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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th September, 1879, and was referred to a Select Committee:—

Bill No. 15 of 1879.

THE INDIAN MERCHANT SHIPPING BILL, 1879.

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WHEREAS it is expedient to prevent the departure of unsafe ships from British India ;

Preamble.

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which sections 211 to 213 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

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. This Act may be called "The Indian Merchant Shipping Act, 1880" :

Short title.

and it shall come into force on the first day of January 1880.

Commencement.

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

"ship", except in chapter III, includes anything made for the conveyance by water of human beings or property :

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

"wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water :

"port" in any provision of this Act includes also any part of a river or "port". channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

3. Nothing in this chapter contained shall apply to any ship belonging to, or in the service of, Her Majesty or the Government of India.

In this chapter, "British Indian ship" means a ship registered under Interpretation-clause. Act No. XIX of 1838, "British Indian ship": Act No. X of 1841, or Act No. XI of 1856, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

"British ship" includes a British Indian ship :

"manner prescribed" means such manner as the Local Government may from time to time, by rules published in the official Gazette prescribe.

A ship is "unsafe" within the meaning of this chapter when by reason of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

4. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

5. In every contract of service, express or implied,

Obligation of owner to crew with respect to use of reasonable efforts to secure seaworthiness.

between the owner of a British Indian ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same :

Provided that nothing in this section shall sub-

Proviso.

ject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

6. The Local Government, if it has reason to

Provisional detention by Local Government.

believe, on complaint or otherwise, that a British ship, in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such

Service of grounds on master. detentions shall be forthwith served on the master of such ship.

7. The Local Government may, if it thinks

Power to appoint surveyor.

fit, when it provisionally orders the detention of any ship, appoint some competent person to survey such ship and report thereon, and, on receiving the report of such person, may either order the ship to be released,

or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section

Order of final detention.

may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order :

Provided that, before an order for final deten-

Service of report on master and appeal to Court of Survey.

tion is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

8. Where a ship has been provisionally de-

Option to owner or master of appointing assessor to accompany surveyor.

tained and a person has been appointed under section seven to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall be accompanied by such person as such owner or master may select out of the list of assessors for the Court of Survey (nominated as hereinafter mentioned) ; and

in such case, if the surveyor and assessor agree Procedure where surveyor and assessor agree ; that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal ;

but if the surveyor and assessor differ in their where they differ, report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

9. When a ship has been provisionally de-

Power to refer to Court of Survey.

tained, the Local Government may at any time, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining Officers.

10. For the better execution of this chapter,

Detaining-officers.

the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred

Their powers generally.

to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers (that is to say) :—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, boats or equipments on board thereof, not unnecessarily detaining or delaying her from proceeding on any voyage ;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine, and may require answers or returns to any inquiries he thinks fit to make ;

(c) he may require and enforce the production of all books, papers or documents which he considers important ; and

(d) he may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

11. Every detaining-officer shall, in addition

Their power to order provisional detention and survey.

to the powers hereinbefore conferred, have the same power as the Local Government has under sections six and seven respectively of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her ;

and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

12. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

13. The Judge shall be such person as may be summoned for the case, in the manner prescribed, out of a list (from time to time approved for the port by the Local Government) of District Judges, Judges of Courts of Small Causes, Presidency Magistrates, Magistrates of the first class and other fit persons.

14. The assessors shall be persons of nautical engineering or other special skill and experience. One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned in the manner prescribed, by the Registrar of the Court (to be appointed as hereinafter declared) out of a list of persons periodically nominated for the purpose by the Local Government, or, if there is no such list, shall be appointed by the Judge.

15. The Local Government may, from time to time, by notification in the official Gazette, appoint some fit person to be the Registrar of the Court.

16. The Registrar shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the Court, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section ten conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally

detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of cost under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time approved by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Local Government and the appellant, or, in default of any such agreement, by the Governor General in Council; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also

compensation for any loss or damage sustained by him by reason of the detention or survey.

28. If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

29. For the purposes of this chapter, the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of detention and survey of the ship.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to Government all such costs and compensation as Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of

this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The owner or master of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall before entering his ship outwards from any port in British India upon any voyage for which he is required so to enter her, or if that is not practicable as soon after as may be, mark upon each of her sides amidship or as near thereto as is practicable, in white or yellow, on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through the centre.

The centre of such disc shall indicate the maximum load-line in salt-water to which the owner intends to load such ship for that voyage.

35. The owner or master of every such ship shall also, upon so entering her, insert, in the form of application for entry outwards made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. The master of every such ship shall enter a copy of this statement in the official log-book and also in the agreement with the crew before it is signed by any member of the crew; and no shipping master shall proceed with the engagement of the crew till this entry is made.

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. Any owner or master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt-water the centre of the disc, and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, shall be punished for each such offence with fine which may extend to one thousand rupees.

39. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the owner and master of the ship shall be punished with fine which may extend to one thousand rupees.

40. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Supplemental Provisions.

41. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

42. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any Master Attendant, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

43. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

44. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also be punishable with fine which may extend to one thousand rupees.

When any owner or Master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

45. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

46. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

47. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

48. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

49. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

50. The Lieutenant-Governor of Bengal may, from time to time, by notification in the *Calcutta Gazette*, delegate to the Commissioners for making improvements in the Port of Calcutta, either absolutely or subject to such conditions or restrictions as he thinks fit, all or any of the powers, and require the said Commissioners to discharge all or any of the functions of a local Government under the foregoing sections of this Act, except the powers conferred by sections thirteen and fifteen, the power of nominating assessors under section fourteen and the power of making rules, and may cancel any such notification.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from the said Commissioners; and the said Commissioners shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such Commissioners.

CHAPTER III. DISTRESSED SEAMEN.

51. This chapter shall be read with, and taken as part of, Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "ship" includes every description of vessel used in navigation, not propelled by oars;

"local authority" means such person as the Local Government may from time to time appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

52. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State; and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship, registered in British India and who are in distress in any such place,

Until such time as such authority is able to provide them with a passage as hereinafter provided.

53. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom

or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

54. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

55. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-three or section fifty-four, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

56. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-three or section fifty-four not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather.

57. If the master of any such ship fails or refuses, to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-six, he shall, for such seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

58. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of

such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

59. (a). If any seaman or apprentice, being

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases. a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, becomes distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India and not being a Native Indian subject of Her Majesty is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and in cases he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

60. All such wages and expenses shall be

Mode of recovering such recoverable with costs wages and expenses. either from the master of such ship or from the person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

61. The Local Government may, from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, 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.

62. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section fifty-nine, clause (c), they may, instead of being recovered by a person authorized under section sixty-one, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

63. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

64. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

MARINE SURVEYORS.

65. The Local Government may, from time to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a marine surveyor in the territories administered by such Government, and subject to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

66. No person shall, in any port in which there is a person exercising the profession of a marine surveyor and holding a certificate

No person to practise as marine surveyor unless qualified.

issued under section sixty-five, exercise such profession in such port unless he holds a certificate issued under that section.

67. Any person who exercises such profession, in contravention of the provisions of section sixty-six, shall be punished with fine not exceeding

Penalty for practising as marine surveyor without certificate.

one thousand rupees, and in default of payment with imprisonment for a term which may extend to six months. He shall also be capable of maintaining any suit for any fee or reward for anything done by him whilst acting as a marine surveyor in contravention of the provisions of section sixty-six.

CHAPTER V.

RECEIVERS OF THE WRECK.

68. Chapter V of the Indian Ports Act, 1875, is hereby repealed.

69. The local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned within such local limits as it may from time to time prescribe.

Appointment of wreck-receivers.

Persons so appointed shall be called receivers of wreck.

70. Whenever any wreck is found within any local limits for which a receiver of wreck has been so appointed, the finder shall as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

71. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy

Government or person finding wreck entitled to salvage.

by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

72. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such

Notice to be given by wreck-receiver.

place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

73. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

74. On the realization of the proceeds of such sale, the amount due for salvage and charges as

Proceeds how applied.

aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Provided that he makes his claim within one year from the date of the sale.

75. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section seventy

Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

76. Nothing in this chapter contained shall apply to any ship belonging to, or in the service

Saving clause.

of, Her Majesty or the Government of India or any foreign prince or State.

77. The Local Government may, from time to time, appoint persons to inspect ships in any port for the purpose of seeing that the same are properly provided with lights and with the means of making fog-signals in pursuance of the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section ten.

78. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

79. Every notice so given shall be communicated, in such manner as the Local Government may direct, to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations.

CHAPTER VII.

PORT-INSPECTORS.

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

“18A. The Local Government may from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Every officer so appointed 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) he may at any time enter any vessel and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel and the medicines and appliances and the accommodation for the seamen;

(b) he may medically examine all or any of the persons on board such vessel;

(c) he may require and enforce the production of the log 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 such vessel;

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

(e) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.”

“18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any seaman or apprentice on board such vessel desires to make any complaint against the master or any of the crew thereof.

In the event of any seaman or apprentice so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

The Port-inspector shall forthwith report in writing to the Shipping-master the particulars of any complaint made to him under this section, together with his opinion thereon.”

CHAPTER VIII.

AMENDMENT OF THE INDIAN MERCHANT SHIPPING ACT, 1875.

81. In the Indian Merchant Shipping Act, 1875, for Section three, the following shall be substituted:—

“3. When—
(a) any ship has been lost, abandoned, stranded or damaged on or near the coasts of India; or

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

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

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

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

and any Magistrate or any officer appointed by the Local Government in this behalf receives information of the same, he shall without delay communicate such information to the Local Government.

In cases under 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 such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in India, the master of such ship at the time she arrives at such place,

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

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."

Insertion of section after section 25 of same Act.

82. After section twenty-five of the same Act, the following section

shall be inserted (that is to say):—

"25A. 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.

Any master entering into an agreement with lascars or other Native seamen 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."

D. FITZPATRICK,

Secy. to the Govt. of India,

Legislative Department.

 Please substitute these pages for pages 264 and 265 of Part VI. to the *Bombay Government Gazette* of the 11th September 1879.

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and any Magistrate or any officer appointed by the Local Government in this behalf receives information of the same, he shall without delay communicate such information to the Local Government.

In cases under 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 such loss, abandonment, stranding, damage or casualty, and

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

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

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82. After section twenty-five of the same Act, the following section shall be inserted (that is to say):—

"25A. 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.

Any master entering into an agreement with lascars or other Native seamen 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."

STATEMENT OF OBJECTS AND REASONS.

THE provisions of this Bill may be roughly divided into three parts (namely):—

- I. those relating to unsafe and unseaworthy ships contained in chapter II;
- II. those relating to the relief and conveyance home of distressed seamen contained in chapter III;
- III. those contained in the subsequent chapter which make additions to, and amendments of, the existing law as to Merchant Shipping on various miscellaneous points.

I.—Unseaworthy Ships.

2. The whole law enacted by Parliament on the subject of seaworthiness of ships is now contained in the Statute 39 & 40 Vic., c. 80. There are two main reasons why that Statute does not meet the requirements of this country:

First.—None of its provisions apply to ships of British Indian register, as distinguished from ships of British register. Ships of British Indian register (or "British Indian ships," as they are termed in the Bill) are a somewhat peculiar class of vessels, registered under Acts of the Indian Legislature, and only possessing the status of British ships within certain defined limits in Eastern waters. As there is a large number of such ships sailing from ports in India, it is obvious that any law which does not include them is incomplete and inadequate.

Secondly.—Even with regard to British ships, to which the Statute does apply, though many of its provisions extend to them wherever they may be still some—and perhaps the most important—are confined to such ships when sailing from ports in the United Kingdom, and are, therefore, totally inoperative in this country.

3. It is the object of this Bill to supplement the Statute, and by extending certain of its provisions to this country to make all ships, whether British or British Indian, sailing from ports in India subject to provisions similar to those to which British ships are subject in the United Kingdom.

In doing this, however care has been taken strictly to confine the provisions of the Bill to those cases to which the Statute does not apply, and in no way to trench upon ground which its provisions already cover.

4. The sections of the Statute which have been adopted in this Bill are sections 4 to 12 inclusive, and sections 15, 22, 25, 26, 28, 34, and 35.

The effect of these provisions may be shortly stated as follows.

Section 4 makes it penal for any person to send, and any master to take, a ship to sea when she is in such an unseaworthy state that the life of any person is likely to be thereby endangered.

Section 5 makes it an implied condition in every contract of service with a seaman and in every instrument of apprenticeship that all reasonable efforts will be used to secure the seaworthiness of the ship.

Section 6 empowers the Board of Trade to order the detention of any British ship which they believe to be unsafe; and sections 7, 8 and 9 deal with the constitution and procedure of the Court of Survey, to which appeals may be made from such order.

Section 10 lays down the cases in which the Board and shipowner respectively shall be liable for costs of detention and survey. Section 11 empowers the Board to require security for costs from a complainant; whilst section 12 is taken up with general supplemental provisions as to the detention of ships.

By section 15, in cases of scientific difficulty, a special Court of appeal of scientific men is provided.

Section 22 enacts in what way only grain cargoes may be stowed.

Sections 25 and 26 lay down certain rules as to the marking of ships with deck and load lines—the former to indicate the position of each deck which is above water, and the latter the depth in the water up to which the owner intends to load the ship; and section 28 inflicts certain penalties for offences in relation to these marks.

Sections 34 and 35 contain miscellaneous provisions as to the enforcement of the detention of ships and service of orders, notices, &c., on masters.

5. Of the above provisions, sections 4, 5, 22 and 25 apply to British ships wherever they may be. They, therefore, already apply *proprio vigore* to such ships in India; and, accordingly, the Bill extends them only to British Indian ships. The other sections apply to British ships only when in ports in the United Kingdom; and, therefore, the Bill extends them both to British and British Indian ships in this country.

6. In adapting to India an English Act of this nature, it seems advisable to make the Indian Act as nearly as possible identical with the English one. In drafting this chapter therefore, the provisions of 39 & 40 Vic., c. 80, have been followed as closely as possible, not merely in substance, but also in wording. The different circumstances of India have, however, required certain alterations in the authorities who are to carry out the provisions of the chapter. For example, it has been necessary to substitute "Local Government" for "Board of Trade," and to alter the list of persons from whom the Judge of the Court of Survey shall be summoned; and the Lieutenant-Governor of Bengal has been authorized to delegate his powers under the proposed Act to the Calcutta Port Commissioners (section 50); but, as a rule, the provisions of the English Act have been adopted as they stand.

II.—Distressed Seamen.

7. The main provisions of the existing law relating to the relief and conveyance home of distressed seamen are contained in sections 211 and 212 of the Merchant Shipping Act of 1854, forming a portion of Part III of the Act. Section 109 of the Act applies these provisions to—

(a) all ships registered in any British possession when they are out of the jurisdiction of that possession;

(b) all ships registered in any British possession and plying between any place in the United Kingdom and any place not situated in that possession;

(c) all sea-going ships registered in the United Kingdom, with some exceptions immaterial for the present purpose; and

(d) the owners, masters and crews of all such ships.

There may thus be ships registered in India to which these provisions apply, *e.g.*, an Indian ship at Singapore or Hong-Kong, or one plying between Galle and London. There may also be ships of English register, though plying exclusively within British Indian waters and manned by Native crews, to which the same provisions apply, as is the case with some of the vessels of the British India Steam Navigation Company, which are registered in Glasgow.

8. Sections 211 and 212 of the Act made provisions in favour of distressed seamen "being subjects of Her Majesty," and it is clear that in this expression all subjects, whatever their place of birth, are included.

9. By subsequent enactments powers have been conferred on the Board of Trade to issue binding instructions for the regulation of the relief of distressed seamen. The enactment now operative for this purpose is the twenty-second section of the Merchant Shipping Act Amendment Act of 1862. The instructions issued by the Board relate to distressed seamen generally, making no distinction between different classes. They appear clearly to apply to all seamen over whom the Act of 1854 gives jurisdiction, *e.g.*, they would apply to Bengal lascars in distress at Penang.

10. A question arises as to the circumstances under which these instructions, which, as shown above, apply to some ships while in Indian waters and also include lascars who are British subjects, become applicable to such lascars. This arises on the interpretation of the conditions laid down in the Act, which are that the seamen, besides being distressed, shall be *abroad* and desire to be conveyed *home*. These words may equally, accurately and literally be construed either of the *place* or to *possession* at or in which the seaman is, and it is possible to do little more than guess at the construction they should receive.

11. It is thus clear that, on the most restrictive construction of the Act, there are many cases occurring in British India to which the Act and instructions apply, but that from the vagueness of the terms used in the Act, it is impossible to tell how far such cases may extend.

12. It is not competent to the Government of India to effect of its own motion any amendment of the terms of sections 211 and 212 of the Act of 1854. It might do so possibly if that Act stood by itself; but the instructions issued by the Board of Trade, which are the means whereby these sections are worked, are no part of the Act of 1854, but depend for their authority on the Act of 1862, which it is beyond the power of the Government of India to repeal or affect. On the other hand, there are cases not falling within those enumerated in paragraph seven as governed by the Merchant Shipping Act of 1854, for which the Government of this country has power to legislate.

13. It is with these latter cases that chapter III. of the Bill deals. Under the first construction of the words "abroad" and "home" referred to in paragraph ten, the case mentioned in clause (a) of section 52 of the Bill is no doubt to some extent provided for by the Merchant Shipping Act, 1854; but

on either construction of these words it will be admitted that there are some places in British India where a Native seaman may be which are not *abroad* to him, though not actually his *home*. These cases will be provided for, while, as the Bill does not purport to provide for any case in which the Board of Trade have power to issue instructions, any possibility of conflict between the Local and Imperial Acts will be avoided.

14. Following section 16 of the Merchant Shipping Act, 1855, the local authorities in India have been empowered to send home distressed foreign as well as British seamen, and further to send seamen home in foreign ships. This extended power may be found useful in the case of some Asiatic seamen not subjects of Her Majesty.

15. The money paid in respect of the seamen referred to in clause (a) of section 52 should be recovered from the ship to which the distressed seaman belonged by the Secretary of State in Council; and section 61 accordingly provides for its being recovered in India by him. In the case mentioned in clause (c) of section 59, it would appear that, under section 288 of the Merchant Shipping Act, 1854, the Government of India can empower the Board of Trade to recover the money for it by adapting the provisions of section 213 of the Act to the case. Accordingly, there has been added in section 62 a power, to the Board of Trade to recover for the Government of India, which will probably be found useful when the money has to be recovered in England or in British possessions abroad.

16. A draft of these provisions has been submitted to the Board of Trade, who have agreed to issue new instructions in conformity with the Bill, and to adopt as the rate of subsistence for Native Indian seamen that to be fixed for such persons by the Government of India under the Bill. The result is that, if these provisions become law, the instructions of the Board of Trade and this Act will cover the whole ground, although it may still remain uncertain how much is covered by the instructions of the Board and how much by the Act.

III.—Miscellaneous Amendments.

17. The other provisions of the Bill do not call for much notice. They have all been introduced to provide for cases in which it appears that the provisions of the existing law are wanting or insufficient.

18. By a recent order of Government, all officers holding port appointments have been prohibited from undertaking private surveys. It having since been represented that considerable inconvenience is caused by this order, in consequence of the private surveyors at some ports not possessing the confidence of the mercantile community, provision has been made in the Bill (chapter IV) for the examination and licensing of fit persons to be marine surveyors, and prohibiting any unlicensed person from acting as a marine surveyor in any port where there may be any such licensed surveyor.

19. Chapter V, providing for the appointment of receivers of wreck, has been introduced at the suggestion of the Secretary of State, who considers that some provisions on the subject similar to those in the English Merchant Shipping Act of 1854 are desirable. In the event of this portion of the Bill becoming law, chapter V of the Indian Ports Act, relating to salvage in ports, will become unnecessary, and it is accordingly proposed to repeal it.

20. Chapter VI provides for the appointment of persons to inspect ships for the purpose of seeing whether they are properly furnished with lights and with the means of making fog signals in accordance with the regulations for preventing collisions at sea. Section 30 of the English Merchant Shipping Act Amendment Act, 1862, deals with this point. Though under it the Board of Trade is apparently given power to appoint persons to inspect ships for such purpose anywhere, still it is doubtful whether it was intended to give them this power in a British possession abroad, and still more doubtful whether the Board would be willing to exercise this power. It has, therefore, been considered the best course for the Legislature of this country to take independent power in the matter.

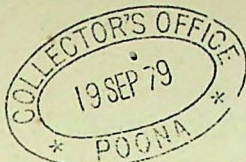
21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a "Port-inspector." This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen.

(Signed) WHITLEY STOKES.

SIMLA;
The 29th August 1879. }

D. FITZPATRICK,
Secretary to the Government of India, Legislative Department.



[Published with the "Bombay Government Gazette" on the 18th September 1879.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th September, 1879, and was referred to a Select Committee:—

Bill No. 15 of 1879.

THE INDIAN MERCHANT SHIPPING BILL, 1879.

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WHEREAS it is expedient to prevent the departure of unsafe ships from British India ;

Preamble.

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which sections 211 to 213 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

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. This Act may be called “The Indian Merchant Shipping Act, 1880” :
Short title.

and it shall come into force on the first day of January 1880.
Commencement.

2. In this Act, unless there be something repugnant in the subject or context,—
Interpretation-clause.

“ship”, except in chapter III, includes anything made for the conveyance by water of human beings or property :

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

“wreck” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water :

“port” in any provision of this Act includes also any part of a river or channel leading to a port
“port”.

which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

3. Nothing in this chapter contained shall apply to any ship belonging to, or in the service of, Her Majesty or the Government of India.

In this chapter, “British Indian ship” means a ship registered under Interpretation-clause. Act No. XIX of 1838, “British Indian ship”: Act No. X of 1841, or Act No. XI of 1856, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

“British ship”: “British ship” includes a British Indian ship :

“manner prescribed” means such manner as the Local Government may from time to time, by rules published in the official Gazette prescribe.

A ship is “unsafe” within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

4. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government. No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

5. In every contract of service, express or implied, between the owner

Obligation of owner to crew with respect to use of reasonable efforts to secure seaworthiness.

of a British Indian ship and the master or any seaman thereof, and in

every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Provided that nothing in this section shall sub-

Proviso.

ject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

6. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship, in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such Service of grounds on detentions shall be forthwith served on the master of such ship.

7. The Local Government may, if it thinks

Power to appoint surveyor.

fit, when it provisionally orders the detention of any ship, appoint some competent person to survey such ship and report thereon, and, on receiving the report of such person, may either order the ship to be released, or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section

Order of final detention.

may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order:

Provided that, before an order for final deten-

Service of report on master and appeal to Court of Survey.

tion is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained,

8. Where a ship has been provisionally detained and a person has been appointed under section seven to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall be accompanied by such person as such owner or master may select out of the list of assessors for the Court of Survey (nominated as hereinafter mentioned); and

Option to owner or master of appointing assessor to accompany surveyor.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

9. When a ship has been provisionally detained, the Local Government may at any time, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining Officers.

10. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers (that is to say):—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, boats or equipments on board thereof, not unnecessarily detaining or delaying her from proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine, and may require answers or returns to any inquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

11. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections six and seven respectively of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her;

and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Detaining-officer to report to Local Government.

Of the Court of Survey and of Appeals and References thereto.

12. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

13. The Judge shall be such person as may be summoned for the case, in the manner prescribed, out of a list (from time to time approved for the port by the Local Government) of District Judges, Judges of Courts of Small Causes, Presidency Magistrates, Magistrates of the first class and other fit persons.

14. The assessors shall be persons of nautical engineering or other special skill and experience. One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned in the manner prescribed, by the Registrar of the Court (to be appointed as hereinafter declared) out of a list of persons periodically nominated for the purpose by the Local Government, or, if there is no such list, shall be appointed by the Judge.

15. The Local Government may, from time to time, by notification in the official Gazette, appoint some fit person to be the Registrar of the Court.

16. The Registrar shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the Court, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section ten conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally

detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of cost under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time approved by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Local Government and the appellant, or, in default of any such agreement, by the Governor General in Council; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also

compensation for any loss or damage sustained by him by reason of the detention or survey.

28. If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

29. For the purposes of this chapter, the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of detention and survey of the ship.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to Government all such costs and compensation as Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of

this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The owner or master of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall before entering his ship outwards from any port in British India upon any voyage for which he is required so to enter her, or if that is not practicable as soon after as may be, mark upon each of her sides amidship or as near thereto as is practicable, in white or yellow, on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through the centre.

The centre of such disc shall indicate the maximum load-line in salt-water to which the owner intends to load such ship for that voyage.

35. The owner or master of every such ship shall also, upon so entering her, insert, in the form of application for entry outwards made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. The master of every such ship shall enter a copy of this statement in the official log-book and also in the agreement with the crew before it is signed by any member of the crew; and no shipping master shall proceed with the engagement of the crew till this entry is made.

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. Any owner or master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt-water the centre of the disc, and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

Penalty for neglecting to mark, for concealing marks, &c.

shall be punished for each such offence with fine which may extend to one thousand rupees.

39. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the owner and master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty on owner for having misleading marks.

owner and master of the ship shall be punished with fine which may extend to one thousand rupees.

40. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Supplemental Provisions.

41. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Release of ship at any time by Local Government.

42. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any Master Attendant, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

Who may enforce detention of ship.

43. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for proceeding to sea after detention.

44. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also be punishable with fine which may extend to one thousand rupees.

Penalty for carrying to sea officer in execution of his duty.

When any owner or Master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

45. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Detained ship not to be released because British registry closed.

46. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Powers of person authorized to survey ship.

47. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Certain persons to be deemed public servants.

48. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Service of order where there is no master or resident owner, &c.

49. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Order, &c., how to be served.

50. The Lieutenant-Governor of Bengal may, from time to time, by notification in the *Calcutta Gazette*, delegate to the Commissioners for making improvements in the Port of Calcutta, either absolutely or subject to such conditions or restrictions as he thinks fit, all or any of the powers, and require the said Commissioners to discharge all or any of the functions of a local Government under the foregoing sections of this Act, except the powers conferred by sections thirteen and fifteen, the power of nominating assessors under section fourteen and the power of making rules, and may cancel any such notification.

Delegation of powers to Calcutta Port Commissioners.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from the said Commissioners; and the said Commissioners shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such Commissioners.

CHAPTER III.

DISTRESSED SEAMEN.

51. This chapter shall be read with, and taken as part of, Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "ship" includes every description of vessel used in navigation, not propelled by oars ;

"local authority." and "local authority" means such person as the Local Government may from time to time appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

52. The local authority may, subject to the rules hereinafter mentioned, provide for the relief of distressed seamen at Indian ports.

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State, and who are in distress in any such place ; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship, registered in British India and who are in distress in any such place,

Until such time as such authority is able to provide them with a passage as hereinafter provided.

53. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home ;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom

or the British possession to which they belong (as the case requires) ; and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

54. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

55. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-three or section fifty-four, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

56. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-three or section fifty-four not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather.

57. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-six, he shall, for such seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

58. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints :

Provided that no payment shall be made under this section except on the production of the following documents (that is to say) :—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of

such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

59. (a). If any seaman or apprentice, being

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left

behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, becomes distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India and not being a Native Indian subject of Her Majesty is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and in cases he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

60. All such wages and expenses shall be

recovered with costs either from the master of such ship or from the

person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

VI.—73 c

61. The Local Government may, from time

Local Government may authorize persons to recover same.

to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so

Such persons to be deemed persons filling a public office.

authorized shall be entitled to sue and recover accordingly, 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.

62. When any such wages and expenses are

Board of Trade may recover such amount from master or owner in certain cases.

due to or in respect of a seaman or apprentice mentioned in section fifty-nine, clause (c), they may, instead of being

recovered by a person authorized under section sixty-one, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

63. In all proceedings under this chapter,

What shall be evidence of distress and expenses incurred.

whether in India or elsewhere, the production of a certificate signed by the local authority by

which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

64. The Governor General in Council may,

Power of Governor-General in Council to make rules.

from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

MARINE SURVEYORS.

65. The Local Government may, from time

Local Government to appoint examiners.

to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a marine surveyor in the territories administered by such Government, and subject

and to make rules as to qualification, &c., of marine surveyors.

to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

66. No person shall, in any port in which there is a person exercising the profession of a

No person to practise as marine surveyor unless qualified.

marine surveyor and holding a certificate issued under section sixty-five, exercise such profession in such port unless he holds a certificate issued under that section.

67. Any person who exercises such profession, in contravention of the

Penalty for practising as marine surveyor without certificate.

provisions of section sixty-six, shall be punished with fine not exceeding one thousand rupees, and in default of payment with imprisonment for a term which may extend to six months. He shall also be capable of maintaining any suit for any fee or reward for anything done by him whilst acting as a marine surveyor in contravention of the provisions of section sixty-six.

CHAPTER V.

RECEIVERS OF THE WRECK.

Repeal of chapter V of Indian Ports Act, 1875.

68. Chapter V of the Indian Ports Act, 1875, is hereby repealed.

69. The local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned within such local limits as it may from time to time prescribe.

Appointment of wreck-receivers.

Persons so appointed shall be called receivers of wreck.

70. Whenever any wreck is found within any local limits for which a receiver of wreck has been so appointed, the finder shall as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

Rules to be observed by persons finding wreck.

Saving clause.

71. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

72. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

73. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

74. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Provided that he makes his claim within one year from the date of the sale.

75. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section seventy

shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

76. Nothing in this chapter contained shall apply to any ship belonging to, or in the service

of, Her Majesty or the Government of India or any foreign prince or State.

77. The Local Government may, from time to time, appoint persons to inspect ships in any port for the purpose of seeing that the same are properly provided with lights and with the means of making fog-signals in pursuance of the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detain-officers by section ten.

78. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

79. Every notice so given shall be communicated, in such manner as the Local Government may direct, to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations.

CHAPTER VII.

PORT-INSPECTORS.

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

“18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Every officer so appointed 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) he may at any time enter any vessel and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel and the medicines and appliances and the accommodation for the seamen;

(b) he may medically examine all or any of the persons on board such vessel;

(c) he may require and enforce the production of the log 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 such vessel;

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

(e) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.”

“18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any seaman or apprentice on board such vessel desires to make any complaint against the master or any of the crew thereof.

In the event of any seaman or apprentice so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

The Port-inspector shall forthwith report in writing to the Shipping-master the particulars of any complaint made to him under this section, together with his opinion thereon.”

CHAPTER VIII.

AMENDMENT OF THE INDIAN MERCHANT SHIPPING ACT, 1875.

81. In the Indian Merchant Shipping Act, 1875, for Section three, the following shall be substituted:—

“3. When—
(a) any ship has been lost, abandoned, stranded or damaged on or near the coasts of India; or

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

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

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

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

and any Magistrate or any officer appointed by the Local Government in this behalf receives information of the same, he shall without delay communicate such information to the Local Government.

In cases under 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 such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in India, the master of such ship at the time she arrives at such place,

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

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."

82. After section twenty-five of the same Act, the following section shall be inserted (that is to say):—

"25A. 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.

Any master entering into an agreement with lascars or other Native seamen 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."

STATEMENT OF OBJECTS AND REASONS.

THE provisions of this Bill may be roughly divided into three parts (namely):—

- I. those relating to unsafe and unseaworthy ships contained in chapter II;
- II. those relating to the relief and conveyance home of distressed seamen contained in chapter III;
- III. those contained in the subsequent chapter which make additions to, and amendments of, the existing law as to Merchant Shipping on various miscellaneous points.

I.—Unseaworthy Ships.

2. The whole law enacted by Parliament on the subject of seaworthiness of ships is now contained in the Statute 39 & 40 Vic., c. 80. There are two main reasons why that Statute does not meet the requirements of this country:

First.—None of its provisions apply to ships of British Indian register, as distinguished from ships of British register. Ships of British Indian register (or "British Indian ships," as they are termed in the Bill) are a somewhat peculiar class of vessels, registered under Acts of the Indian Legislature, and only possessing the status of British ships within certain defined limits in Eastern waters. As there is a large number of such ships sailing from ports in India, it is obvious that any law which does not include them is incomplete and inadequate.

Secondly.—Even with regard to British ships, to which the Statute does apply, though many of its provisions extend to them wherever they may be still some—and perhaps the most important—are confined to such ships when sailing from ports in the United Kingdom, and are, therefore, totally inoperative in this country.

3. It is the object of this Bill to supplement the Statute, and by extending certain of its provisions to this country to make all ships, whether British or British Indian, sailing from ports in India subject to provisions similar to those to which British ships are subject in the United Kingdom.

In doing this, however care has been taken strictly to confine the provisions of the Bill to those cases to which the Statute does not apply, and in no way to trench upon ground which its provisions already cover.

4. The sections of the Statute which have been adopted in this Bill are sections 4 to 12 inclusive, and sections 15, 22, 25, 26, 28, 34, and 35.

The effect of these provisions may be shortly stated as follows.

Section 4 makes it penal for any person to send, and any master to take, a ship to sea when she is in such an unseaworthy state that the life of any person is likely to be thereby endangered.

Section 5 makes it an implied condition in every contract of service with a seaman and in every instrument of apprenticeship that all reasonable efforts will be used to secure the seaworthiness of the ship.

Section 6 empowers the Board of Trade to order the detention of any British ship which they believe to be unsafe; and sections 7, 8 and 9 deal with the constitution and procedure of the Court of Survey, to which appeals may be made from such order.

Section 10 lays down the cases in which the Board and shipowner respectively shall be liable for costs of detention and survey. Section 11 empowers the Board to require security for costs from a complainant; whilst section 12 is taken up with general supplemental provisions as to the detention of ships.

By section 15, in cases of scientific difficulty, a special Court of appeal of scientific men is provided.

Section 22 enacts in what way only grain cargoes may be stowed.

Sections 25 and 26 lay down certain rules as to the marking of ships with deck and load lines—the former to indicate the position of each deck which is above water, and the latter the depth in the water up to which the owner intends to load the ship; and section 28 inflicts certain penalties for offences in relation to these marks.

Sections 34 and 35 contain miscellaneous provisions as to the enforcement of the detention of ships and service of orders, notices, &c., on masters.

5. Of the above provisions, sections 4, 5, 22 and 25 apply to British ships wherever they may be. They, therefore, already apply *proprio vigore* to such ships in India; and, accordingly, the Bill extends them only to British Indian ships. The other sections apply to British ships only when in ports in the United Kingdom; and, therefore, the Bill extends them both to British and British Indian ships in this country.

6. In adapting to India an English Act of this nature, it seems advisable to make the Indian Act as nearly as possible identical with the English one. In drafting this chapter therefore, the provisions of 39 & 40 Vic., c. 80, have been followed as closely as possible, not merely in substance, but also in wording. The different circumstances of India have, however, required certain alterations in the authorities who are to carry out the provisions of the chapter. For example, it has been necessary to substitute "Local Government" for "Board of Trade," and to alter the list of persons from whom the Judge of the Court of Survey shall be summoned; and the Lieutenant-Governor of Bengal has been authorized to delegate his powers under the proposed Act to the Calcutta Port Commissioners (section 50); but, as a rule, the provisions of the English Act have been adopted as they stand.

II.—Distressed Seamen.

7. The main provisions of the existing law relating to the relief and conveyance home of distressed seamen are contained in sections 211 and 212 of the Merchant Shipping Act of 1854, forming a portion of Part III of the Act. Section 109 of the Act applies these provisions to—

(a) all ships registered in any British possession when they are out of the jurisdiction of that possession;

(b) all ships registered in any British possession and plying between any place in the United Kingdom and any place not situated in that possession;

(c) all sea-going ships registered in the United Kingdom, with some exceptions immaterial for the present purpose; and

(d) the owners, masters and crews of all such ships.

There may thus be ships registered in India to which these provisions apply, *e.g.*, an Indian ship at Singapore or Hong-Kong, or one plying between Galle and London. There may also be ships of English register, though plying exclusively within British Indian waters and manned by Native crews, to which the same provisions apply, as is the case with some of the vessels of the British India Steam Navigation Company, which are registered in Glasgow.

8. Sections 211 and 212 of the Act made provisions in favour of distressed seamen "being subjects of Her Majesty," and it is clear that in this expression all subjects, whatever their place of birth, are included.

9. By subsequent enactments powers have been conferred on the Board of Trade to issue binding instructions for the regulation of the relief of distressed seamen. The enactment now operative for this purpose is the twenty-second section of the Merchant Shipping Act Amendment Act of 1862. The instructions issued by the Board relate to distressed seamen generally, making no distinction between different classes. They appear clearly to apply to all seamen over whom the Act of 1854 gives jurisdiction, *e.g.*, they would apply to Bengal lascars in distress at Penang.

10. A question arises as to the circumstances under which these instructions, which, as shown above, apply to some ships while in Indian waters and also include lascars who are British subjects, become applicable to such lascars. This arises on the interpretation of the conditions laid down in the Act, which are that the seamen, besides being distressed, shall be *abroad* and desire to be conveyed *home*. These words may equally, accurately and literally be construed either of the *place* or to *possession* at or in which the seaman is, and it is possible to do little more than guess at the construction they should receive.

11. It is thus clear that, on the most restrictive construction of the Act, there are many cases occurring in British India to which the Act and instructions apply, but that from the vagueness of the terms used in the Act, it is impossible to tell how far such cases may extend.

12. It is not competent to the Government of India to effect of its own motion any amendment of the terms of sections 211 and 212 of the Act of 1854. It might do so possibly if that Act stood by itself; but the instructions issued by the Board of Trade, which are the means whereby these sections are worked, are no part of the Act of 1854, but depend for their authority on the Act of 1862, which it is beyond the power of the Government of India to repeal or affect. On the other hand, there are cases not falling within those enumerated in paragraph seven as governed by the Merchant Shipping Act of 1854, for which the Government of this country has power to legislate.

13. It is with these latter cases that chapter III. of the Bill deals. Under the first construction of the words "abroad" and "home" referred to in paragraph ten, the case mentioned in clause (a) of section 52 of the Bill is no doubt to some extent provided for by the Merchant Shipping Act, 1854; but

on either construction of these words it will be admitted that there are some places in British India where a Native seaman may be which are not *abroad* to him, though not actually his *home*. These cases will be provided for, while, as the Bill does not purport to provide for any case in which the Board of Trade have power to issue instructions, any possibility of conflict between the Local and Imperial Acts will be avoided.

14. Following section 16 of the Merchant Shipping Act, 1855, the local authorities in India have been empowered to send home distressed foreign as well as British seamen, and further to send seamen home in foreign ships. This extended power may be found useful in the case of some Asiatic seamen not subjects of Her Majesty.

15. The money paid in respect of the seamen referred to in clause (a) of section 52 should be recovered from the ship to which the distressed seaman belonged by the Secretary of State in Council; and section 61 accordingly provides for its being recovered in India by him. In the case mentioned in clause (c) of section 59, it would appear that, under section 288 of the Merchant Shipping Act, 1854, the Government of India can empower the Board of Trade to recover the money for it by adapting the provisions of section 213 of the Act to the case. Accordingly, there has been added in section 62 a power, to the Board of Trade to recover for the Government of India, which will probably be found useful when the money has to be recovered in England or in British possessions abroad.

16. A draft of these provisions has been submitted to the Board of Trade, who have agreed to issue new instructions in conformity with the Bill, and to adopt as the rate of subsistence for Native Indian seamen that to be fixed for such persons by the Government of India under the Bill. The result is that, if these provisions become law, the instructions of the Board of Trade and this Act will cover the whole ground, although it may still remain uncertain how much is covered by the instructions of the Board and how much by the Act.

III.—Miscellaneous Amendments.

17. The other provisions of the Bill do not call for much notice. They have all been introduced to provide for cases in which it appears that the provisions of the existing law are wanting or insufficient.

18. By a recent order of Government, all officers holding port appointments have been prohibited from undertaking private surveys. It having since been represented that considerable inconvenience is caused by this order, in consequence of the private surveyors at some ports not possessing the confidence of the mercantile community, provision has been made in the Bill (chapter IV) for the examination and licensing of fit persons to be marine surveyors, and prohibiting any unlicensed person from acting as a marine surveyor in any port where there may be any such licensed surveyor.

19. Chapter V, providing for the appointment of receivers of wreck, has been introduced at the suggestion of the Secretary of State, who considers that some provisions on the subject similar to those in the English Merchant Shipping Act of 1854 are desirable. In the event of this portion of the Bill becoming law, chapter V of the Indian Ports Act, relating to salvage in ports, will become unnecessary, and it is accordingly proposed to repeal it.

20. Chapter VI provides for the appointment of persons to inspect ships for the purpose of seeing whether they are properly furnished with lights and with the means of making fog signals in accordance with the regulations for preventing collisions at sea. Section 30 of the English Merchant Shipping Act Amendment Act, 1862, deals with this point. Though under it the Board of Trade is apparently given power to appoint persons to inspect ships for such purpose anywhere, still it is doubtful whether it was intended to give them this power in a British possession abroad, and still more doubtful whether the Board would be willing to exercise this power. It has, therefore, been considered the best course for the Legislature of this country to take independent power in the matter.

21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a "Port-inspector." This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

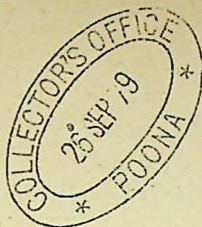
22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen.

(Signed) WHITLEY STOKES.

SIMLA;
The 29th August 1879. }

D. FITZPATRICK,

Secretary to the Government of India, Legislative Department.



[Published with the "Bombay Government Gazette" on the 25th September 1879.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th September, 1879, and was referred to a Select Committee:—

Bill No. 15 of 1879.

THE INDIAN MERCHANT SHIPPING BILL, 1879.

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WHEREAS it is expedient to prevent the departure of unsafe ships from British India ;

Preamble.

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which sections 211 to 213 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

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. This Act may be called "The Indian Merchant Shipping Act, 1880" :
Short title.

and it shall come into force on the first day of January 1880.
Commencement.

2. In this Act, unless there be something repugnant in the subject or context,—
Interpretation-clause.

"ship", except in chapter III, includes anything made for the conveyance by water of human beings or property :

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

"wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water :

"port" in any provision of this Act includes also any part of a river or channel leading to a port

which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

3. Nothing in this chapter contained shall apply to any ship belonging to, or in the service of, Her Majesty or the Government of India.
Saving clause.

In this chapter, "British Indian ship" means a ship registered under Interpretation-clause. Act No. XIX of 1838, "British Indian ship": Act No. X of 1841, or Act No. XI of 1856, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

"British ship": "British ship" includes a British Indian ship :

"manner prescribed" means such manner as the Local Government "manner prescribed": may from time to time, by rules published in the official Gazette prescribe.

A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

4. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

5. In every contract of service, express or implied, between the owner of a British Indian ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

6. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship, in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such Service of grounds on detentions shall be forthwith served on the master of such ship.

7. The Local Government may, if it thinks fit, when it provisionally orders the detention of any ship, appoint some competent person to survey such ship and report thereon, and, on receiving the report of such person, may either order the ship to be released, or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order:

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained,

8. Where a ship has been provisionally detained and a person has been appointed under section seven to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall be accompanied by such person as such owner or master may select out of the list of assessors for the Court of Survey (nominated as hereinafter mentioned); and

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

9. When a ship has been provisionally detained, the Local Government may at any time, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining Officers.

10. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers (that is to say):—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, boats or equipments on board thereof, not unnecessarily detaining or delaying her from proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine, and may require answers or returns to any inquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

11. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections six and seven respectively of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her;

and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

12. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

13. The Judge shall be such person as may be summoned for the case, in the manner prescribed, out of a list (from time to time approved for the port by the Local Government) of District Judges, Judges of Courts of Small Causes, Presidency Magistrates, Magistrates of the first class and other fit persons.

14. The assessors shall be persons of nautical engineering or other special skill and experience. One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned in the manner prescribed, by the Registrar of the Court (to be appointed as hereinafter declared) out of a list of persons periodically nominated for the purpose by the Local Government, or, if there is no such list, shall be appointed by the Judge.

15. The Local Government may, from time to time, by notification in the official Gazette, appoint some fit person to be the Registrar of the Court.

16. The Registrar shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the Court, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section ten conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally

detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of cost under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time approved by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Local Government and the appellant, or, in default of any such agreement, by the Governor General in Council; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also

compensation for any loss or damage sustained by him by reason of the detention or survey.

28. If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

29. For the purposes of this chapter, the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of detention and survey of the ship.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to Government all such costs and compensation as Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of

this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The owner or master of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing and pleasure yachts) shall before entering his ship outwards from any port in British India upon any voyage for which he is required so to enter her, or if that is not practicable as soon after as may be, mark upon each of her sides amidship or as near thereto as is practicable, in white or yellow, on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through the centre.

The centre of such disc shall indicate the maximum load-line in salt-water to which the owner intends to load such ship for that voyage.

35. The owner or master of every such ship shall also, upon so entering her, insert, in the form of application for entry outwards made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. The master of every such ship shall enter a copy of this statement in the official log-book and also in the agreement with the crew before it is signed by any member of the crew; and no shipping master shall proceed with the engagement of the crew till this entry is made.

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. Any owner or master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt-water the centre of the disc, and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

Penalty for neglecting to mark, for concealing marks, &c.

shall be punished for each such offence with fine which may extend to one thousand rupees.

39. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the owner and master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty on owner for having misleading marks.

40. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Saving of ships marked in the United Kingdom.

Supplemental Provisions.

41. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Release of ship at any time by Local Government.

42. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any Master Attendant, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

Who may enforce detention of ship.

43. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for proceeding to sea after detention.

44. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also be punishable with fine which may extend to one thousand rupees.

When any owner or Master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

45. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Detained ship not to be released because British registry closed.

46. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Powers of person authorized to survey ship.

47. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Certain persons to be deemed public servants.

48. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Service of order where there is no master or resident owner, &c.

49. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Order, &c., how to be served.

50. The Lieutenant-Governor of Bengal may, from time to time, by notification in the *Calcutta Gazette*, delegate to the Commissioners for making improvements in the Port of Calcutta, either absolutely or subject to such conditions or restrictions as he thinks fit, all or any of the powers, and require the said Commissioners to discharge all or any of the functions of a local Government under the foregoing sections of this Act, except the powers conferred by sections thirteen and fifteen, the power of nominating assessors under section fourteen and the power of making rules, and may cancel any such notification.

Delegation of powers to Calcutta Port Commissioners.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from the said Commissioners; and the said Commissioners shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such Commissioners.

CHAPTER III.

DISTRESSED SEAMEN.

51. This chapter shall be read with, and taken as part of, Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "ship" includes every description of vessel used in navigation, not propelled by oars;

"local authority" and "local authority" means such person as the Local Government may from time to time appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

52. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship, registered in British India and who are in distress in any such place,

Until such time as such authority is able to provide them with a passage as hereinafter provided.

53. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom

or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

54. In default of any such ship, the local authority may, subject to the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

55. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-three or section fifty-four, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

56. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-three or section fifty-four not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather.

57. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-six, he shall, for such seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

58. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of

such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

59. (a). If any seaman or apprentice, being

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in

British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, becomes distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India and not being a Native Indian subject of Her Majesty is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and in cases he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

60. All such wages and expenses shall be

Mode of recovering such wages and expenses.

recoverable with costs either from the master of such ship or from the

person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

61. The Local Government may, from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, 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.

62. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section fifty-nine, clause (c), they may, instead of being recovered by a person authorized under section sixty-one, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

63. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

64. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

Power of Governor-General in Council to make rules.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

MARINE SURVEYORS.

65. The Local Government may, from time to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a marine surveyor in the territories administered by such Government, and subject to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancellation of such certificates.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Publication of rules.

66. No person shall, in any port in which there is a person exercising the profession of a marine surveyor and holding a certificate issued under section sixty-five, exercise such profession in such port unless he holds a certificate issued under that section.

67. Any person who exercises such profession, in contravention of the provisions of section sixty-six, shall be punished with fine not exceeding one thousand rupees, and in default of payment with imprisonment for a term which may extend to six months. He shall also be capable of maintaining any suit for any fee or reward for anything done by him whilst acting as a marine surveyor in contravention of the provisions of section sixty-six.

Penalty for practising as marine surveyor without certificate.

CHAPTER V.

RECEIVERS OF THE WRECK.

68. Chapter V of the Indian Ports Act, 1875, is hereby repealed.

Repeal of chapter V of Indian Ports Act, 1875.

69. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned within such local limits as it may from time to time prescribe.

Appointment of wreck-receivers.

Persons so appointed shall be called receivers of wreck.

70. Whenever any wreck is found within any local limits for which a receiver of wreck has been so appointed, the finder shall as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

71. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

72. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Notice to be given by wreck-receiver.

73. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

74. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Proceeds how applied.

75. Any person omitting to give notice of, or to deliver, any wreck to the receiver of wreck as required by section seventy shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

76. Nothing in this chapter contained shall apply to any ship belonging to, or in the service

Saving clause.

of Her Majesty or the Government of India or any foreign prince or State.

77. The Local Government may, from time to time, appoint persons to inspect ships in any port for the purpose of seeing that the same are properly provided with lights and with the means of making fog-signals in pursuance of the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section ten.

78. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

79. Every notice so given shall be communicated, in such manner as the Local Government may direct, to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations.

CHAPTER VII.

PORT-INSPECTORS.

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

“18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Every officer so appointed 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) he may at any time enter any vessel and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel and the medicines and appliances and the accommodation for the seamen;

(b) he may medically examine all or any of the persons on board such vessel;

(c) he may require and enforce the production of the log 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 such vessel;

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

(e) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.”

“18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any seaman or apprentice on board such vessel desires to make any complaint against the master or any of the crew thereof.

In the event of any seaman or apprentice so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

The Port-inspector shall forthwith report in writing to the Shipping-master the particulars of any complaint made to him under this section, together with his opinion thereon.”

CHAPTER VIII.

AMENDMENT OF THE INDIAN MERCHANT SHIPPING ACT, 1875.

81. In the Indian Merchant Shipping Act, 1875, for Section three, the following shall be substituted :—

“3. When—
(a) any ship has been lost, abandoned, stranded or damaged on or near the coasts of India; or

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

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

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

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

and any Magistrate or any officer appointed by the Local Government in this behalf receives information of the same, he shall without delay communicate such information to the Local Government.

In cases under 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 such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in India, the master of such ship at the time she arrives at such place,

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

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."

Insertion of section after section 25 of same Act.

82. After section twenty-five of the same Act, the following section

shall be inserted (that is to say) :—

"25A. 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.

Any master entering into an agreement with lascars or other Native seamen 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."

STATEMENT OF OBJECTS AND REASONS.

The provisions of this Bill may be roughly divided into three parts (namely) :—

- I. those relating to unsafe and unseaworthy ships contained in chapter II;
- II. those relating to the relief and conveyance home of distressed seamen contained in chapter III;
- III. those contained in the subsequent chapter which make additions to, and amendments of, the existing law as to Merchant Shipping on various miscellaneous points.

I.—Unseaworthy Ships.

2. The whole law enacted by Parliament on the subject of seaworthiness of ships is now contained in the Statute 39 & 40 Vic., c. 80. There are two main reasons why that Statute does not meet the requirements of this country :

First.—None of its provisions apply to ships of British Indian register, as distinguished from ships of British register. Ships of British Indian register (or "British Indian ships," as they are termed in the Bill) are a somewhat peculiar class of vessels, registered under Acts of the Indian Legislature, and only possessing the status of British ships within certain defined limits in Eastern waters. As there is a large number of such ships sailing from ports in India, it is obvious that any law which does not include them is incomplete and inadequate.

Secondly.—Even with regard to British ships, to which the Statute does apply, though many of its provisions extend to them wherever they may be still some—and perhaps the most important—are confined to such ships when sailing from ports in the United Kingdom, and are, therefore, totally inoperative in this country.

3. It is the object of this Bill to supplement the Statute, and by extending certain of its provisions to this country to make all ships, whether British or British Indian, sailing from ports in India subject to provisions similar to those to which British ships are subject in the United Kingdom.

In doing this, however, care has been taken strictly to confine the provisions of the Bill to those cases to which the Statute does not apply, and in no way to trench upon ground which its provisions already cover.

4. The sections of the Statute which have been adopted in this Bill are sections 4 to 12 inclusive, and sections 15, 22, 25, 26, 28, 34, and 35.

The effect of these provisions may be shortly stated as follows.

Section 4 makes it penal for any person to send, and any master to take, a ship to sea when she is in such an unseaworthy state that the life of any person is likely to be thereby endangered.

Section 5 makes it an implied condition in every contract of service with a seaman and in every instrument of apprenticeship that all reasonable efforts will be used to secure the seaworthiness of the ship.

Section 6 empowers the Board of Trade to order the detention of any British ship which they believe to be unsafe; and sections 7, 8 and 9 deal with the constitution and procedure of the Court of Survey, to which appeals may be made from such order.

Section 10 lays down the cases in which the Board and shipowner respectively shall be liable for costs of detention and survey. Section 11 empowers the Board to require security for costs from a complainant; whilst section 12 is taken up with general supplemental provisions as to the detention of ships.

By section 15, in cases of scientific difficulty, a special Court of appeal of scientific men is provided.

Section 22 enacts in what way only grain cargoes may be stowed.

Sections 25 and 26 lay down certain rules as to the marking of ships with deck and load lines—the former to indicate the position of each deck which is above water, and the latter the depth in the water up to which the owner intends to load the ship; and section 28 inflicts certain penalties for offences in relation to these marks.

Sections 34 and 35 contain miscellaneous provisions as to the enforcement of the detention of ships and service of orders, notices, &c., on masters.

5. Of the above provisions, sections 4, 5, 22 and 25 apply to British ships wherever they may be. They therefore already apply, *proprio vigore*, to such ships in India; and, accordingly, the Bill extends them only to British Indian ships. The other sections apply to British ships only when in ports in the United Kingdom; and, therefore, the Bill extends them both to British and British Indian ships in this country.

6. In adapting to India an English Act of this nature, it seems advisable to make the Indian Act as nearly as possible identical with the English one. In drafting this chapter therefore, the provisions of 39 & 40 Vic., c. 80, have been followed as closely as possible, not merely in substance, but also in wording. The different circumstances of India have, however, required certain alterations in the authorities who are to carry out the provisions of the chapter. For example, it has been necessary to substitute "Local Government" for "Board of Trade," and to alter the list of persons from whom the Judge of the Court of Survey shall be summoned; and the Lieutenant-Governor of Bengal has been authorized to delegate his powers under the proposed Act to the Calcutta Port Commissioners (section 50); but, as a rule, the provisions of the English Act have been adopted as they stand.

II.—Distressed Seamen.

7. The main provisions of the existing law relating to the relief and conveyance home of distressed seamen are contained in sections 211 and 212 of the Merchant Shipping Act of 1854, forming a portion of Part III of the Act. Section 109 of the Act applies these provisions to—

- (a) all ships registered in any British possession when they are out of the jurisdiction of that possession;
- (b) all ships registered in any British possession and plying between any place in the United Kingdom and any place not situated in that possession;
- (c) all sea-going ships registered in the United Kingdom, with some exceptions immaterial for the present purpose; and
- (d) the owners, masters and crews of all such ships.

There may thus be ships registered in India to which these provisions apply, e.g., an Indian ship at Singapore or Hong-Kong, or one plying between Galle and London. There may also be ships of English register, though plying exclusively within British Indian waters and manned by Native crews, to which the same provisions apply, as is the case with some of the vessels of the British India Steam Navigation Company, which are registered in Glasgow.

8. Sections 211 and 212 of the Act made provisions in favour of distressed seamen "being subjects of Her Majesty," and it is clear that in this expression all subjects, whatever their place of birth, are included.

9. By subsequent enactments powers have been conferred on the Board of Trade to issue binding instructions for the regulation of the relief of distressed seamen. The enactment now operative for this purpose is the twenty-second section of the Merchant Shipping Act Amendment Act of 1862. The instructions issued by the Board relate to distressed seamen generally, making no distinction between different classes. They appear clearly to apply to all seamen over whom the Act of 1854 gives jurisdiction, e.g., they would apply to Bengal lascars in distress at Penang.

10. A question arises as to the circumstances under which these instructions, which, as shown above, apply to some ships while in Indian waters and also include lascars who are British subjects, become applicable to such lascars. This arises on the interpretation of the conditions laid down in the Act, which are that the seamen, besides being distressed, shall be *abroad* and desire to be conveyed *home*. These words may equally, accurately and literally be construed either of the *place* or to *possession* at or in which the seaman is, and it is possible to do little more than guess at the construction they should receive.

11. It is thus clear that, on the most restrictive construction of the Act, there are many cases occurring in British India to which the Act and instructions apply, but that from the vagueness of the terms used in the Act, it is impossible to tell how far such cases may extend.

12. It is not competent to the Government of India to effect of its own motion any amendment of the terms of sections 211 and 212 of the Act of 1854. It might do so possibly if that Act stood by itself; but the instructions issued by the Board of Trade, which are the means whereby these sections are worked, are no part of the Act of 1854, but depend for their authority on the Act of 1862, which it is beyond the power of the Government of India to repeal or affect. On the other hand, there are cases not falling within those enumerated in paragraph seven as governed by the Merchant Shipping Act of 1854, for which the Government of this country has power to legislate.

13. It is with these latter cases that chapter III. of the Bill deals. Under the first construction of the words "abroad" and "home" referred to in paragraph ten, the case mentioned in clause (a) of section 52 of the Bill is no doubt to some extent provided for by the Merchant Shipping Act, 1854; but

In cases under 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 such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in India, the master of such ship at the time she arrives at such place,

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simple imprisonment for a term which may extend to three months."

Insertion of section after section 25 of same Act. 82. After section twenty-five of the same Act, the following section shall be inserted (that is to say):—

"25A. 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.

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10. A question arises as to the circumstances under which these instructions, which, as shown above, apply to some ships while in Indian waters and also include lascars who are British subjects, become applicable to such lascars. This arises on the interpretation of the conditions laid down in the Act, which are that the seamen, besides being distressed, shall be *abroad* and desire to be conveyed *home*. These words may equally, accurately and literally be construed either of the *place* or to *possession* at or in which the seaman is, and it is possible to do little more than guess at the construction they should receive.

11. It is thus clear that, on the most restrictive construction of the Act, there are many cases occurring in British India to which the Act and instructions apply, but that from the vagueness of the terms used in the Act, it is impossible to tell how far such cases may extend.

12. It is not competent to the Government of India to effect of its own motion any amendment of the terms of sections 211 and 212 of the Act of 1854. It might do so possibly if that Act stood by itself; but the instructions issued by the Board of Trade, which are the means whereby these sections are worked, are no part of the Act of 1854, but depend for their authority on the Act of 1862, which it is beyond the power of the Government of India to repeal or affect. On the other hand, there are cases not falling within those enumerated in paragraph seven as governed by the Merchant Shipping Act of 1854, for which the Government of this country has power to legislate.

13. It is with these latter cases that chapter III. of the Bill deals. Under the first construction of the words "abroad" and "home" referred to in paragraph ten, the case mentioned in clause (a) of section 52 of the Bill is no doubt to some extent provided for by the Merchant Shipping Act, 1854; but

on either construction of these words it will be admitted that there are some places in British India where a Native seaman may be which are not *abroad* to him, though not actually his *home*. These cases will be provided for, while, as the Bill does not purport to provide for any case in which the Board of Trade have power to issue instructions, any possibility of conflict between the Local and Imperial Acts will be avoided.

14. Following section 10 of the Merchant Shipping Act, 1855, the local authorities in India have been empowered to send home distressed foreign as well as British seamen, and further to send seamen home in foreign ships. This extended power may be found useful in the case of some Asiatic seamen not subjects of Her Majesty.

15. The money paid in respect of the seamen referred to in clause (a) of section 52 should be recovered from the ship to which the distressed seaman belonged by the Secretary of State in Council; and section 61 accordingly provides for its being recovered in India by him. In the case mentioned in clause (c) of section 59, it would appear that, under section 288 of the Merchant Shipping Act, 1854, the Government of India can empower the Board of Trade to recover the money for it by adapting the provisions of section 213 of the Act to the case. Accordingly, there has been added in section 62 a power to the Board of Trade to recover for the Government of India, which will probably be found useful when the money has to be recovered in England or in British possessions abroad.

16. A draft of these provisions has been submitted to the Board of Trade, who have agreed to issue new instructions in conformity with the Bill, and to adopt as the rate of subsistence for Native Indian seamen that to be fixed for such persons by the Government of India under the Bill. The result is that, if these provisions become law, the instructions of the Board of Trade and this Act will cover the whole ground, although it may still remain uncertain how much is covered by the instructions of the Board and how much by the Act.

III.—Miscellaneous Amendments.

17. The other provisions of the Bill do not call for much notice. They have all been introduced to provide for cases in which it appears that the provisions of the existing law are wanting or insufficient.

18. By a recent order of Government, all officers holding port appointments have been prohibited from undertaking private surveys. It having since been represented that considerable inconvenience is caused by this order, in consequence of the private surveyors at some ports not possessing the confidence of the mercantile community, provision has been made in the Bill (chapter IV) for the examination and licensing of fit persons to be marine surveyors, and prohibiting any unlicensed person from acting as a marine surveyor in any port where there may be any such licensed surveyor.

19. Chapter V, providing for the appointment of receivers of wreck, has been introduced at the suggestion of the Secretary of State, who considers that some provisions on the subject similar to those in the English Merchant Shipping Act of 1854 are desirable. In the event of this portion of the Bill becoming law, chapter V of the Indian Ports Act, relating to salvage in ports, will become unnecessary, and it is accordingly proposed to repeal it.

20. Chapter VI provides for the appointment of persons to inspect ships for the purpose of seeing whether they are properly furnished with lights and with the means of making fog signals in accordance with the regulations for preventing collisions at sea. Section 30 of the English Merchant Shipping Act Amendment Act, 1862, deals with this point. Though under it the Board of Trade is apparently given power to appoint persons to inspect ships for such purpose anywhere, still it is doubtful whether it was intended to give them this power in a British possession abroad, and still more doubtful whether the Board would be willing to exercise this power. It has, therefore, been considered the best course for the Legislature of this country to take independent power in the matter.

21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a "Port-inspector." This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen.

SIMLA;
The 29th August 1879. }

(Signed) WHITLEY STOKES.

D. FITZPATRICK,
Secretary to the Government of India, Legislative Department.