

ACT No. IX of 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 30th April 1859.)

*An Act to provide for the adjudication of claims to property seized as forfeited.*

WHEREAS it is expedient to make provision for the adjudication of claims to property seized as forfeited, with a view to the speedy determination of the same; and whereas it is also expedient to remove doubts concerning the powers of Officers or other persons to whom Commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such Officers or other persons; It is enacted as follows:—

I. It shall be lawful for the Executive Governments of the Lower and North-Western Provinces of the Presidency of Bengal, to establish within any part of the Territories subject to their respective Governments, Courts of Special Commission for the trial and determination of claims to property seized as forfeited, and to assign, from time to time, such local jurisdiction to the Courts so established as may appear proper. Provided that no additional expense shall be incurred by the establishment of any such Court without the previous sanction of the Governor General of India in Council.

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II. Every

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II. Every Court established under this Act shall consist of not less than three Commissioners, who shall sit together for the trial and determination of claims ; but any one or more of them shall have power to make all such orders as may be necessary for preparing the cases that may be instituted for trial and decision.

Court to consist of three Commissioners.

III. Whenever any Court shall be established under the provisions of this Act, with jurisdiction in any district or districts, notice thereof shall be given by a written proclamation, of which copies shall be affixed in the several Courts and in the Offices of the several Collectors and Magistrates of such district or districts ; and the powers heretofore vested in the Courts of such district or districts in respect of all cases cognizable by the Courts established under this Act, shall be suspended until such Courts shall be informed, by an order under the signature of the Secretary to Government, that the local jurisdiction of such Court of Special Commission has ceased, of which notice shall be given by proclamation in the manner aforesaid.

Notification of establishment of Court in any District.

IV. Any case pending before any Court sitting as a Court of original jurisdiction at the time of the passing of this Act in respect of a matter made cognizable by Courts established under its provisions, shall be transferred to the Court of Special Commission within the limits of whose jurisdiction the property in dispute is situate, and such Court shall summon the defendant and proceed to dispose of the case in the same manner as if it had been instituted before it.

Transfer of pending suits.

V. The Courts established under this Act shall be held at such place within the limits of their respective jurisdiction as shall, from time to time, be appointed by the local Government.

Court where to be held.

VI. The plaint in suits instituted under this Act shall be written on the stamp paper prescribed for petitions of plaint in regular suits, and shall contain the following particulars, namely,

Form of plaint.

The name, description, and place of abode of the plaintiff, the relief sought for, the subject of the claim, and the cause of action ; and if the suit be brought against a defendant other than the Government or some Officer on the part of Government, the name, description, and place of abode of such defendant.

VII. The

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VII. The plaint shall be verified in the manner prescribed for the verification of plaints in Section XXVII Act VIII of 1859, (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter); and if the plaintiff contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

VIII. The plaint may be presented by the plaintiff in person or by his duly constituted representative, either in the principal Civil Court of original jurisdiction in the district in which the property or any part of the property in dispute is situate, or in the Court of Special Commission having jurisdiction over the claim under this Act. If the plaint be not presented in the Court of Special Commission, it shall be forwarded to such Court without delay.

IX. The Court shall fix a day for the appearance of the parties and for the hearing of the suit, of which due notice shall be given to the parties or their representatives, and on the day so fixed the parties shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements. If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit, and the Court shall issue a subpoena requiring such witness to attend the Court on that day. It shall be competent to the Court to require the personal attendance of the plaintiff on the day fixed for the hearing of the suit or at any subsequent stage.

X. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the plaintiff, or his representative when his personal attendance is not required, and the witnesses of the parties, and upon such examination and after inspecting the documents of the parties and making any further enquiry that may appear necessary, shall proceed to pass such order in the case in respect both to the claim and to the costs of suit as it may consider just and proper.

XI. It

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XI. It shall not be necessary to take down the depositions of the witnesses in writing at length; but the Court, as the examination of each witness proceeds, shall reduce into writing the substance of what such witness deposes, and the deposition so taken shall form part of the record. In all other respects the provisions of the Regulations and Acts for procuring the attendance of witnesses and for the examination, remuneration, and punishment of witnesses in suits before the Civil Courts, shall be of equal force and effect in cases tried under this Act.

XII. The rules contained in Act XII of 1843 (*concerning the time at which and the language in which the decisions of the Judges in the Courts of the East India Company are to be written*) shall be applicable to decisions passed under this Act.

XIII. No appeal shall lie from any decision passed under this Act, nor shall any such decision be open to revision.

XIV. The decrees of the Courts of Special Commission established under this Act shall be enforced by the Civil Courts of the district in which the property in dispute is situate, under the rules applicable to the execution of decrees passed by those Courts.

XV. The records of cases disposed of by Courts established under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

XVI. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property, to question the validity of the conviction.

XVII. Whenever any person shall have been convicted as above by an Officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such Officer acted, or that it represents him

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to have acted in a different capacity from that in which he had power to convict.

XVIII. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any Officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice. Nothing in this Section shall extend to persons entitled to pardon under Her Majesty's proclamation published in the Calcutta Gazette Extraordinary, dated the 1st of November 1858, or to any person who having surrendered himself within the period of one year after the seizure of his property shall be discharged by order of Government without a prosecution.

Property attached without adjudication of forfeiture.

Validity of such attachment not to be questioned unless offender surrender within one year and be acquitted, &c.

Proviso.

XIX. No Judge or other person acting as Commissioner under the provisions of Act XIV of 1857 (*to make further provision for the trial and punishment of certain offences relating to the Army, and of offences against the State*) and Act XVI of 1857 (*to make temporary provision for the trial and punishment of heinous offences in certain Districts*) has power to release property attached or seized as forfeited or as liable to be forfeited to Government except under the provisions of Section VIII Act XXV of 1857 (*to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and to provide for the adjudication and recovery of forfeitures of property in certain cases*), when the offender or alleged offender shall have surrendered himself for trial, and shall be tried and acquitted by such Judge or Commissioner, and shall prove that he did not escape or keep out of the way for the purpose of evading justice; and

Release of property attached as forfeited.

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any order passed by any such Judge or Commissioner for the release of any property attached or seized as forfeited or liable to be forfeited to Government, except upon the acquittal before him of the person accused, and upon proof that he did not escape or keep out of the way for the purpose of evading justice, is hereby declared null and void.

XX. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government; provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

Act not to affect the rights of parties not charged with an offence punishable by forfeiture of property.

Proviso.