

PILOT COURT, BENGAL ACT 1845

ACT No XXIV OF 1845

(Rep., Act 12 of 1859)

[22<sup>nd</sup> November, 1845.]

*Passed by the Hon'ble the President of the Council of India in Council on the 22d November 1845, with the assent of the Right Hon'ble the Governor General of India.*

AN Act for establishing a Court for the trial of Officers of the Pilot Service accused of Breach of duty.

I. It is hereby enacted, that from and after the First day of January next, if any person employed in the Pilot Service of the East India Company, at the Presidency of Fort William in Bengal, shall be accused of having committed any breach of duty while engaged in such Service, and it shall appear to the Superintendent of Marine that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial before a Court, consisting of a President and two Merchants of Calcutta, four Commanders of British, Ships and two Branch Pilots or the Master Pilots of the East India Company's Service, as Members.

II. And it is hereby enacted, that the said President shall be such person as shall be, from time to time appointed for that purpose by the Governor of Bengal.

III. And it is hereby enacted, that whenever it shall appear to such Superintendent of Marine that any person employed in the said Pilot Service ought to be brought to trial before such Court, the said Superintendent shall convene such Court by giving notice to the said President, and summoning by writing under his hand any two Merchants of Calcutta, any four Commanders of British Ships lying in the Port of Calcutta any two Branch Pilots or Master Pilots of the East India Company's Service, to appear for the purpose of holding such trial at a time and place to be subsequently intimated to them by the Judge Advocate appointed to conduct the Proceedings of such Court. Provided always that every Court to be held under this Act shall consist of the President, and at least four Members, and that the decision shall in every case be according to the votes of the majority, and that in case of equality of votes the President shall have a casting vote.

IV. And it is hereby enacted, that if after the Court shall have been convened the President shall be prevented by sickness or any other cause from attending the said Court, it shall be lawful for the Members of the said Court, not being less than five in number, to elect one from among themselves, who shall perform the functions of President of the said Court until the end of the trial.

V. And it is hereby enacted, that if any person summoned, as aforesaid, shall neglect or refuse to attend in pursuance thereof, or to remain in attendance to the end of such trial without sufficient cause, then it shall be lawful for the said Superintendent of Marine to impose upon any such person

a fine not exceeding the sum of Rupees 200 for every such default, and every Justice of the Peace for the Town of Calcutta is hereby authorized and required upon representation made to him in writing and signed by the said Superintendent, to enforce the payment of such fine in like manner as if such fine had been imposed by himself.

VI. And it is hereby enacted, that the proceedings before such Court shall be conducted on the part of Government by such person as the Governor of Bengal shall from time to time appoint as Judge Advocate for that purpose.

VII. And it is hereby enacted, that it shall be lawful for the said Judge Advocate, and he is hereby authorized and required either at the request of the party accused, or of the party making the accusation, or of the said Court, by writing under his hand to summon any person whatsoever, to attend as a witness at a time and place to be specified in such summons for the purpose of being examined at any trial before a Court constituted as aforesaid, or if such person shall be about to depart from Calcutta so as to be unable to attend at such trial without serious inconvenience, then to be examined before the President of the said Court, and any two Members of the said Court, provided always that due notice of the time and place of such examination shall be given to the person against whom a charge is about to be preferred, and provided also, that such witness may nevertheless be examined at the trial if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

VIII. And it is hereby enacted, that every witness duly summoned to attend any such Court or President and two Members, shall during his necessary attendance on such Courts or President and two Members, and in going to and returning from the same, be privileged from arrest, and shall, if arrested in breach of such privilege, be discharged by such Court or President and two Members, or by the Supreme Court, or any Judge thereof, or by an Justice of the Peace in and for the Town of Calcutta upon its being made to appear to such Court or President and two Members constituted by this Act, or to such Supreme Court, or Judge, or to such Justice of the Peace by affidavit in a summary way that such witness was arrested in going to or returning from or attending upon such Court or President and two Members constituted by this Act, and that every witness so duly summoned to attend as aforesaid, who shall not attend on such Court or President and two Members, or who attending shall refuse to give evidence or Oath of Solemn Affirmation or Declaration, or to answer all such questions as the Court or President and two Members may legally demand, shall be liable to be attached in the Supreme Court, upon complaint made in like manner as if such witness had neglected to attend on any trial in such Supreme Court.

IX. And it is hereby enacted, that every Member assisting at every such Court before the commencement of any proceeding, to be had before it shall take the following Oath upon the Holy Evangelists, which Oath shall be administered by the president of such Court to the other Members thereof and to the President by the Judge Advocate, that is to say,

“ I, A. B. do swear that I will duly determine and administer Justice according to the evidence in the matter that shall be brought before me, and that I will not divulge the sentence till it shall be approved of by competent authority, neither will I at any time divulge the vote or opinion of the President, not my own vote, not that of any Member of this Court unless required to give evidence thereof as a Witness by a Court of Justice in due course of Law. So help me God.”

X. And it is hereby enacted that the Judge Advocate who is to conduct the Proceedings of the said Court shall take the following Oath, which Oath shall be administration by the President,

“I, A. B., do swear that I will not upon any account whatsoever disclose or discovery any vote or opinion of the President or any particular member of this Court unless required to give evidence thereof as a witness of a Court of Justice in due course of Law. So help me God.”

XI. And it hereby enacted, that every Witness before any such Court President and two Members, shall be examined upon Oath, which such Courts and President and two Members are hereby authorized to administer, Provided always that in all cases wherein a Solemn Declaration or Affirmation would be allowed in Her Majesty’s Courts of Judicature to be substituted for an Oath, the said Court or President and two Members constituted by this Act, shall substitute such Solemn Declaration or Affirmation for an Oath.

XII. And it is hereby enacted, that any person willfully and knowingly giving false testimony on Oath or Solemn Declaration or Affirmation in any case in which an Oath or Solemn Declaration or Affirmation is by this Act required to be made, shall be deemed guilty of willful and corrupt perjury, and being duly convicted, shall be liable to the pains and penalties of perjury.

XIII. And it is hereby enacted, that if the party against whom a charge is preferred shall appear, or shall not satisfy the Court that he has a reasonable excuse for not appearing, the said Court shall proceed to hear and determine the charges preferred by the said Superintendent against any person or persons so employed in the Pilot Service as aforesaid, and if such person or persons shall be found guilty by the said Court of the breach of duty laid to his or their charges it shall be competent to the said Court, and it is hereby required to sentence such person or persons to dismissal from the said Pilot Services, or to such other punishment by loss of rank or pay as to the said Court shall appear fit, whether or not such breach of duty be punishable under a certain Code called the Penal Code for the better order and government of the Members composing the Pilot Service, passed by order of the Right Hon’ble the Vice President in Council, on the 21<sup>st</sup> December 1826.

XIV. Provided always, and it is hereby enacted, that in all cases wherein the charge preferred before such Court is a charge of breach of duty punishable under the said Code, the said Court shall award such punishment as prescribed for such breach of duty in the said Code and no other.

XV. Provided also, and it is hereby enacted, that the said Code shall remain in full force as regards the several breaches of duty therein specified, but that it shall be competent for the said Superintendent of Marine, and he is hereby empowered in any case of breach of duty not specified

in the said Code, to frame such charge as shall be applicable to the facts of the case and to prefer the same to the said Court.

XVI. Provided always, and it is hereby enacted, that nothing in this Act contained shall prevent the said Superintendent from deciding summarily in cases in which he was empowered to decide summarily before the passing of this Act.

XVII. And it is hereby enacted, that the proceedings of such Court shall be sent on completion of the trial to the Superintendent of Marine, and it shall be lawful for the said Superintendent of marine, to send back the proceedings to the Court for revision of the finding or sentence or both.

XVIII. And it is hereby enacted, that every finding and sentence of such Court as aforesaid shall be subject to the approval of the Governor of Bengal, and that no such finding or sentence shall be considered final or conclusive until it has been submitted to and approved by the Governor of Bengal who is hereby empowered to remit any part or the whole of such sentence as he shall think fit, and that every such sentence either of dismissal from the service or of loss of rank or pay upon being confirmed or mitigated by the said Governor of Bengal, shall be considered valid and effectual from the date of such confirmation or mitigation and shall be forth with carried into effect.

XIX. And it is hereby enacted, that it shall be lawful for the said Superintendent of Marine to make such Rules for conducting the Proceedings and regulating the practice of the said Courts, and for carrying into effect the purposes of this Act as to the said Superintendent shall seem expedient, and all such Rules shall be submitted to the Governor of Bengal, and shall have full effect after they shall have been confirmed by the Governor of Bengal.

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