

*The whole Act is repealed
by Act No. 1 of 1854
to be in force
of the Act
the Act
the Act
the Act*

ACT NO. XIX. OF 1853.

*Passed by the Governor General of India in Council, on the 2nd
December 1853.*

*An Act to amend the Law of Evidence in the Civil Courts of the East
India Company in the Bengal Presidency.*

WHEREAS the law of evidence administered by the Civil Courts of the Presidency of Fort William in Bengal, and the rules for the attendance and examination of witnesses and the production of documents in Courts, require amendment, It is enacted as follows :

I. Sections XXXIII., and LXXIII., Regulation XXIII. 1814, of the Bengal Code, so far as they are inconsistent with the provisions of this Act, Section XI., Regulation XXIV. 1814, of the same Code, except so far as it relates to the signing and issuing of any process of Court to which the signature of the judge may not be specially required, and Section I., Act VI. 1843, so far as it authorizes the examination of witnesses according to the rules established by Section XI., Regulation XXIV. 1814, aforesaid, are hereby repealed.

II. In any regular or summary suit, appeal, or proceeding in any of the Civil Courts of the East India Company, and also in any summary suit, or other proceeding of a civil nature before any Court, Officer, or other person having by law or by consent of parties authority to examine witnesses, any party to such suit, appeal or proceeding, shall be competent and entitled to give evidence as a witness either on his own behalf

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or on behalf of any other party to the suit, appeal or proceeding in the same manner as if he were not a party to the same. Provided that 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 XXXII. or XXXVIII. of this Act.

III. No person shall, by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in any such suit.

IV. A husband or wife shall be competent to give evidence for or against the other provided that the examination shall take place in open Court in such manner as the Court may direct having regard to the usages and customs of the country, or that it be taken and read, and subject to the Rules prescribed in Section XXXII. or XXXVIII. of this Act, provided also that any communication made by husband or wife to the other during their marriage shall be deemed a privileged communication, and shall not be disclosed without the consent of the person making the same, unless such communication shall relate to a matter in dispute in a suit pending between such husband and wife.

V. Any party to a suit may be compelled to give evidence as a witness therein and also to produce any document in his possession or power, in the same manner, by the same process, and subject to the same Rules, as if he were not a party to the suit, except so far as is otherwise provided by this Act. Provided that no Court need to compel the attendance of any party to such 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 inquiry in the suit, and that he cannot give any material evidence therein. Nothing in this Clause shall exempt any party to a suit from being summoned to produce a document.

VI. After the parties in a suit in which according to the practice of the Court a day fixed for the hearing, shall have filed their exhibits and lists of witnesses, the Court shall by an order in writing, appoint

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aday, not less than fifteen days after the date thereof, for the examination of witnesses and the hearing of the suit.

VII. The list of witnesses required to be furnished in any suit shall include the names of all the witnesses, whether parties to the suit or not, whom the party filing the list may intend to call as witnesses or whom he may require to be summoned to give evidence or produce any document, also a list of the documents which he may require to be produced.

VIII. 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 hearing, the application shall be made before such day shall be fixed.

IX. 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 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.

X. *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.

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.

XI. 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.

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XII. The Court on the requisition of any party to a suit, or his pleader, may cause a summons to be issued to every person who shall be required to produce any material document. Previously to the issuing of any summons for the attendance of any person to give evidence or produce a document, the party requiring the same shall pay into Court such sum as shall appear to the Court to be reasonable, to defray the travelling and other expenses of such person in passing to and from the Court in which he may be required to attend and give evidence, and for one day's attendance thereat. In fixing the sum to be paid into Court, regard shall be had to the rules, if any, established by the Court or Board, if any, to which such Court shall be subordinate. The sum so paid into Court shall be tendered to the witness at the time of serving the summons if it can be served personally. In addition to the sum so paid into Court, the Court before whom any person who may attend in pursuance of a summons, or proclamation to give evidence or produce any document, may order such further sum to be paid to the person so attending by the person causing the summons or proclamation to be issued, as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, or proclamation, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness shall not be bound to give evidence or produce any document until such sum shall be paid.

XIII. Every summons for the attendance of a witness to give evidence, or to produce a document shall require the intended witness to attend at a time and place to be named in the summons, and shall also state whether the attendance of the witness is required for the purpose of giving evidence, or producing a document, or for both purposes. If a witness, whether a party to the suit or not, is required to attend, and to produce before the Court any document alleged by the party summoning him to be in his possession or power, a direction to attend the Court with such document shall be inserted in the summons, and the document which the witness may be so called upon to produce shall be described in the summons with convenient certainty.

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XIV. Every such summons shall, if possible, be served personally upon the person thereby required to attend, by showing the original to such person, and at the same time delivering or tendering to him a copy thereof.

XV. Such service must be made a sufficient time before the time specified therein for his attendance, to allow the witness a reasonable time for preparation, and for travelling to the place at which his attendance is required.

XVI. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced, instead of attending personally to produce the same.

XVII. Any person who shall be summoned to appear and give evidence shall be bound to attend at the time and place named for that purpose.

XVIII. Any person attending to produce a document may be called upon to produce the same without being sworn or examined as a witness.

XIX. 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.

XX. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.

XXI. A witness being a party to the suit shall not be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, nor any writing or correspondence which may have passed between him and any legal professional adviser. If any party, however, offer himself as a witness, he shall be bound to produce any such writing or correspondence,

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ence, in his custody, possession, or power, if relevant or material to the case of the party requiring its production.

XXII. Every witness summoned to produce a document shall, if the same be in his custody, possession or power, be bound to produce it or cause it to be produced to the Court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof, the validity of any such objection made by the person producing the document shall be determined by the Court; and for the better determination thereof, it shall be lawful for the Court to receive any admissible evidence which the person producing the document may give respecting it, and it shall also be lawful for the Court to inspect the document, and if necessary to call to its assistance any person whom it may appoint to interpret the same. Such person, however, shall be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof except to the Court, unless the Court shall order the document to be given in evidence. If the Court shall be of opinion that such document shall not be produced, the Court shall not disclose the contents thereof to the parties, or take any note, or make any mention of the contents or effect thereof in its judgment or proceedings, but shall return the document at once to the party producing the same, having previously marked the same for the purpose of identification, and shall record in its proceedings that a document, identifying it by the mark put upon it, was called for, by the person, naming him who shall call for its production, that the person having the possession of the document, naming him, objected to its production, and the reasons, if any for such objection, together with the reasons of the Court for refusing to compel its production. If the Court shall refuse to enforce the production of a document, or to receive the same in evidence, the Court of appeal may, upon a regular appeal, compel the production of such document, and if such Court shall think that the production of the same ought to have been enforced, or that it ought to have been received in evidence, may themselves enforce its production, and receive it in evidence, and decide the case upon such document, coupled with the other evidence given in the suit.

XXIII.

XXIII. A barrister, attorney, or vakeel, shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however, is that of the client, and if any party to a suit shall give evidence therein at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure by such barrister, attorney, or vakeel, of any such matter as aforesaid, which may be relevant, and which the barrister, attorney, or vakeel would have been bound to disclose, but for the privilege of his client, and the barrister, attorney or vakeel shall be bound upon examination to disclose any such matter.

XXIV. If any witness, whether a party to a suit or not, 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 as required by this Act, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court shall have full power and authority to issue an order in writing to the nazir to apprehend and bring the witness before the Court; or, if he be already before the Court, to take him into custody. And such Court may impose on such witness a fine not exceeding five hundred rupees for his default or refusal, realizable by attachment and sale of his property, and may commit him to close custody until he shall consent to give his evidence, or to sign his deposition, or to produce the document, and any such fine as aforesaid shall be levied and recovered by attachment and sale of the property of such person. Provided that no fine imposed under the provisions of this section shall exceed the amount of the property in dispute in the suit. If any such person shall abscond, or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided by Section XXVII. of this Act, with respect to a witness on whom the service of a
summons

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summons cannot be effected. If such person shall be a party to the suit, the Court, instead of proceeding in the manner above pointed out, 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.

XXV. Any person present in Court, whether a party or not, may be called upon and compelled by the Court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the Court.

XXVI. 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 under this Act, 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 civil action.

XXVII. If a person, whether a party to a suit or not, for whose attendance either to give evidence or produce a document a summons shall be issued, cannot, after, diligent search, to be certified by a return of the nazir, be found, the Court upon proof that the evidence of such witness

witness, or the production of the document is material, and that the witness absconds, or keeps out of the way to avoid being served with a summons, and that he could not, after diligent search, be found or served with the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document at a time and place to be named therein, to be affixed, in the presence, and with the attestation of two respectable house-holders in some conspicuous place, upon or near to his house or place of abode, and if such person shall not attend at the time and place to be named in such proclamation, and it be proved to the satisfaction of the Court that the witness cannot be found, his property, real and personal, to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale. Provided always, that when the order for attachment and sale shall have been issued by any Court subordinate to the Court of Sudder Dewanny Adawlut, a summary appeal shall lie within one month from the date of the order of the subordinate Court to the Court to which its orders are generally appealable; and that the Rules for the time being in force in regard to sales made in execution of decrees, as to the mode and period of attachment and the place or manner of sale, and as to claims of third parties to property attached and notified for sale, shall be held applicable to such sales.

XXVIII. *Clause 1.*—The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property, but shall order the same to be released from attachment if the witness shall appear and satisfy the Court that he did not abscond, or keep out of the way to avoid service of a summons and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond, or keep out of the way to avoid service of a summons, and that he had not such notice of the proclamation as aforesaid, it shall be in the discretion

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discretion of the Court to order the property attached or any part thereof to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such defaulter absconding, or keeping out of the way, and such fine not exceeding the amount in dispute in the suit as the Court may deem fit to impose upon the witness, having regard to all the circumstances of the case, and the condition in life of the witness, or the Court may order the property to be released from attachment upon payment of such costs and fine as aforesaid.

Clause 2.—An order made in pursuance of this Section shall be subject to appeal in the same manner and within the same period, as an appeal against an order for attachment and sale under the last preceding Section of this Act.

XXIX. All orders as to fines, or the levying thereof, or as to imprisonment under this Act, shall be subject to a similar appeal within one month from the date of the order.

XXX. 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 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.

XXXI. On

XXXI. On the day appointed for the hearing, 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 with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanor of any witness whilst under examination.

XXXII. In cases where the evidence is needed of females, who, according to the custom of the country, ought not to be compelled to appear as witnesses in a Court of Justice, and in which the Court shall be of opinion that the ends of justice require and justify it, such Court may issue a commission to any Officer of the Court or other person, to be named in such commission, for the examination of such females in the hearing of the parties to the suit or their vakeels, in such manner as the Court may direct, having regard to the custom and usage of the country, and with liberty to the parties or their vakeels, to cross-examine, anything in Section V. Act VII. 1841, to the contrary notwithstanding.

XXXIII. On or before the day appointed for trial, the Court may for any sufficient reason, such as the unavoidable absence of any material

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rial witness, or for other good cause, on the application of either party, postpone the hearing to another day, to be named, on such terms as to the payment to the opposite party of his costs occasioned by the postponement, and otherwise as to the Court shall seem reasonable. In such case notice in writing shall be given to each of the witnesses to attend and give evidence, or to produce a document on the substituted day, instead of the day mentioned in their summonses, if there be time to do so and the judge shall so order. The notice shall be served in the same manner as a summons. The service of such notice shall have the same effect as if the substituted day had been originally named in such summons as the day for the appearance in Court to give evidence or produce a document, and all the provisions in this Act relating to summonses to give evidence or produce documents, shall extend to such notices in the same manner as if such notices had been expressly mentioned in such provisions. If the application be too late to serve such notices, the Court may order that the examination of any witness who may be present, or shall attend in pursuance of a summons, shall be proceeded with, and that the further hearing of the case, after the examination of such witness, shall alone be postponed.

XXXIV. Unless the hearing be postponed in manner aforesaid, it shall commence on the day appointed, or as soon afterwards as the business which may be pending before the Court and may be entitled to priority will allow, and the recording of evidence on the trial of any suit when begun under the rules above enacted, shall, unless there be good and sufficient reason to the contrary, (which reason shall be recorded) continue on the same day, or on consecutive business days, until the whole of the evidence of the witnesses present shall be heard. The parties or such of them as desire it shall then be heard either by themselves or their pleaders orally on the merits of the case as regards the issues both of fact and law, and after considering the arguments and evidence, the Judge shall record his judgment under Act XII. 1843.

XXXV. If the Court, after the evidence of all the witnesses shall have been heard, and before hearing the pleaders or recording the judgment, shall think it necessary for the ends of justice to inspect any document,

cument, or to examine any party to the suit, or any other person whose evidence may appear to be material, the Court, of its own accord, may cause such party or person to be summoned to attend as a witness, to give evidence, or to produce such document, if in his possession, on a day to be appointed, and may examine such party or person as a witness in open Court, or in such other manner as the Court may direct, upon any question which the party or witness may be bound to answer and the Court may think necessary, and may also compel the production of any document mentioned in such summons, which any such persons may have in his possession or power, and be bound to produce. Any witness so called shall be subject to the cross-examination of either party, or his vakeel. If such person, whether a party or not, shall be a female who, according to the custom of the country, ought not to be compelled to appear as a witness in a Court of Justice, the Court may order such person to be examined in the manner provided by Section XXXII. of this Act, upon such questions as it may direct. The Commissioner or other person authorized to take the examination in such case may put such further questions as in his judgment may be necessary, or may arise out of the answers to be given to the questions directed by the Court.

XXXVI. The Judge may cause public notice to be given in Court, either before or during the examination of any witness, requiring all or any other witnesses, whether parties or not, who have been summoned or inserted in the list of witnesses in the same cause, to leave and to remain out of Court until further order. Any witness in a cause who without lawful excuse shall wilfully remain in or come into Court, contrary to such notice, shall be punishable in the same manner as for a contempt of Court in open Court. Whenever such notice shall be given the consequence of disobedience thereto shall be publicly explained at the time of giving the notice.

XXXVII. Any party to a suit, appeal or proceeding who may be examined as a witness therein, shall, except as otherwise provided by this Act, be examined according to the rules for the time being in force as to the examination of witnesses not being parties to the suit, and shall

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be punishable for any false evidence given by him, in the same manner as if he were not a party.

XXXVIII. The words "witness" and "witnesses" in Act VII. 1841, shall respectively include any party or parties to a suit, and the said Act shall be read as if the words "or party" "or parties" had been used in such Act, in conjunction with the words "witness" or "witnesses" respectively. Provided that the deposition of a party taken under the provisions of this Section at the instance of any opposite party may be read in evidence by, or on behalf of, such last-mentioned party, without the proof required by Section V. of the said Act. Provided also that no deposition of any party taken under the provisions of this Section shall be read or used in evidence unless taken and read at the *instance of some opposite party, or unless it shall be proved that the deponent is unable, from sickness or infirmity, to attend to be personally examined, or is, without collusion, or any reference to the suit, at so great a distance from the Court, that in the judgment of the Court it would be unreasonable to require his personal attendance in Court for the purpose of giving such evidence, in which last-mentioned case it shall be discretionary with the Court, having regard to the nature of the case and of the evidence given, either to allow or to refuse such deposition to be read.*

XXXIX. No appeal shall lie from any order or decision of a Judge with respect to summoning or examining any party to a suit, or as to allowing a deposition to be read under the Section next preceding.

XL. If any party to any such suit as aforesaid shall, in any pleading or statement, refer to any document in his possession or power, as a material proof or document in support of his claim or defence, he shall file such document with the pleading or statement, unless the Court shall, for good and sufficient cause, extend the time for filing the same; and any adverse party shall be entitled, by himself, or his vakeel, to inspect and take a copy of the document.

XLI. In the construction of this Act, unless where it is otherwise expressly provided, or there is something in the subject or context repugnant to such construction, or which would render such construction inapplicable

inapplicable to the case, the word "Court" shall mean any Civil Court of the East India Company, and shall include any Judge or other officer or person mentioned in Section II. of this Act; the word "Judge" shall be understood to mean the chief judicial authority presiding in any such Court, and shall include any officer or person having, by law, or consent of parties, authority to examine witnesses and to act judicially; the word "suit" shall be deemed to mean and include any suit, appeal or proceeding mentioned in Section II.; 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*.

XLII. This Act shall extend only to Civil proceedings, and to the Presidency of Fort William in Bengal, and shall not include any of Her Majesty's Supreme Courts of Judicature.

XLIII. The provisions of Sections IX. X. and XI. of this Act shall not extend to the Zillah of Chittagong or Sylhet.

XLIV. This Act shall come into operation on the 1st day of January 1854.

GEO. PLOWDEN,
Offg. Secy. to the Govt. of India.