

BENGAL. MADRAS. BOMBAY.---JUDICIARY.

Repealed by Act... 2 of 2010

of Sec... 17... Act No. XXXVII. OF 1850.

[Passed on the 1st November, 1850.]

1. Repeals Acts 6, 1838; 26, 1839; 13, 1843.
2. Inquiries ordered by Government into conduct of public servants to proceed on formal charges.
3. To whom the inquiry may be committed.
4. Government to appoint some person to conduct its prosecution.
- 5, 6. Charges by private accuser to be reduced to writing, and verified by oath, &c. and (6) private prosecutor may be required to give security to prosecute charge and to be forthcoming to meet counter-charge.
7. Government may abandon its prosecutions and give leave to private accuser to continue them, on giving security.
- 8, 9. Commissioners under this Act to have the like powers to punish contempts and summon witnesses as Courts of Justice, and (9) persons disobeying their process to be liable to penalties, &c.
10. A copy of charges and list of documents and witnesses to be delivered to accused before commencement of inquiry.
11. Articles of charge to be exhibited to the Commissioners; accused to plead to each of them, or in default to be taken to admit truth of them.
- 12, 13. Prosecutor to speak on the charges, &c. (13) Evidence next to be taken, by examination and cross examination of witnesses.
14. Prosecutor by leave of Court may call witnesses not in his list, &c.
- 15, 16, 17. Case for prosecution being closed, accused shall make his defence,

REPEALED

orally or in writing, &c. and (16) then exhibit his evidence and examine his witnesses, &c. (17) either on oath or solemn affirmation, and be himself a witness.

18. Commissioners to take notes of the evidence and have them read to witnesses.

19. If accused puts in evidence a written defence, the prosecutor to have a reply and give evidence to contradict, &c.

20, 21, 22. Commissioners may order charges to be amended for want of clearness, &c. and adjourn inquiry for specified reasons, and (21) at end of proceedings, report to Government, and (22) Government on consideration of report may make order, for further evidence to be taken, &c.

23. Explains meaning of word "Government" in this Act.

24, 25. Act not to repeal any Act, &c. regulating suspension or dismissal of P. S. Ameens, &c. nor (25) the authority of Government to suspend, &c. any public servant.

X For regulating Inquiries into the behaviour of Public Servants.

Whereas it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable without the sanction of Government, and to make the same uniform throughout the territories under the Government of the East India Company, It is enacted as follows:

I. The following Acts VI. 1838, XXVI. 1839, and XIII. 1843, are repealed, but not so as to revive any Act or Regulation, or part of any Act or Regulation thereby repealed. X

II. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the East India Company not removable from his Office without the sanction of the same Government, it shall cause the substance of the imputations to be drawn into distinct Articles of Charge, and shall order a formal and public inquiry to be made into the truth thereof.

III. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government Commissioners for the purpose: notice of which Commission shall be given to the person accused ten days at least before the beginning of the inquiry.

IV. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

V. When the charge shall be brought by an accuser, the

Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury: but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

VI. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or prejury or subornation of perjury, as the case may be.

VII. At any subsequent stage of the proceedings, the government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

VIII. The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by Act XXX. 1841, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the Commission, and shall be entitled to the same protection as the Zillah and City Judges except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through and executed by the Zillah or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature there. When the Commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the Commission.

XI. All persons disobeying any lawful process issued as aforesaid for the purposes of the Commission shall be liable to the

same penalties, as if the same had issued originally from the Court or other authority through whom it is executed.

X. A copy of the Articles of Charge, and list of the documents and witnesses by which each charge is to be sustained shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery, and the first day of the inquiry.

XI. At the beginning of the inquiry, the prosecutor shall exhibit the Articles of Charge to the Commissioners, which shall be openly read, and the person accused shall thereupon be required to plead 'guilty' or 'not guilty' to each of them, which pleas shall be forthwith recorded with the Articles of Charge. If the person accused refuses, or without reasonable cause neglects to appear to answer the charge either personally or by his Counsel or Agent, he shall be taken to admit the truth of the Articles of Charge.

XII. The prosecutor shall then be entitled to address the Commissioners in explanation of the Articles of Charge, and of the evidence by which they are to be proved: his address shall not be recorded.

XIII. The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by or on behalf of the prosecutor, and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the Commissioners, who also may put such questions as they think fit.

XIV. If it shall appear necessary before the close of the case for the prosecution, the Commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

XV. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if

made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

XVI. The Evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the Commissioners according to the like rules as the witnesses for the prosecution.

XVII. All witnesses, either for the prosecution or defence, shall be examined on oath, or, if exempt from taking an oath in Courts of Justice, on solemn affirmation, to be administered in either case by one of the Commissioners, and every witness so examined and wilfully giving false evidence on any material point shall be deemed guilty of and liable to the penalties of perjury. When the prosecution is not conducted on behalf of Government, the prosecutor may himself give evidence for the prosecution and may be examined for the defence.

XVIII. The Commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary explained to him in the language in which it was given, and shall be recorded with the proceedings.

XIX. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

XX. When the Commissioners shall be of opinion that the Articles of Charge, or any of them, are not drawn with sufficient clearness and precision, the Commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The Commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the

Commissioners shall record the application, and their reasons for refusing to comply with it.

XXI. After the close of the inquiry, the Commissioners shall forthwith report to Government their proceedings under the Commission, and shall send with the record thereof their opinion upon each of the Articles of Charge separately, with such observations as they think fit on the whole case.

XXII. The Government, on consideration of the report of the Commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional Articles of Charge to be framed, in which case the inquiry into the truth of such additional Articles shall be made in the same manner as is herein directed with respect to the original charges. When Special Commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the Commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

XXIII. The word 'Government' as used in this Act means the Governor General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant Governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused.

XXIV. Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sudder Ameen or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said Officers, under this Act, in any case in which the Government shall think it expedient.

XXV. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.