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## CAP. XXII.

### An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise. [30th *March* 1831.]

WHEREAS great Difficulties and Delays are often experienced, and sometimes a Failure of Justice takes place, in Actions depending in Courts of Law, by reason of the Want of a competent Power and Authority in the said Courts to order and enforce the Examination of Witnesses, when the same may be required, before the Trial of a Cause: And whereas by an Act passed in the Thirteenth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for the establishing certain Regulations for the better Management of the Affairs of the* East India *Company, as well in* India *as in* Europe, certain Powers are given and Provisions made for the Examination of Witnesses in *India* in the Cases therein mentioned; and it is expedient to extend such Powers and Provisions: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every the Powers, Authorities, Provisions, and Matters contained in the said recited Act, relating to the Examination of Witnesses in *India*, shall be and the same are hereby extended to all Colonies, Islands, Plantations, and Places under the Dominion of His Majesty in Foreign Parts, and to the Judges of the several Courts therein, and

13 G. 3. c. 63.

Powers of the recited Act, as to the Examination of Witnesses in India, extended to the Colonies, &c.

and to all Actions in the Courts at Westminster, when Examination by Commission shall appear necessary.

and to all Actions depending in any of His Majesty's Courts of Law at *Westminster*, in what Place or Country soever the Cause of Action may have arisen, and whether the same may have arisen within the Jurisdiction of the Court to the Judges whereof the Writ or Commission may be directed, or elsewhere, when it shall appear that the Examination of Witnesses under a Writ or Commission issued in pursuance of the Authority hereby given will be necessary or conducive to the due Administration of Justice in the Matter wherein such Writ shall be applied for.

Judges to whom the Commission is directed empowered to enforce the Attendance of Witnesses.

II. And be it further enacted, When any Writ or Commission shall issue under the Authority of the said recited Act, or of the Power herein-before given by this Act, the Judge or Judges to whom the same shall be directed shall have the like Power to compel and enforce the Attendance and Examination of Witnesses as the Court whereof they are Judges does or may possess for that Purpose in Suits or Causes depending in such Court.

Costs of Writs to be in the Discretion of the Court.

III. And be it further enacted, That the Costs of every Writ or Commission to be issued under the Authority of the said recited Act, or of the Power herein-before given by this Act, in any Action at Law depending in either of the said Courts at *Westminster*, and of the Proceedings thereon, shall be in the Discretion of the Court issuing the same.

Courts at Westminster, Lancaster, and Durham may order the Examination of Witnesses within their Jurisdiction by an Officer of the Court; or may order a Commission for that Purpose out of their Jurisdiction.

IV. And be it further enacted, That it shall be lawful to and for each of the said Courts at *Westminster*, and also the Court of Common Pleas of the County Palatine of *Lancaster*, and the Court of Pleas of the County Palatine of *Durham*, and the several Judges thereof, in every Action depending in such Court, upon the Application of any of the Parties to such Suit, to order the Examination on Oath, upon Interrogatories or otherwise, before the Master or Prothonotary of the said Court, or other Person or Persons to be named in such Order, of any Witnesses within the Jurisdiction of the Court where the Action shall be depending, or to order a Commission to issue for the Examination of Witnesses on Oath at any Place or Places out of such Jurisdiction, by Interrogatories or otherwise, and by the same or any subsequent Order or Orders to give all such Directions touching the Time, Place, and Manner of such Examination, as well within the Jurisdiction of the Court wherein the Action shall be depending as without, and all other Matters and Circumstances connected with such Examinations, as may appear reasonable and just.

Compelling Attendance of Witnesses, or Production of Documents.

V. And be it further enacted, That when any Rule or Order shall be made for the Examination of Witnesses within the Jurisdiction of the Court wherein the Action shall be depending, by Authority of this Act, it shall be lawful for the Court, or any Judge thereof, in and by the first Rule or Order to be made in the Matter, or any subsequent Rule or Order, to command the Attendance of any Person to be named in such Rule or Order for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Rule or Order, and to direct the Attend-

ance of any such Person to be at his own Place of Abode, or elsewhere, if necessary or convenient so to do; and the wilful Disobedience of any such Rule or Order shall be deemed a Contempt of Court, and Proceedings may be thereupon had by Attachment (the Judge's Order being made a Rule of Court before or at the Time of the Application for an Attachment), if, in addition to the Service of the Rule or Order, an Appointment of the Time and Place of Attendance in obedience thereto, signed by the Person or Persons appointed to take the Examination, or by One or more of such Persons, shall be also served together with or after the Service of such Rule or Order: Provided always, that every Person whose Attendance shall be so required shall be entitled to the like Conduct Money and Payment for Expences and Loss of Time as upon Attendance at a Trial: Provided also, that no Person shall be compelled to produce, under any such Rule or Order, any Writing or other Document that he would not be compellable to produce at a Trial of the Cause.

Disobedience to be deemed a Contempt of Court.

Payment of Expences.

Proviso as to Production of Documents.

VI. And be it further enacted, That it shall be lawful for any Sheriff, Gaoler, or other Officer having the Custody of any Prisoner, to take such Prisoner for Examination under the Authority of this Act, by virtue of a Writ of Habeas corpus to be issued for that Purpose, which Writ shall and may be issued by any Court or Judge under such Circumstances and in such Manner as such Court or Judge may now by Law issue the Writ commonly called a Writ of Habeas corpus ad testificandum.

Prisoners may be removed by Habeas corpus for Examination.

VII. And be it further enacted, That it shall be lawful for all and every Person authorized to take the Examination of Witnesses by any Rule, Order, Writ, or Commission made or issued in pursuance of this Act, and he and they are hereby authorized and required to take all such Examinations upon the Oath of the Witnesses, or Affirmation in Cases where Affirmation is allowed by Law instead of Oath, to be administered by the Person so authorized, or by any Judge of the Court wherein the Action shall be depending; and if upon such Oath or Affirmation any Person making the same shall wilfully and corruptly give any false Evidence, every Person so offending shall be deemed and taken to be guilty of Perjury, and shall and may be indicted and prosecuted for such Offence in the County wherein such Evidence shall be given, or in the County of *Middlesex* if the Evidence be given out of *England*.

Examinations of Witnesses to be taken upon Oath.

Persons giving false Evidence to be deemed guilty of Perjury.

VIII. And be it further enacted, That it shall and may be lawful for the Master, Prothonotary, or any other Persons to be named in any such Rule or Order as aforesaid for taking any Examination in pursuance thereof, and he and they are hereby required, to make, if Need be, a special Report to the Court touching such Examination, and the Conduct or Absence of any Witness or other Person thereon or relating thereto; and the Court is hereby authorized to institute such Proceedings and make such Order and Orders upon such Report as Justice may require, and as may be instituted and made in any Case of Contempt of the Court.

Persons appointed for taking Examinations to report to the Court upon the Conduct or Absence of Witnesses, if necessary.

IX. And

Costs of the Order for Examination may be made Costs in the Cause.

IX. And be it further enacted, That the Costs of every Rule or Order to be made for the Examination of Witnesses under any Commission or otherwise by virtue of this Act, and of the Proceedings thereupon, shall (except in the Case herein-before provided for) be Costs in the Cause, unless otherwise directed either by the Judge making such Rule or Order, or by the Judge before whom the Cause may be tried, or by the Court.

Restriction as to the reading of Examinations or Depositions without Consent of the Party.

X. And be it further enacted, That no Examination or Deposition to be taken by virtue of this Act shall be read in Evidence at any Trial without the Consent of the Party against whom the same may be offered, unless it shall appear to the Satisfaction of the Judge that the Examinant or Deponent is beyond the Jurisdiction of the Court, or dead, or unable from permanent Sickness or other permanent Infirmity to attend the Trial; in all or any of which Cases the Examinations and Depositions certified under the Hand of the Commissioners, Master, Prothonotary, or other Person taking the same, shall and may, without Proof of the Signature to such Certificate, be received and read in Evidence, saving all just Exceptions.

Proviso as to Judges of Durham.

XI. Provided always, and be it further enacted, That no Order shall be made in pursuance of this Act by a single Judge of the Court of Pleas of the said County Palatine of *Durham*, who shall not also be a Judge of one of the said Courts at *Westminster*.

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