

FOREIGN LAW ASCERTAINMENT ACT, 1861

24 of 1861

[17th May, 1891]

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An Act to afford Facilities for the better ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions. Preamble reciting 22 and 23 Vict., c. 63, and enacting words . [Repealed by (U.K.) 55 and 56 Vict., c. 19 (S.L.R.)]. Note.-- With respect to British law Ascertainment Act, 1859 and the Foreign Law Ascertainment Act, 1861 (24 and 25 Vict., c. II) the Law Commission of India has made the following observations---- "Both these statutes enable any Court within the British Dominions to ascertain the law administered in any other country, by stating a case for the opinion of a superior Court in that country. While the statute of 1859 applies where that country is another part of the British Dominions, the statute of 1861 applies where that country is a foreign country, situated outside the British Dominions. The latter statute is founded on international conventions entered into between the U.K. and foreign countries. India being no longer a Dominion, adaptation of these statutes is necessary. It would be better to engraft appropriate provisions in the Evidence Act, giving reference to these English statutes so that our parties as well as the Courts may easily understand that the Courts possess this

power. So far as the statute of 1861 is concerned, a fresh arrangement between India and the foreign countries may be necessary, if we want to enact a similar law of our own".--- Law Commission of India, Fifth Report, 1957, page 45.

1. Superior Courts within Her Majesty's dominions may remit a case, with queries, to a Court of any foreign State with which Her Majesty may have made a convention for that purpose, for ascertaining the law of such state as to the facts in question :-

If, in any action depending in any of the Superior Courts within Her Majesty's dominions, it shall be the opinion of such Court that it is necessary or expedient for the disposal of such action, to ascertain the law applicable to the facts of the case as administered in any State or country with the Government of which Her Majesty shall have entered into such convention as aforesaid, it shall be competent to the Court in which such action may depend to direct a case to be prepared setting forth the facts as these may be ascertained by verdict of jury or other mode competent, or as may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the Court for that purpose in the event of the parties not agreeing; and upon such case being approved of by such Court or a Judge thereof, such Court or Judge shall settle the questions of law arising out of the same on which they desire to have the opinion of another Court and shall pronounce an order remitting the same together with the case to such Superior Court in such foreign State or country as shall be agreed upon in said convention, whose opinion is desired upon the law administered by such foreign Court as applicable to the facts set forth in such case, and requesting them to pronounce their opinion on the questions submitted to them; and upon such opinion being pronounced, a copy thereof, certified by an officer of such Court, shall be deemed and held to contain a correct record of such opinion. Note : --- This Act and British Law Ascertainment Act, 1859 enable any Court within the British Dominion to ascertain the law administered in any other country, by stating a case for the opinion of a Superior Court in that country. This Act applies where the foreign country is situated outside the British Dominions.

2. Copy of opinion to be lodged in Court in which action depends :-

It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the

same with the officer of the Court within Her Majesty's dominions in which the action may be depending who may have the official charge thereof, together with. a notice of motion setting forth that the party will, on a certain day named in such notice, move the Court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified; Court to apply opinion to the facts set forth in the case, etc. and the said Court shall thereupon, if it shall see fit, apply such opinion to such facts, in the same manner as if the same had been pronounced by such Court itself upon a case reserved for opinion of the Court, or upon special verdict of a jury; or the said last-mentioned Court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as conclusive evidence of the foreign law therein stated; and the said opinion shall be so submitted to the jury; Remitter of case back to foreign Court. Provided always, that if after having obtained such certified copy the Court shall not be satisfied that the facts had been properly understood by the foreign Court to which the case was remitted, or shall on any ground whatsoever be doubtful whether the opinion so certified does correctly represent the foreign law as regards the facts to which it is to be applied, it shall be lawful for such Court to remit the said case, either with or without alterations or amendments, to the same or to any other such superior Court in such foreign State as aforesaid, and so from time to time as may be necessary or expedient.

3. Courts in Her Majesty's dominions shall pronounce opinion on case remitted by a foreign Court :-

If in any action depending in any Court of a foreign country or State with whose Government Her Majesty shall have entered into a convention as above set forth, such Court shall deem it expedient to ascertain the law applicable to the facts of the case as administered in any part of Her Majesty's dominions, and if the foreign Court in which such action may depend shall remit to the Court in Her Majesty's dominions whose opinion is desired a case setting forth the facts and the questions of law arising out of the same on which they desire to have the opinion of a Court within Her Majesty's dominions, it shall be competent to any of the parties to the action to present a petition to such last-mentioned Court, whose opinion is to be obtained, praying such Court to hear parties or their counsel, and to pronounce their opinion thereon in terms of

this Act, or to pronounce their opinion without hearing parties or counsel. and the Court to which such petition shall be presented shall consider the same, and, if they think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce their opinion upon the questions of law as administered by them which are submitted to them by the .foreign Court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper; and upon such opinion being pronounced a copy thereof, certified by an officer of such Court, shall be given to each of the parties to the action by whom the same shall be required.

4. Interpretation of terms :-

In the construction of this Act the word "action" shall include every judicial proceeding instituted in any Court, civil, criminal, or ecclesiastical; and the words "Superior Courts" shall include. in England, the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls, or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate, in Scotland, the High Court of Justiciary, and the Court of Session, acting by either of its divisions; in Ireland, the Superior Courts of Law at Dublin, the Master of the Rolls and the Judge of the Admiralty Court; and in any other part of Her Majesty's dominions, the Superior Courts of Law or Equity therein; and in a foreign country or State, any Superior Court or Courts which shall be set forth in any such convention between Her Majesty and the Government of such foreign country or State.