

THE RECUSANT WITNESSES ACT 1853
Report No.78

THE RECUSANT WITNESSES ACT 1853

The Recusant Witnesses Act 1853, as mentioned in long title of the Act, amended the law of evidence applicable in the civil courts of the East India Company in the Bengal Presidency. This Act originally contained 44 sections, which have been repealed by various laws except section 26. Section 40 of the Act was repealed by Act X of 1855, sections 1-18, 20-25, 27-39 and 41-44 of the Act were repealed by Act X of 1861 and section 19 of the Act was repealed by the Evidence Act 1872. The existing section 26 of the Act reads as under: -

26. 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 ¹ * * * 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.

Under the above Act the person who neglects or refuses to obey summons or absconds to avoid the service of summons or who without lawful excuse refuses to give evidence

has been held liable for all damages which the effected person may have sustained in consequence of such absconding or keeping out of the way.

The Recusant Witnesses Act 1853 was enforced only in the presidency of Bengal, the area taken over firstly after battle of Palsy' and either the people were not accepting writ of the East India Company in Bengal or were facing difficulties in traveling from one place to another in forest and delta terrain of Bengal, therefore, the person avoiding or evading the service of summons for the purpose of giving evidence or producing a document was made liable for all the damages incurred by the effected person due to such neglect.

After the adoption of Civil Procedure Code 1908 and the Criminal Procedure Code 1898, and the fall of East Pakistan there is no need to have the single section dormant law on the statute book. The Civil Procedure Code in section 27 to 32 and Order XVI provides detailed procedure for the service of summons and forcing attendance of witnesses and penalty for default, however, no provision is available in these sections for making the witness or any other person who disobey the summons, liable also for damages in favour of the party which has suffered due to his absconding or evading from service of summons.

More than one and half century old Act of the period of East India Company having been repealed except a single section points weakness of judicial system of that period in compelling the witness to appear or procure his evidence and on failure of the suit by

avoiding service of summons by such witness it was left open to the party to file suit for damages against the recusant witnesses. Presently there exists a strong judicial system with vast powers to compel appearance of a witness. The Courts under the Civil and Criminal Procedure Codes as well as under the laws of other concerned agencies can force appearance of the witness either by arresting him or attaching and sale of his property. The powers of the Court to compel appearance of a person under the Code of Criminal Procedure 1898 are provided under Chapter VI of the Code in section 68 to 93-C of the Code. Such powers under the Civil Procedure Code 1908 are provided under sections 30 to 32 and order XVI of the Code.

In view of above the Act requires to be repealed. However, for the purpose of any compensation or damages, on failure of case in result of absconding from service of summons to give evidence the plaintiff may be compensated out of the sale proceeds of property of the witnesses as attached in connection with his failure to attend the court. However, the single section Act may be considered for repeal.

Draft Bill is placed below: -

A Bill

to repeal the Recusant Witnesses Act, 1853.

Whereas it is expedient to repeal the Recusant Witnesses Act, 1853 (Act XIX of 1853) for the purpose hereinafter appearing.

It is hereby enacted as follows: -

- 1. Short title and Commencement.** - (1). This Act may be called the Recusant Witnesses (repeal) Act, 2005.
(2). It shall come into force at once.
- 2. Repeal of Recusant Witnesses Act, 1853 (Act XIX of 1853):** - The Recusant Witnesses Act, 1853 (Act XIX of 1853) is hereby repealed.

Commission's deliberation on 4.2.2006

The above working paper was considered by the Commission in its meeting held on 04.02.2006 and the following are the deliberations:-

The Commission considered the Recusant Witnesses Act 1853 and resolved that the subsequent enactments like the Code of Criminal Procedure 1898 and the Civil Procedure Code, 1908 provide sufficient measures to force a witness to attend the court for evidence, therefore, the Commission approved the repeal of the Act.