

Emperor Vs. Corporal Allen

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Court : Allahabad

Decided On : Dec-06-1909

Reported in : 4Ind.Cas.400

Judge : Richards, J.

Appellant : Emperor

Respondent : Corporal Allen

Judgement :

ORDER

Richards, J.

1. This is an application for the issue of a Commission to take the evidence of certain Mr. H. Frost at present residing at Hiawatha, 73 Belle Vue Road, Southbourne on Sea, England. Section 503 of the Code of Criminal Procedure provides for the issue of a Commission in criminal cases in India where the witness is residing in India or in the territories of any prince or chief in India. There is no provision in the Code for the issue of a Commission for the examination of a witness in criminal cases residing elsewhere. In the case of *Empress v. S. Moorga Chatty* (1) it was admitted that there was no authority for granting a Commission in criminal case. One of the learned Judges at page 369 pointed out that there was a deficiency in the Indian Law in this respect and he expressed a hope that such a deficiency would be supplied. The learned Counsel on behalf of the accused has

admitted that there is no authority for the issue of a Commission. He asks, However, for leave to amend his application and prays that instead of a Commission a letter of request may be sent by this Court to the Supreme Court of Judicature in England. The Criminal Procedure Code makes no provision to the issue of such a letter of request 'but the learned Counsel suggests that the Statute 22 Victoria cap. 20 and the Rules framed by the Supreme Court in England under that Act supplies the deficiency. Section 1 of the last mentioned Act is as follows:' Where, upon an application for this purpose it is made to appear to any Court or Judge having authority under this Act that any Court or Tribunal of competent jurisdiction in Her Majesty's dominions has duly authorized, by Commission, order or other process, the obtaining the testimony in, or in relation to, any action, suit or proceeding pending in or before such Court or Tribunal, of any witness or witnesses out of the jurisdiction of such Court or Tribunal and within the jurisdiction of such first mentioned Court or of the Court to which such Judge belongs or of such Judge, it shall be lawful for such Court or Judge to order the examination before the person or persons appointed and in manner and form directed by such Commission; order or other process as aforesaid, of such witness or witnesses accordingly; and it shall be lawful for the said Court or Judge or any other Judge having authority under this Act by any subsequent order to command the attendance of any person to be named in such order for the purpose of being examined or the production of any writings or other documents to be mentioned in such order and to give all such directions as to the time, place and manner of such examination and all other matters connected therewith as may appear reasonable and just and any such order may be enforced and any disobedience thereof punished in like manner as in case of an order made by such Court or Judge in a cause depending in such Court or before such Judge '. It seems to me (assuming that the Statute refers to criminal cases at all) that this section assumes the issue of a lawful and regular order either in the form of a Commission or otherwise appointing certain person or persons in England, Ireland or Scotland to take the evidence of the witness and that the. Statute merely provides for carrying into effect such regular order of a Court of competent jurisdiction in. His Majesty's dominions. It enables the English, Scotch or Irish Courts to enforce attendance of a witness before the person named in, and appointed by, the order of Courts in

India or elsewhere in His Majesty's Dominions. It seems to me that no letter of request ought to issue from the Indian Courts unless one of the latter has already, under proper authority, made a regular and legal order for the examination of the witness. I am also of opinion that this Court must look to the Code of Criminal Procedure for authority to make such an order and, as I have already pointed out, no such authority exists in the Code of Criminal Procedure. Mr. Boys relies on Order 37, Rules 54 to 59 of the Rules of the Supreme Court of Judicature in England. 22 Victoria cap. 20, Section VI, authorizes English Courts to make rules for carrying into effect the provisions of the Act. Rules 54 to 58 of the Rules of the Supreme Court of Judicature are made under authority of Foreign Tribunal Evidence Act, 1856 and Extradition Act, 1870. Rule 59, no doubt, provides that Rules 54 to 58 shall apply as far as may be to applications under the Evidence by Commission Act, 1859 (22 Victoria Cap. 20). It is quite clear that Rules made under the authority of an Act cannot extend the provisions of the Act itself and if the Act itself does not authorize the issue of a letter of request independently of, the issue of a Commission, the Rules made under the Act cannot authorize the issue of such a letter. It does not seem to me, however, that Rule 59 is in any way inconsistent with the Evidence by the. Commission, Act, 1859. It merely provides that Rules 54 to 58 of Order 37 shall apply as far as may be. I hold that I have no authority either to issue a Commission or a letter of request to the English Courts for the examination of a witness in a criminal case. No object will be gained by allowing any amendment of the application which must, therefore, be rejected.

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