

CHAPTER 5

Witnesses—Civil Courts

PART A.—ATTENDANCE OF WITNESSES (GENERAL).

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| <p>1. A Court can compel the personal attendance of any witness residing within the local limits of its jurisdiction, or without such limits if the person to be summoned is at a place, not more than fifty miles from the Court house or not more than two hundred miles if there is a railway communication or public conveyance for 5/6th of distance, provided that he is not exempted under any of the provisions of the Code of Civil Procedure, 1908. A proviso has been added to Order XVI, Rule 19, Civil Procedure Code in Punjab with the result that a Court situate in the State of Punjab may require the personal attendance of any witness residing in the State of Punjab or the Union territory of Delhi. (High Court Notification No. 60—General/IX. Y. 8 dated the 4th March, 1955)</p> | <p>Compulsory attendance.</p> |
| <p>2. Under Section 132 of the Code of Civil Procedure 1908, women, who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal attendance in Court.</p> | <p>Attendance of pardah nashin ladies.</p> |
| <p>3. The Court has a discretion to exempt from attendance as witness any person who in the opinion of the Court, is, from sickness or infirmity unable so to attend (O.26 R. 1. C. P. C.) or who, being a Civil or Military Officer of the Government, cannot attend without detriment to the Public Service (O.26, R. 4, C. P. C.). As regards the attendance of Patwaries in Civil Courts Part B of this Chapter should be referred to.</p> | <p>Other exemptions.</p> |
| <p>4. The Court may issue a Commission for the examination of a witness, whose attendance cannot be compelled according to law, or cannot be secured for any other sufficient reason, in the circumstances specified in Order XXVI of the Civil Procedure Code.</p> | <p>Evidence by commission.</p> |
| <p>5. The general procedure for issue of processes to Service of witnesses is the same as that in respect of defendants. For detailed instructions on the subject, see Volume IV, Chapter 7 and Volume I, Chapter 1-D.</p> | <p>Service of processes.</p> |
| <p>6. Where a witness summoned to attend evidence or produce a document, fails to attend or to</p> | <p>Non-attendance, proof of service.</p> |

produce the document, without lawful excuse, the Court shall, on return of the service of the summons, examine the serving officer on oath, if his certificate has not been verified by affidavit and it may do so even when the certificate has already been so verified, to satisfy itself that the summons was duly served.

Proclamation
attachment and
arrest in case of
non-attendance.

7. The Court, on being satisfied that the person the document in compliance with such summons without any lawful excuse and that his evidence or the document is material, may issue a proclamation requiring him to attend to give evidence or produce the document at a time and place to be named therein. Or, the Court may, in lieu thereof, or in addition to it, issue a warrant, with or without bail, for the arrest of such person and may make also an order for the attachment of his property to such an amount as it deems fit to cover the costs of the attachment and any fine which may be imposed for his failure to attend, not exceeding Rs. 500. (vide Order XVI, Rule 10, Code of Civil Procedure, 1908).

Fine.

8. Whenever such person appears and satisfies the Court that he did not, without lawful excuse, fail to comply with the summons, the Court may release the attachment or cancel the warrant of arrest, as the case may be. Where such person does not appear, or appears but fails to satisfy the Court that there was a lawful excuse for his absence, the Court may impose a fine, not exceeding Rs. 500 to be recovered by the attachment if not already effected) and sale of his property (Order XVI, Rule 12, Code of Civil Procedure, 1908).

Party witness.

9. It should be noted that, where a party to a suit is required to give evidence or produce a document, the provisions as to witnesses apply to him, so far as they are applicable.

Warrants against
Government
servants for non-
attendance.

10. The Judges wish to impress upon the Subordinate Courts the desirability of caution in issuing warrants of arrest against a person in Public Service, unless and until the Court is fully satisfied that he is willfully omitting to obey the summons. In most cases, it will produce the desired effect if a notice is issued to the person at fault to show cause why he should not be proceeded against under the penal provisions of Order XVI and the attention of the superior officer is drawn to the conduct of his subordinate. Of course, in cases of pronounced refractoriness, the

Courts can set the law in motion in any one or all of the forms, available to them.

11. In cases where proper service of summons has been effected but the witnesses fail to attend, either through negligence or in collusion with the party on whose behalf they have been cited, Civil Courts should use their powers to take penal action freely, and if parties are unwilling to take coercive action against their own witnesses, the issue of any further summons through the Court for their attendance should be refused. The Courts should also, where necessary, take action themselves against defaulting witnesses. The provisions of Order XVI, Rule 16, should be studied and used, and if parties refuse to make an application under Order XVI, Rule 16 (2), the Court may refuse to grant any further adjournment.

Non-attendance
duty of parties and
Courts.

12. When witnesses are in attendance, every effort should be made to record their evidence promptly and they should not be required, as far as possible, to attend again at any adjourned hearing. In the case of business men and Government servants, the Court should, if possible, give them some indication as to the hour when their evidence is likely to be recorded, so as to avoid their being detained on the Court premises longer than may be necessary.

Prompt disposal of
witnesses.

13. (a) In any case where a party to a suit wishes to prove the fact of a birth or death by reference to one of the registers of vital statistics he should be directed in the first instance to file a certified copy of the entry on which he relies. Civil Courts should refrain from summoning the clerks of Civil Surgeons' offices with the registers except where their presence is deemed absolutely necessary.

Summoning
Government
servants to prove
birth or death
entries.

(b) Similarly, the Court should not, without sufficient reasons, summon the origin records of Municipal Committees and Property Tax authorities where the purpose could be served by the production of certified copies of these public documents. Whenever it appears necessary to summon the original records, as for instance where signatures of a person on an application or plan etc; have to be proved, the courts should, as a rule, return the original record to the official producing the same soon after the witnesses relating to the document and present on that hearing have been examined. The original record should not be retained in court except under exceptional circumstances such as where the authority concerned has declined to give the party a duly certified copy or where the original document appears to have been tampered with.

Municipal
records.

Agreements
with rulers of
former Indian
States.

(c) In civil suits involving rights and property of Rulers of former Indian States, it often becomes necessary to prove the agreements respecting their accession to the Indian Union or their merger and integration into new political units. Such agreements with the Union Government are the acts of the sovereign authority and are therefore public documents within clause 1 (1) of section 74 of the Indian Evidence Act. These are also printed in "White Paper on Indian States", a Central Government publication and are therefore admissible under section 78 (1) of the Act. These agreements can also be proved by the production of certified copies under section 77 of the Act. A summons to the Government of India should therefore be avoided where all that is necessary is to prove the agreement. Apart from the trouble and expense involved to an officer of the Ministry concerned, there is risk of mishap to or loss of these valuable documents. The Courts should not therefore summon the original agreements except in very special circumstances as for example, where the direct testimony of an officer of the Ministry is necessary to elucidate any material point arising in the case.