

The Calcutta Pilots Act, 1859

ACT NO. 12 OF 1859 [4th May, 1859.] An Act to make better provision for the trial of pilots at the Presidency of Fort William in Bengal 2 for breach of duty.

Preamble.-- WHEREAS it is expedient to amend the law for the trial of person employed in 3 the Hooghly Pilot Service of the Commissioners for the Port of Calcutta], when accused of breach of duty, and to extend the same to persons licensed to act as pilots at the said Presidency 2; It is enacted as follows:

1. [Repeal of Acts 24, of 1845 and 1 of 1851 .] Rep. by the Repealing Act, 1870 (14 of 1870), s. 1 and Sch., Pt. II.

2. Trial of pilots accused of breach of duty.-- When any person employed in ³ the Hooghly Pilot Service of the Commissioners for the Port of Calcutta], or licensed to act as a pilot at the said Presidency² , shall be accused of having committed any breach of duty while engaged in such service or acting under such license, and it shall appear to the ⁴ Port Officer], or to the ⁵ Central Government] that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said ⁴ Port Officer] or such other person as the ⁶ Central Government] shall direct, before a Court constituted under the provisions of this Act.

3. Appointment of Judge.-- The ⁵ Central Government] shall appoint a fit person to be Judge of the said Court.

4. Appointment of prosecutor.-- The ⁷ Central Government] shall appoint such person as ⁸ it] may think proper to conduct the proceedings before the Court as prosecutor on the part of Government.

5. Trial to be held before Judge and jury.-- Every trial under this Act shall be held before the said Judge and a jury composed of two merchants of Calcutta, a master of a merchantship lying in the Port of Calcutta, and a pilot of not less than twenty years' service.

1. Short title given by the Repealing and Amending Act, 1903 (1 of 1903), s. 2 and Sch. I Pt. II. This Act applies to all persons employed in the pilot Service of Government at the Presidency of (i. e., at Calcutta) and borne on the rolls of the Government establishment and to all persons licensed to act as pilots at the Presidency (i. e., at Calcutta)

2. i. e., at Calcutta,

3. Subs. by Act 33 of 1948, s. 11 for" the Pilot Service of Government at the Presidency of Fort William in Bengal" (w. e. f. 16- 5- 1948).

4. Subs. by Act 1 of 1903, s. 3 and Sch. II Pt. II, for" Superintendment of Marine".

5. Subs. by the A. O. 1937 for" G. G. in C" which had been subs. by Act 11 of 1929, s. 2 for" said Lieutenant- Governor of Bengal".

6. Subs, ibid for" G. G. in C" which had been subs. by Act 11 of 1929, s. 2 for" said Lieutenant- Governor".

7. Subs. *ibid* for " G. G. in C" which had been subs. by Act 11 of 11 1929, s. 2 as amended by Act 8 of 1930, s. 2 and Sch. I for " Lieutenant- Governor".

8. Subs., *ibid* for " he".

6. Lists of merchants and pilots liable to serve on jury.-- The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of merchants, the other containing the names of pilots, liable to serve on such jury. The names in each list shall be arranged in alphabetical order, and the place of abode and quality or business of each person named shall be stated.

7. Notice to prosecutor and accused of time and place for appointing jury.-- When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a jury to serve at such trial.

8. Appointment of jury.-- At the time and place mentioned in the notice, the Judge in the presence of the prosecutor and the person accused shall read over the names which first occur in each of the said lists of those merchants and pilots who he has reason to believe are present in Calcutta and capable of attending as jurors at the trial; and shall also propose the name of a master of a merchantship lying in the Port of Calcutta, whom he deems qualified to serve on such Jury. If no objection be made and allowed, the persons so nominated shall be the jury to serve at the trial. If the prosecutor or the party accused shall object to any of the persons named as jurors, he shall assign the grounds of his objection, and such objection shall forthwith be decided by the Judge. If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the jury provided no objection to such person be made and allowed as aforesaid.

9. Day of trial to be fixed and summons to issue to jurors.-- When a jury has been appointed under the last preceding section, the Judge shall fix a day for the trial and shall summon by writing under his hand the persons so appointed to sit as a jury. Penalty for non- attendance.-- If any such person when duly summoned shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed or to remain in attendance until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such person a fine not exceeding two hundred rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge. Such warrant may be transmitted by the Judge to any 1 [Presidency Magistrate] for the town of Calcutta, and thereupon such Magistrate shall endorse the same and shall cause it to be executed in the same manner as if the warrant had been issued by such Magistrate.

10. Trial how to proceed if any juror does not attend.-- If for any cause any of the persons summoned to attend as jurors shall not be in attendance at the time fixed for the commencement of the trial, the trial may with the consent of the prosecutor and the party accused be held before the Judge and such jurors as shall be in attendance.

1. Subs. by Act 11 of 1929, s. 2, for " Magistrate or Police".

If such consent be not given, the place of the absent juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned and who shall consent to serve, provided no objection to such person be made and

allowed in manner aforesaid. If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day and the Judge shall either re- summon the same jury or appoint and summon another jury in the manner hereinbefore provided.

11. Register of jurors who have served.-- The Judge shall register in a book the names of all jurors mentioned in either of the said two lists who have attended and served on a trial held under this Act. A juror who has served shall not be required again to serve and his name shall be excluded in reading over the jury lists until all the persons named in the said lists who are present in Calcutta and capable of attending as jurors shall have served.

12. [Jurors to be sworn.] Rep. by the Indian Oaths Act, 1873 (10 of 1873), s. 2 and Sch., Pt. II.

13. Judge may summon witnesses to attend at certain time and place. Examination of witnesses about to leave Calcutta.-- It shall be lawful for the Judge of the said Court, at the instance of the prosecutor, or of the party accused, or of his own motion, by writing under his hand, to summon any person to attend as a witness at a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court; or if such person shall be about to depart from Calcutta, so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial: Provided always that due notice of the time and place of such examination shall be given to the accused party; provided also that such witness may nevertheless be examined at the trial if he shall be able to attend thereat in which case his previous examination may also be read at the trial.

14. Penalty for witnesses not attending or refusing to give evidence.-- If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or attending shall refuse to give evidence or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding five hundred rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same in the manner prescribed in section 9 of this Act.

15. ¹ Arrest.--

(1) Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he 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 2 [Central Government]) to enter any vessel.

1. Ins. by Act 6 of 1883, s. 1 (w. e. f. 1- 1- 1984). The original s. 15, relating to examination of witnesses on oath, affirmation or otherwise, was rep. by Act 10 of 1873, s. 2 and Sch., Pt. II.

2. Subs. by the A. O. 1937 for" G. G. in C" which had been by Act 11 of 1929, s. 2 for" L. G."

(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 (45 of 1860), section 186.

(3) No person shall be detained under this section for more than forty- eight hours.]

16. Verdict of jurors.-- Upon the completion of the trial, the jurors shall give their verdict upon the charge, or, if there be more than one, upon each separate charge. The verdict shall be according to the opinion of the majority of jurors. If the jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the jurors with whom he concurs.

17. Sentence if accused found guilty.-- If by such verdict the accused person is found guilty of the charge or of any one or more of the charges preferred against him, the Judge of the Court shall sentence him to be dismissed from the said pilot service, or to have his licence withdrawn, or shall award such other punishment, by loss of rank ¹ , or by change of a licence from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit. Preparation of schedule of offences and punishments.-- The 2 [Central Government], ³ may prepare a schedule of offences and punishments (such punishments being of the same nature as those hereinbefore mentioned) for the guidance of the said Court; and if such schedule be prepared, ⁴ and the charge proved before the said Court is an offence specified in such schedule, the Judge of the said Court shall award such punishment as is prescribed for such offence in the said schedule, and no other. If by such verdict as aforesaid the accused person is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same.

18. No sentence final till approved by Government.-- The proceedings of the Court shall be sent by the Judge to the ⁵ Port Officer] for submission to the ² Central Government]; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the ⁶ Central Government]. Government may remit sentence or mitigate punishment.-- The 6 [Central Government may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court as it shall think fit.

1. The words" or pay" omitted by Ben. Act 4 of 1920, s. 2.

2. Subs. by the A. O. 1937, for" G. G. in C" which had been subs. byv Act 11 of 1929, s. 2 for" Lieutenant- Governor of Bengal".

3. The words" with the sanction of the G. G. in C." omitted by ACt 4 of 1914, s. 2 and Sch. Pt. I.

4. The words" and sanctioned" omitted by s. 2 and Sch., Pt. I, ibdi.

5. Subs. by Act 1 of 1903, s. 3 and Sch. II, pt. II, for" Superintendent of Marine".

6. Subs. by the A. O. 1937 for" G. G. in C." which had been subs. by Act 11 of 1929, s. 2, for" said Lieutenant- Governnor".

19. If verdict of jurors be manifestly contrary to evidence, or trial otherwise insufficient.-- If it shall appear to the Judge of the said Court that the verdict of the jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person or declaring him acquitted, as the case may be, may certify the same to the 1 [Central Government], and the ² Central Government] may either order a new trial before another jury or acquit the accused person, as it shall think fit.

20. Power to make rules.-- It shall be lawful for the 1 [Central Government] to make such rules as it shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.

21. Marine authorities or Government may pass orders upon charge of breach of duty where trial unnecessary.-- Nothing contained in this Act shall be held to restrict³ the Commissioners for the Port of Calcutta] from passing such orders as may be deemed proper upon any charge of breach of duty preferred against any person employed in the said pilot service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act;⁴ provided that no order for suspension, reduction or deprivation of appointment shall be made without the previous sanction of the Central Government].

22. Withdrawal of licence from licensed pilot.-- If any person licensed to act as a pilot when duly charged with breach of duty as aforesaid, shall refuse to submit himself to trial under the provisions of this Act, the license of such person shall be withdrawn, and he shall be incapable of being again licensed to act as a pilot at the said Presidency.⁵

23. Act applicable to persons in pilot service and to licensed pilots.-- The provisions of this Act shall extend to⁶ all persons employed in the Hooghly Pilot Service and borne on the rolls of the Commissioners for the Port of Calcutta], whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as pilots at the said Presidency.⁵

1. Subs. by the A. O. 1937, for" G. G. in C." which had been subs. by Act 11 of 1929, s. 2 for" Lieutenant Governor of Bengal".

2. Subs. *ibid.*, for" G. G. in C." which had been subs. by Act 11 of 1929, s. 2, for" said Lieutenant Governor".

3. Subs. by Act 33 of 1948, s. 11, for" the marine authorities of the Government" (w. e. f. 16-5-1948).

4. Added by s. 11 *ibid.* (w. e. f. 16-5-1948)

5. *i. e.* at Calcutta.

6. Subs. by Act 33 of 1948, s. 11, for" all persons employed in the Pilot Service at the said Presidency and borne on the rolls of the Government establishment" (w. e. f. 16-5-1948).