

# RULES OF THE CENTRAL COURT. <sup>(1)</sup>

## *Obtaining Evidence for Foreign Tribunals*

(19 and 20 Vict., C. 113; 33 and 34 Vict., C. 52, s. 24).

1. Where under the *Foreign Tribunals Evidence Act, 1856*,<sup>(2)</sup> or the *Extradition Act, 1870*,<sup>(3)</sup> Section 24, any civil or commercial matter or any criminal matter is pending before a Court or Tribunal of a Foreign country and it is made to appear to the Court or a Judge by Commission Rogatoire, or Letter of Request, or other evidence as hereinafter provided, that such Court or Tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction the Court or a Judge may, on the *ex parte* application of any person shown to be duly authorised to make the application on behalf of such Foreign Court or Tribunal, and on the production of the Commission Rogatoire, or Letter of Request, or of a certificate signed in the manner, and certifying to the effect mentioned in Section 2 of the *Foreign Tribunals Evidence Act, 1856*,<sup>(2)</sup> or such other evidence as the Court or a Judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with Section 1 of the said *Foreign Tribunals Evidence Act, 1856*.<sup>(2)</sup>

2. An order made under the last preceding rule shall be in Form numbered 1 in the Schedule to these Rules, with such variations as circumstances may require.

3. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or such other qualified person as to the Court may seem fit. The person before whom an examination is ordered to be taken is hereinafter referred to as the examiner.

(1) Particulars of these Rules are as follows:—

Ordinance under which made.	Date on which made by Chief Judicial Officer.	Date on which approved by Legislative Council.	Date on which published in Papua Govt. Gaz.	Date on which took effect.
Unspecified; <i>semble, The Courts and Laws Adopting Ordinance of 1888</i>	(Undated)	12.8.1915	1.9.1915	1.9.1915 (Papua Govt. Gaz. of 1.9.1915)

(2) Printed on p. 837.

(3) See the *Extradition Acts 1870-1935* (United Kingdom), printed below, title CRIMINAL LAW.

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4. Where a Commission Rogatoire, or Letter of Request, as mentioned in Rule 1 of these Rules, is transmitted to the Central-Court<sup>(4)</sup> by His Majesty's Secretary of State for Foreign Affairs with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the Court by the agents in the Territory of Papua of any of the parties to the action or matter in the foreign country, the Registrar shall transmit the same to the Government Secretary, who may thereupon, with the concurrence of the Treasurer, take such steps as may be necessary to give effect to such Commission Rogatoire, or Letter of Request, in accordance with these Rules.

5. The examiner shall have all the powers of the Court in any cause or matter at any stage of the proceedings to order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court may think fit to be produced. Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

6. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

7. Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

8. Where any witness or person is ordered to be examined before an examiner, the examiner taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

9. The examination shall take place in presence of the parties, their counsel, solicitors or agents, and the witnesses shall be subject to cross-examination and re-examination.

10. The depositions taken before an examiner, shall be taken down in writing by or in the presence of the examiner, not ordinarily by questions and answers, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or

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(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

11. If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the office of the Registrar of the Court and thereupon the party requiring the attendance of the witness may apply to the Court *ex parte* or on notice for an order directing the witness to attend or to be sworn, or to answer any question as the case may be.

12. If any witness shall object to any question which may be put to him before an examiner, the question so put and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the Registrar's Office to be there filed and the validity of the objection shall be decided by the Court.

13. In any case under the two last preceding rules the Court shall have power to order the witness to pay any costs occasioned by his refusal or objection.

14. When the examination of any witness before an examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Registrar's Office, and there filed.

15. Any person directed in pursuance of these Rules to take the examination of any witness or person may administer oaths.

16. Any party in any cause or matter may by subpoena ad testificandum or duces tecum require the attendance of any witness before a person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such subpoena to attend before any officer or person for cross-examination.

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17.—(1.) Unless otherwise provided in the order for examination, the examiner shall, on completion of the examination, forward the record thereof to the Registrar of the Court, who shall, on receipt thereof, append thereto a certificate in Form 2 in the Schedule to these Rules, with such variations as circumstances may require, duly sealed with the seal of the Court.

(2.) Where the Commission Rogatoire, or Letter of Request, has been transmitted to the Court by His Majesty's Secretary of State for the Colonies or for Foreign Affairs, the Registrar shall, upon receipt of the depositions aforesaid, forward the same so certified, together with the Commission Rogatoire, or Letter of Request, to the Lieutenant-Governor<sup>(4)</sup> for transmission to that Officer of State.

(3.) Where the Commission Rogatoire, or Letter of Request, has been transmitted to the Court by a court or tribunal of a foreign country, the Registrar shall, upon receipt of the depositions aforesaid, forward the same so certified, together with the Commission Rogatoire, or Letter of Request, to the Lieutenant-Governor<sup>(4)</sup> for transmission to that court or tribunal.

18. An order made under Rule 1 hereof may, if the Court shall think fit, direct the said examination to be taken in such manner as may be requested by the Commission Rogatoire, or Letter of Request, from the Foreign Court or therein signified to be in accordance with the practice or requirements of such court or tribunal or which may for the same reason be requested by the applicant for such order. But in the absence of any such special directions being given in the order for examination the same shall be taken in the manner hereinbefore prescribed.

19. Rules 1 to 18 hereof shall apply, as far as may be, to applications under the *Evidence by Commission Act, 1859*<sup>(5)</sup> (22 Vict. c. 20), for the purpose of giving effect to any Commission or Letter of Request from any British tribunal out of the jurisdiction, except that, in those cases, the depositions, certified as above, and the Commission or Letter of Request (if any) shall be forwarded by the Registrar to the Lieutenant-Governor<sup>(4)</sup> for transmission—

- (a) where the Commission or Letter of Request has been transmitted to the Court by His Majesty's Secretary of State for the Colonies, to that Officer of State; and
- (b) where the Commission or Letter of Request has been transmitted to the Court by a judge of an Indian court, to His Majesty's Secretary of State for India; and

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(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(5) Printed on p. 840.

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(c) where the Commission or Letter of Request has been transmitted to the Court by any other British tribunal out of the jurisdiction, to that tribunal.

20. The examiner shall be entitled to charge the fees mentioned hereunder:—

1. Upon giving an appointment to take an examination .. .. .	£1 1 0
2. For the Examiner's Clerk .. .. .	0 2 6
3. For each hour or part of an hour occupied in an examination within three miles from the principal entrance to the Court .. .. .	0 10 6
4. For each day of six hours or part of a day occupied in an examination beyond three miles from the principal entrance to the Court ..	5 5 0
5. For the Examiner's Clerk when an examination occupies more than three hours (in addition to fee No. 2) per day .. .. .	0 2 6

*Issue of Letter of Request.*

21. If the Court shall so order there shall be issued a request to examine witnesses. The forms 3 and 4 in the Schedule hereto shall be used for such order and request respectively with such variations as circumstances may require.

22. The Letter of Request shall be transmitted in the manner provided in Rule 19 hereof and shall be accompanied by a list of questions to be put to the witnesses, together with a translation of the questions and of the Letter of Request into the language of the foreign state concerned, or if that be impracticable a request that the Secretary of State concerned should obtain and transmit such a translation.

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THE SCHEDULE.

No. 1.

ORDER UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856.

In the Central Court of the Territory of Papua,  
in Chambers.

In the matter of *Foreign Tribunals Evidence Act, 1856* (19 and 20 Vict.  
c. 113)

And in the matter of a (Civil or Commercial or Criminal) proceeding now  
pending before intituled as follows:—

COURTS—

Between \_\_\_\_\_ and \_\_\_\_\_ Plaintiff  
UPON reading the affidavit (if any) of \_\_\_\_\_ Defendant  
day of \_\_\_\_\_ 19 \_\_\_\_\_ and the certificate of  
in \_\_\_\_\_ that proceedings are pending in the  
and that such Court is desirous of obtaining the testimony of

It is ordered that the said witness \_\_\_\_\_ do attend before  
who is hereby appointed examiner herein at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ o'clock or such  
other day and time as the said Examiner may appoint, and do there submit, to  
be examined upon oath, or affirmation, touching the testimony so required as  
aforesaid and do then and there produce

And it is further ordered that the said Examiner do take down in writing the  
evidence of the said witness, or witnesses, according to the rules and practice of  
the Central Court of the Territory of Papua pertaining to the examination and  
cross-examination of witnesses (or as may be otherwise directed); and do cause  
each and every such witness to sign his or her depositions in his, the Examiner's  
presence; and do sign the depositions taken in pursuance of these rules, and when  
so completed, do transmit the same together with this order to the Registrar of  
the Central Court of the Territory of Papua for transmission to the President of  
the said Tribunal desiring the evidence of such witness or witnesses.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

No. 2.

CERTIFICATE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856.

I, \_\_\_\_\_ Registrar of the Central Court of the Territory of Papua  
hereby certify that the documents annexed hereto are (1) the original order of  
dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
made in the matter of \_\_\_\_\_ pending in the  
at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ directing  
the examination of certain witnesses to be taken before \_\_\_\_\_ and  
(2) the examination and depositions taken by the said  
pursuant to the said order, and duly signed and completed by him on the  
day of \_\_\_\_\_ 19 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

No. 3.

ORDER FOR ISSUE OF REQUEST FOR COMMISSION.

(Formal heading).

It is ordered that a Letter of Request do issue directed to the proper Tribunal  
for the examination of the following witnesses, that is to say:

- E.F. of \_\_\_\_\_
- G.H. of \_\_\_\_\_
- J.J. of \_\_\_\_\_

And it is ordered that the depositions taken pursuant thereto when received  
be filed at the Registry and be given in evidence in the trial of this action, saving  
all just exceptions.

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No. 4.

REQUEST FOR COMMISSION.

WHEREAS an action is now pending in the Central Court of the Territory of Papua in which A.B. is plaintiff and C.D. is defendant. And in the said action the plaintiff claims

*(Endorsement upon writ).*

And whereas it has been reported to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E.F. of  
G.H. of  
J.J. of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now, I \_\_\_\_\_ as the Chief Judicial Officer of the said Court have the honour to request and do hereby request that for the reasons aforesaid and for the assistance of the Central Court of the Territory of Papua, you as the President and Judge of the said \_\_\_\_\_ or some one or more of you will be pleased to summon the said witnesses to attend at such time and place as you shall appoint before some one or more of you or such other persons as according to the procedure of your Court is competent to make the examination of witnesses and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause this summons of the said witnesses to be reduced into writing and all books letters papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return the same together with such request in writing, if any, for the examination of other witnesses through His Majesty's Secretary of State for transmission to the Central Court of the Territory of Papua.

COURTS—