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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the Assent of His Excellency the Governor General on the 4th day of June 1869, and was promulgated for general information in the *Gazette of India* of 5th June 1869:—

Act No. XV. of 1869.

An Act to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows:—

I.—Preliminary.

1. This Act may be called "The Prisoners' Short title. Testimony Act, 1869."
2. For the purposes of this Act, the Courts of Presidency Small Cause Courts. within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be

deemed to be respectively subordinate to the said High Courts.

II.—Bringing up Prisoners.

3. Any Criminal Court not inferior to the Criminal Courts may Court of a Subordinate make orders under Act. Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in schedule A or schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail.
4. Any Civil Court may in its discretion, if it Civil Courts may make appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form in the said schedule A, directed to the officer in charge of the said jail.

5. When such order is made in any civil matter

Court to countersign orders.

pending in a Court subordinate to the Court of the District Judge, or in any District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal, Madras, and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge, or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate.

Every order so submitted shall be accompanied

Statement of facts necessitating order.

by a statement under the hand of the Judge of the facts which in his opinion render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

6. When any person for whose attendance an

Order to be transmitted through Magistrate of the District in which the person is confined.

order as herein-before mentioned shall be made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the District or division of a District in which the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

7. In any case in which a person is confined

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said schedule A, directed to the officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the District or division of a District in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined.

For the purposes of this section and sections three and four the Chief Commissioner of British Burma shall be deemed to be a High Court; the court of a Recorder appointed under Act No. XXI. of 1863 shall be deemed to be subordinate to the said Chief Commissioner; and every jail situate in British Burma shall be deemed to be situate within the local limits of the said Chief Commissioner's appellate jurisdiction.

8. In any case in which a person is confined

Persons confined beyond limits of appellate jurisdiction of High Court.

within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma for the purpose of giving evidence in any criminal matter in the Court of a Recorder appointed under the said Act No. XXI. of 1863, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

9. Upon delivery of any order under this Act

Prisoner to be brought up. to the officer in charge of the jail in which the person named therein is confined,

such officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

10. The Governor General of India in Council or the Local Government

Power to Government to exempt certain prisoners from operation of Act. may, from time to time, by notification in the official Gazette, direct that any person or any class of

persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in sections twelve, thirteen, and fourteen, shall not apply to such person or class of persons.

11. When any person named in any order

When jailor may disobey orders.

made under section three, section four, or section seven appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the District or division of a District in which such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued, a statement of his reason for not obeying the same:

Provided that the said officer shall not so abstain when

the order has been made under section three,

and the person named in the order is confined, under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed,

and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

III.—Commissions.

12. Whenever it shall appear to any Civil

Commission for examination of prisoners.

Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in section ten or section eleven cannot be brought up before it, is material in any matter depending before such Court,

and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter,

and in any case in which the District Judge shall under section five have declined to countersign the order for removal,

the Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

13. Whenever it shall appear to any High

Commission for examination of prisoners beyond limits of appellate jurisdiction of High Court.

Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court, or before any Court subordinate thereto, the High Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

14. Every commission issued under section

Commission how to be directed.

twelve or section thirteen shall be directed to the District Court of the District wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court thinks fit.

IV.—Service of process on prisoners.

15. When any process directed to any person

Process how served on prisoners.

confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

16. Every officer in charge of a jail upon

Process served to be transmitted at prisoner's request.

whom any such service as is mentioned in section fifteen shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process, a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof.

Such certificate shall be sufficient *prima facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the Post Office by registered letter.

V.—Miscellaneous.

17. No order in any civil matter shall be made

Deposit of costs.

by a Court under any of the provisions hereinbefore contained until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court.

Provided that if upon any application for such order it appear to the Court to which the application is made that the applicant has not sufficient means to meet the said cost and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court; and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.

18. It shall be lawful for the Local Govern-

Power to make rules.

ment, and in cases arising under section eight, for the Governor General of India in Council to make rules consistent with this Act—

- (1) for regulating the escort of prisoners to and from the Court in which their presence is required;
- (2) for regulating the amount to be allowed for the costs and charges of such escort; and
- (3) for the guidance of officers in all other matters connected with the enforcement of this Act; and from time to time to alter and add to the rules so made.

19. All such rules, alterations, and additions

Publication of rules.

shall be published in the official Gazette, and shall from the date of such publication be deemed to have the force of law.

20. The Local Government may also declare

Power to declare who shall be deemed 'Officer in charge of Jail.'

in each case what officer shall, for the purposes of this Act, be deemed to be 'the officer in charge of the jail.'

SCHEDULE A.

Court of

To the officer in charge of the
(state name of Jail)

You are hereby required to have the body of
, now a prisoner in under safe and
sure conduct before the at on the
day of next by of the clock in the
forenoon of the same day, there to give testimony
in a cause now pending before [or in a certain
charge or prosecution now pending before,
against or as the case may be]

and after the said
shall then and there have given his
testimony before the said

or the said shall dispense
with his further attendance, cause him to be con-
veyed under safe and sure conduct back to the said
jail.

day of

A. B.

(Countersigned) C. D.

SCHEDULE B.

Court of

To the officer in charge of the
(state name of Jail)

You are hereby required to have the body of
, now a prisoner in under safe
and sure conduct before the at on the
day of next by of the clock
in the forenoon of the same day, there to answer a
charge now pending before and, after
such charge shall have been disposed of or the
said shall dispense with his further attend-
ance, cause him to be conveyed under safe and
sure conduct back to the said jail.

day of

A. B.

(Countersigned) C. D.

WHITLEY STOKES,

Secy. to the Council of the Governor General
for making Laws and Regulations.