

CIRCULAR NO. 86

Subject :- Examination of witness on commission –
Presence of assessors whether necessary.

The Assistant Charity Commissioner, Belgaum has raised a question for Charity Commissioner's opinion whether the presence of assessors is necessary when a witness is examined on commission. He seems to be of the opinion that although section 73 of the Bombay Public Trusts Act, 1950, invests the Inquiry Officers with power to issue a commission to examine a witness on commission, there is no provision in the Act which either expressly or impliedly dispenses with the presence of the assessors at any state of the inquiry, and therefore, a witness cannot be examined without the presence of the assessors even on commission.

The opinion expressed by the Assistant Charity Commissioner is not correct. It is true that there is no express provision in the Act on this point. But no the analogy of the provisions contained in Sections 503 to 508 of the Criminal Procedure Code in respect of issue of commission in a Sessions case to be tried with the aid of assessors, it appears it will not be necessary in an inquiry under Section 19 of the Bombay Public Trusts Act, 1950, that the assessors should be present when the evidence is recorded on commission at a place outside the jurisdiction of the Inquiry Officer. It will meet the ends of justice if evidence taken on commission is read before the Assistant Charity Commissioner and the assessors and recorded in the proceedings.

D.R.Pradhan,
Charity Commissioner, Bombay.

Dated 12th September 1955.