

## **Evidence**

### **ACT No. VII. OF 1841. (Rep., Act 16 of 1874)**

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*Passed by the Right Hon 'ble the Governor General of India in Council,  
on the 14<sup>th</sup> of June, 1841.*

An Act for a more uniform and at improved process for taking the examination of absent witnesses.

I. It is hereby enacted, that all Regulations and parts of Regulations and parts of Regulations for taking the examination of absent witnesses in any Presidency, are hereby repealed.

II. And it is hereby enacted, that it shall be lawful for any Court within the Territories under the Government of the East India Company, and the several Judges thereof, in every Civil proceeding depending in such Court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any Officer of and such Court, or other person or persons named in such order, of any witness within the jurisdiction of the Court where the proceeding shall be depending, or to order a Commission to issue to any subordinate Court for the examination of such witness upon interrogatories or otherwise, or to order a Commission to issue to any other Court for the examination of witness at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions of taking such examination as well within the jurisdiction of the Court wherein the proceeding shall be depending as without as may appear reasonable and just ; provided always, that any Court to whom any such Commission shall be directed shall take the examination in open Court to in all cases where witness are able to attend in Court and are not exempted from attendance by law absolutely or at the discretion of the Court. Provided also, that such Commissions a aforesaid for the examination of witness out of such jurisdiction may be directed otherwise that for some Court under special circumstances which may appear to the Court issuing the Commission to render such special direction expedient, Provided also, that all Commissions issued and Order made by any Court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's Supreme Courts shall be directed in manner hereinafter mentioned.

III. And it is hereby enacted, that when any Order shall be made for the examination of witness within the jurisdiction of the Court wherein any such proceeding as aforesaid shall be depending by the authority of this Act it shall be lawful for the Court or any Judge thereof in and by the first Order to be made in the matter, or any subsequent Order to command the attendance of any person to be named in such Order, and to direct the attendance of any such person to be at his own place or residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers. And the willful disobedience to any such Order shall be deemed a contempt of Court and punishable as in other case of refusing or neglecting to give testimony. Provided always, that every person whose attendance shall be required under this Act shall be entitled to the like payment for expenses and loss of time as upon attendance in Court in cases where such expenses are now allowed.

IV. And it is hereby enacted, that it shall be lawful for every Court or person authorized to take the examination o witness by any Order or Commission issued in pursuance of this Act and they are hereby authorized and required to take all such examinations upon oath or affirmation where an affirmation is admissible or required upon trial, and if upon such oath or affirmation any person making the same shall be willfully and corruptly give any false evidence, every person so offending shall be deemed and taken

to be guilty of perjury, and every person causing or procuring another person to commit the offence or perjury hereby defined shall be guilty of subornation of perjury.

V. And it is hereby enacted, that before any Order or Commission of the examination of any witness under this Act shall be issued, the Court or Judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness or other cause allowed by law. And before granting any such Commission, the Court granting the same, shall make particular enquiry as to the present residence of the witness whose deposition is to be taken under such Commission, and as to the Court of the same degree as the Court granting such Commission, or of inferior degree to such Court which may be nearest to the place of residence of the witness, and the Commission shall ordinarily be directed to such Court of equal or inferior degree as may most conveniently execute the same. Provided however, that if there be doubt as to which is the most convenient Court of equal or inferior jurisdiction, such Commission may be directed to the Judge having jurisdiction within the district within which the Commission is to be executed, And the Judge shall be at his discretion execute the Commission in his own Court, or direct it to any subordinate Court within his District, which shall have the same effect for all the purposes of this Act as if the Commission had in the first instance been directed to such subordinate Court. And no deposition taken under this Act, except as hereinafter mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than 50 miles from the place where the Court is held, or exempted by law, absolutely or at the discretion of the Court, from personal appearance in Court, or unless the Court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition or any witness being read in evidence notwithstanding proof that the cause for taking such deposition has been caused at the time of reading the same ; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court at its discretion to authorize the reading or the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

VI. And it is hereby enacted, that any Court other than one of Her Majesty's Courts, or any judge thereof, may issue such Commissions as aforesaid, and such Order as are indicated in the second and third Sections of this Act to be executed within the local limits of the jurisdiction of any Her Majesty's Courts and all such Commissions and Orders except when directed otherwise than to a Court, shall be directed to a Court of Requests having jurisdiction within such limits or any part thereof.

VII. And it is hereby enacted, that such Commissions and Order as aforesaid may be issued for execution under this Act within the territories or Princes and States in alliance with the East India Company, and all persons within such last mentioned territories being in the service of the East India Company are hereby required to pay obedience thereto, and for disobedience thereof shall on being found within the Jurisdiction of the Court, or Judge issuing any such Commission or Order be punishable in like manner, as if such offence had been committed within such jurisdiction ; and for giving false testimony under the same shall be punishable by the Court of Justice within the territories of the East India Company.

VIII. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the Court in which the proceedings for which the evidence is wanted may be pending and the Commission shall be directed to any Court, such Court may punish the willful disobedience of any such Order as aforesaid as a contempt notwithstanding it shall not itself have made such Order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.