

CHAPTER 14:01
COMPULSION OF WITNESSES
ARRANGEMENT OF SECTIONS

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Proc. 13, 1898,
Proc. 11, 1906,
Cap. 9, 1948,
Cap. 9, 1959,
HCN 1, 1963,
Act 12, 1966,
L.N. 84, 1966.

An Act to make provision for compelling the attendance of persons residing in Botswana whose testimony is required in the courts of neighbouring states.

[Date of Commencement: 1st July, 1898]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Compulsion of Witnesses Act.

2. Application of Act

Where the President is satisfied that in the event of benefits conferred by any Part of this Act being extended to requests made by the courts in any neighbouring state for any of the benefits contained in any Part of this Act, substantial reciprocity of treatment will be assured as respects compliance in that country with requests from the courts of Botswana for similar benefits in any such state, the President may, by statutory instrument, order that the Part containing the appropriate benefit shall extend to that state.

PART II

Procedure for Compelling Persons to Appear in Court in Neighbouring States (ss 3-6)

3. Subpoenas

Whenever a subpoena purporting to be issued by the officer of a court in a neighbouring state to which this Part applies has been transmitted by such officer to a magistrate having jurisdiction in the district in which there resides or is a person whose attendance is required as a witness in such court, it shall be the duty of the magistrate to whom the subpoena has been transmitted to endorse thereon his order that the same be served on the person named therein, and the subpoena so endorsed shall thereupon be delivered to the proper officer for the service of the process of a magistrate's court or to such other person as the official endorsing shall specially appoint for the purpose, and it shall be the duty of such officer or other person to serve such subpoena as soon as practicable on the person named therein:

Provided that-

- (i) the necessary expenses of such service and the necessary expenses to be incurred by the person subpoenaed in going to and returning from the court named in such subpoena, and to be incurred during his detention at the place where his evidence is given, have been transmitted together with the subpoena;
- (ii) the portion of the expenses assigned to the person named in the subpoena has been paid to him by the officer or other person serving the same.

4. Penalty for neglecting to attend when subpoenaed

Any person who has been served with a subpoena as provided in section 3 and has not taken any steps in Botswana as may enable him to attend at the time and place mentioned therein shall be liable to a penalty not exceeding P200 unless he offers a reasonable excuse for such non-attendance; and every such penalty shall be recoverable at the suit of the Government in a magistrate's court of the district in which he resides.

5. Proof of non-attendance

The return of the person who under section 3 is authorized to serve a subpoena showing that service has been duly served together with a certificate under the hand and seal of the presiding judge, commissioner or other judicial officer of the court from which the subpoena was issued showing that the person so served did not attend when called upon and did not establish any valid and lawful excuse for his default shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty in section 4.

6. Protection of witnesses

No person resident in any country to which this Part applies who is summoned as a witness before any court and whose attendance before such court is enforceable by any law of such country shall be liable while so attending to be arrested upon any civil or criminal process for any debt formerly due or for any offence formerly committed by him in Botswana.

PART III

Procedure for Taking Evidence Required in Neighbouring States (ss 7-9)

7. Interrogatories

(1) If any civil cause or matter is pending in a court of any country to which this Part applies and the competent officer of such court certifies that the evidence of a person resident or being in Botswana is required in such cause or matter and transmits such certificate to a magistrate having jurisdiction in the district in which such person resides or is, together with any interrogatories duly and lawfully framed which it is desired to put to such person, it shall be the duty of such magistrate upon receipt of-

- (a) such certificate and interrogatories;
- (b) the expenses payable to such person for his appearance as herein provided; and
- (c) the amount payable in fees or stamps for the issue and service of the summons herein mentioned,

to summon such person to appear before him and upon such appearance to take the evidence of such person as if he were a witness in a civil case in his court and to put to such person the interrogatories together with any other questions calculated to obtain full and true answers to

such interrogatories and to take down or cause to be taken down the evidence so obtained and to transmit the same certified as correct to the resident magistrate in whose court such civil cause or matter is pending.

(2) It shall be the duty of the magistrate who has obtained the evidence mentioned in subsection (1) to transmit to the court in which the said cause or matter is pending a certificate showing the amount paid to the person in respect of the expenses of appearance and the cost of the issue and service of any summons.

8. Penalty for failure to attend when summoned

Any person required to appear before a court under section 7 shall be summoned in like manner and be liable to like penalties in the event of his non-attendance as if he had been summoned to give evidence before a magistrate's court.

9. Evidence taken by means of interrogatories to be accepted in civil cases

Whenever under any law in force in any country to which this Part applies the evidence of persons who reside or are in such country has been taken by means of interrogatories for the purpose of using the same in any civil cause or matter pending in a magistrate's court in Botswana such evidence if certified by the proper officer as having been taken in accordance with the law of such country shall (subject to all lawful objections) be received as evidence in such civil cause or matter.

PART IV

General Provisions (ss 10-11)

10. Endorsement of subpoena

(1) Notwithstanding anything contained in section 3 a magistrate shall not endorse a subpoena in pursuance of that section unless the Minister has by order under his hand signified his acceptance of that subpoena for service in Botswana.

(2) The Minister shall not make any such order if it appears to him that the subpoena has been issued in connection with criminal proceedings of a political character or in which the witness is an accused person, or if he considers for any other reason that it is unreasonable or inexpedient to do so.

11. Regulations

The President may, by statutory instrument, make regulations prescribing such amount as he may consider necessary for the payment of any service of process or any expenses incurred by any person subpoenaed to appear before any court whether in Botswana or in a neighbouring country.