
c. 104.

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, a certificate shall not be suspended or cancelled under clause (a) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

21. Every master, mate or engineer whose certificate is cancelled or suspended under section twenty shall deliver it to the Shipping Master or to such other person as the Local Government which cancelled

Obligation
to deliver up
cancelled or
suspended
certificate.

cancelled

celled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

Report to
other Local
Govern-
ments.

22. If the Local Government which cancels or suspends, under section twenty, 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 cancellation or suspension, to the Local Government which granted the certificate.

Report to
Board of
Trade.

23. Every Local Government cancelling or suspending under section twenty 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.

Power to
revoke can-
cellation or
suspension
and grant
new certi-
ficate.

24. (1) Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section twenty, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act.

32 & 33 Vic.
c. 11.

(3) A certificate of competency for a Home-trade ship under Act I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

Chapter to
be read with
Act I of
1859.

25. This chapter shall be read with, and taken as part of, Act I of 1859.

26. The

26. 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 engages in, and carries to sea from, any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements with seamen.

27. (1) 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 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 the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

(2) 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 any enactment for the time being in force relating to Merchant Shipping),

as

as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

Scale of provisions to be furnished to lascars.

28. (1) In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be, from time to time, fixed and published by the Local Government with the previous sanction of the Governor General in Council.

(2) Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

Stipulation where lascars are shipped.

29. (1) Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section twenty-seven, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on ; or

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on.

(2) Every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

(3) In this section the word "seaman" shall include also any Native of British India carried to sea from any port in British India as one of the crew of a ship.

Forms for British or Colonial ships.

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

CHAPTER V.

CHAPTER V.

HEALTH-OFFICERS.

XII of 1875.

31. In the Indian Ports Act, 1875, after section eighteen, the following section shall be inserted, that is to say :—

Addition to Act XII of 1875.

“18A. The Local Government may, from time to time, appoint, at any port subject to this Act, an officer to be called the Health-officer, and may suspend or remove from office any officer so appointed.

Appointment and powers of Health-officer.

“A Health-officer shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say :—

“(a) with respect to any ship, the powers conferred on a Shipping Master by Act I of 1859, section 71;

“(b) power to enter on board any ship and medically examine all or any of the seamen or apprentices on board the ship;

“(c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the ship;

“(d) power to call before him and examine for any such purpose all or any of those persons and to require answers to any inquiries he thinks fit to make;

“(e) power to require any person so examined to make and subscribe a declaration of the truth of the statements made by him.”

CHAPTER VI.

MISCELLANEOUS.

17 & 18 Vic.,
c. 104.

32. (1) Where any wages or expenses recoverable under section 213 of the Merchant Shipping Act,

Power to appoint persons to sue.

1854,

1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, those wages or expenses.

18 & 19 Vic.
c. 91.17 & 18 Vic.
c. 104.

(2) Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

I of 1872.

Proceedings to be instituted in name of Secretary of State for India in Council.

33. All suits and proceedings under section thirty-two shall be instituted and carried on in the name of the Secretary of State for India in Council.

Amendment of section 10 of Act I of 1859.

34. In section 10 of Act I of 1859, for the words "Fees at the following rates shall be paid by all applicants for examination:—

For a certificate as master	.	.	.	ten rupees.
Ditto ditto as mate	.	.	.	five „ "

the following shall be substituted, namely:—"Fees at such rates as the Local Government may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf shall be paid by all applicants for examination."

Addition to section 11 of Act I of 1859.

35. To section 11 of Act I of 1859 the following shall be added, namely:—

"Provided that the Local Government may, in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character."

36. For

36. For the last fifteen words of section 79 of Act I of 1859, the following shall be substituted, namely:—"punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both."

Amendment of section 79 of Act I of 1859.

37. Sections 9 to 16 (both inclusive) of Act I of 1859 shall not apply to ships registered under Act 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.

38. In sections 2, 15, 17 and 23 of the said Act 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 Presidency Magistrate or a Magistrate of the first class."

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