

tains nothing indicating an intention to bar the ordinary remedy by suit where an application for the summary enforcement has been made and refused.

1875.  
July 30.  
S. A. No. 217  
of 1875.

INNES, J.:—The point of *res judicata* was wrongly taken. The refusal of the application under Section 327 was no determination of the present matter. It was merely a refusal, right or wrong, to register the award as a decree of the Court; the matter now sought to be determined is the plaintiff's right to recover upon the award.

*Appeal allowed.*

### Appellate Jurisdiction.(a)

*Criminal Petitions Nos. 255 and 267 of 1875.*

WILLIAM JOHN REARDON ... .. Petitioner.

The Merchant Shipping Act, 1854, 17 and 18 Vict., Cap. 104, s. 243(b) has no application to British India. The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act No. I of 1859, s. 83, clause 5(c)

THESE were Petitions praying the High Court to revise the sentences of Mr. J. Cameron, the Joint Magistrate of Tanjore in Cases Nos. 30 and 24 of 1875 respectively.

1875.  
August 3.  
C. P. Nos. 255  
& 267 of 1875.

The petitioner was one of seven seamen convicted of continued wilful disobedience of lawful commands and sentenced to one month's rigorous imprisonment under clause 5, Section 243 of the Merchant Shipping Act of 1854.(b)

No Counsel were instructed.

(a) Present :—Innes and Forbes, JJ.

(b) This section has been literally copied in the Merchant Seamen's Act, No. 1 of 1859, s. 83, for which, so far as it is material to the present case, see next note (c).

(c) Section 83 is as follows :—“ Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offences, he shall be liable to be punished summarily as follows (that is to say) :—

“ Clause 5.” For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labor, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.”

1875.  
 August 3.  
 C. P. Nos. 255  
 & 267 of 1875.

The Court delivered the following

JUDGMENT :—There appear to be no grounds for interfering with the conviction of the prisoner.

The petitions will accordingly be dismissed. The sentence, however, is stated to have been passed under Section 243, Clause 5 of the Merchant Shipping Act of 1854. This Act of Parliament (Chap. 104, 17 and 18 Vict.) has, in regard to the offences charged, no application to British India—the Legislature of which in Act I of 1859 has legislated upon the same matters, as would appear to have been contemplated by Section 288(a) of the Merchant Shipping Act of 1854. This is not the case contemplated in Section 290 (b) of the same enactment of there existing any conflict between the two laws. Where that exists the Merchant Shipping Act of 1854 must be followed but not otherwise.

The liability of the accused to punishment arose under Act I of 1859 of the Government of India, Section 83, clause 5(c) Section 83 of the Indian Act corresponds in its terms with Section 243 of the Parliamentary Statute. The accused has been in no way prejudiced by the mistake of the Magistrate. The record should, however, be amended by substituting the clause and section of the Indian Act for the clause and section quoted by the Magistrate.

(a) Section 288 is as follows :—“If the Governor-General of India in Council, or the respective legislative authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the Third Part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty’s dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed.”

(b) Section 290 is as follows :—“If in any matter relating to any ship or to any person belonging to any ship, there appears to be a conflict of laws, then, if there is in the Third Part of this Act any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision the case shall be governed by the law of the place in which such ship is registered.”

(c) *Ante* p. 85 note (c).