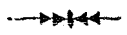


Act 10/11/55

ACT No. X. OF 1855.



PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 21st March 1855.)

AN ACT to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL. Act XIX. of 1853.

WHEREAS it is expedient to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL. Act XIX. of 1853 ; It is enacted as follows :—

I. Section XXII. Regulation VII. of 1809 and Section VIII. Regulation XII. of 1809 of the Madras Code, and Section XL. Act XIX. of 1853, are hereby repealed.

Repeal of former Regulations &c.

II. If any party to a suit shall require the attendance of any other party thereto as a witness to be enforced, he shall, by himself or his pleader, make a special application to the Court for an order for a summons to compel the attendance of the party, and shall show to the satisfaction of the Court sufficient grounds in support of such application ; otherwise a summons shall not be issued. In cases in which, according to the practice of the Court, a day is fixed for the trial, the application shall be made before such day shall be fixed.

Special application to compel attendance of party to a suit as a witness.

III. The Court, upon the application of the pleader of any party to a suit whose attendance as witness is required, or without such application, if the Court think fit so to do, may, before making such order, cause notice to be given to the party or his pleader fixing a day for such party to show

Court may require notice to be given to a party to show cause why he should not attend.

cause

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cause why he should not attend and give evidence, and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such purpose.

IV. *Clause 1.* In support of the cause shown, the Court shall receive a declaration in writing of the party, if signed by him, and delivered into the Court by himself or his pleader.

Written declaration of party receivable.

Clause 2. If the party making such declaration shall wilfully and corruptly make any false statement therein, he shall be deemed guilty of perjury, and shall be proceeded against and upon conviction punished accordingly.

Penalty for false statement.

V. The Court need not compel the attendance of any party to a suit for the purpose of giving evidence therein, if such party shall satisfy the Court that he has no personal knowledge of any material subject of enquiry in the suit, and that he cannot give material evidence therein.

Court not to compel attendance of party to a suit to give evidence, if satisfied that he has no personal knowledge and that he cannot give material evidence.

VI. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall cause a summons to be issued for compelling the party to attend and give evidence.

Summons to issue if no sufficient cause shown.

VII. No party to a suit, appeal, or proceeding, who shall offer himself as a witness therein, shall, without the consent of all parties thereto, be examined otherwise than in open Court, in such manner as the Court may direct, having regard to the usages and customs of the country, unless such examination shall be taken under, and subject to the Rules prescribed by Section XII. or XIV. of this Act.

Mode of examining party to a suit who offers himself as a witness.

Proviso.

VIII. If any witness, being a party to a suit, to whom any summons to give evidence or produce a document shall have been personally delivered, shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe

Penalty for non-compliance with summons.

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scribe his deposition, or to produce any document in his custody or possession, the Court, instead of proceeding in the manner provided by the laws in force in the Presidency in respect of defaulting witnesses, may, if the witness be a plaintiff, appellant, or petitioner, dismiss the complaint, appeal or petition, with costs against such party, or if such party be a defendant or respondent, may hear and decide the case against such defendant or respondent *ex parte*. If any such complaint, appeal or petition shall be dismissed for such cause, the complainant or petitioner shall be debarred from preferring any other petition, appeal or complaint in respect of the same matter.

IX. A witness not a party to the suit or proceeding in which he is summoned shall not be bound to produce his own title-deeds, unless he shall have agreed in writing with the party requiring the production thereof, or with some person through whom he claims to produce such deeds.

In what case a witness, not being a party to the suit in which he is summoned, is bound to produce his title-deeds.

X. Any person, whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document shall be personally delivered, and who shall, without lawful excuse, neglect or refuse to obey such summons, or who shall be proved to have absconded, or kept out of the way to avoid being served with such summons, and any person who, being in Court, and upon being required by the Court to give evidence or produce a document in his possession, shall, without lawful excuse, refuse to give evidence or sign his deposition, or to produce a document in his possession, shall, in addition to any proceedings to which he would otherwise be subject, be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document, for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way as aforesaid, to be recovered in a civil action.

Person not obeying summons, &c. liable for damages in a civil action.

XI. It shall not be necessary to postpone the hearing or decision of a case for the non-production of a document, or for the evidence of a witness who may neglect or refuse to attend, or who shall abscond or keep out of the way, or who cannot be served with a summons, beyond such period as shall appear proper to the

Postponing case on account of non-attendance of witness &c.

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the Court, having regard to all the circumstances of the case: provided that, when a summons shall have been issued for the attendance of a plaintiff or appellant in a suit to give evidence or produce a document, the Court shall, at the request of the defendant or respondent, unless there be good reason to the contrary, postpone the hearing or decision until the plaintiff or appellant can be personally summoned, or shall attend and give evidence or produce the document required; and that, where a summons shall have been issued for the attendance of a defendant or respondent to give evidence or produce a document, the hearing or decision shall, upon the application of the plaintiff or appellant, be postponed in like manner, unless there be good reason to the contrary, until the defendant or respondent can be personally summoned, or shall attend and give evidence, or produce the document required.

XII. In every regular or summary suit, appeal or proceeding in any of the Civil Courts of the East India Company, and also in every summary suit or other proceeding of a Civil nature before any Court, Officer, or other person having by law or consent of parties authority to examine witnesses, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. The evidence of each witness given upon such examination shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit or their vakeels, or such of them as may think fit to attend. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any party or his vakeel shall require it. If any question put to a witness be objected to by either of the parties or their vakeels, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together

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the word "witness" shall include all persons competent and liable to give evidence, whether parties to any suit or proceeding, or not. Words importing the masculine gender or singular number shall include the feminine gender or plural number, and *vice versa*.

XIX. - This Act shall come into operation on the 1st day of May
1855.
Act when to operate.

