

HEADQUARTERS DEPARTMENT OF PORTO RICO,

San Juan, P.R. July ,1899

General Orders)
No.)

Complaints having been made that evidence in cases pending before the courts of this Department is often rendered unavailable by the departure of witnesses from the Island before opportunity has been given for the taking of said testimony in the courts where the case is pending, it is hereby ordered

That testimony may be perpetuated in the following manner:-

I. Whenever a party to any cause pending in any court existing under the authority of this Department shall desire to perpetuate testimony in his behalf by witnesses who are aged, infirm, or about to go beyond the seas, such party may go before the Judge or Clerk of any Common or higher court in this Department, after giving reasonable notice to the opposite party, or his attorney of record, of his intention to perpetuate such testimony, and apply to such Judge or Clerk to take down in writing the testimony of such witnesses as the party may offer.

II. Upon such application being made, it shall be the duty of the Judge or Clerk applied to forthwith to reduce to writing the testimony of such witnesses as the party applying may offer; provided that it shall appear from the examination of the witness that he is within the classes of persons named in paragraph I of this order.

The opposite party or his attorney, if present, shall have the right to cross-examine such witness which shall also be reduced to writing; and the Judge or Clerk before whom such examination is had shall have

the right to collect for his services from the party in whose behalf the testimony is taken ten cents for each one hundred words contained in the deposition and in the certificate which shall be annexed thereto.

III. When any such deposition is completed it shall be read over to and signed by the witness and the officer before whom the same has been taken shall certify at the end thereof that the same was taken and written down in his presence and to his knowledge contains the testimony exactly as given by the witness without addition or alteration. He shall also certify whether the opposite party was represented at said hearing or not. The paper upon which said deposition is written shall be then securely sealed in an envelope by the officer before whom the same has been taken and directed to the court in which the cause is pending and indorsed with a memorandum of its contents and the same shall either be sent by mail to such court or delivered into the possession of the party at whose instance the same has been taken.

IV. When the envelope containing any such deposition shall be delivered to the court in which said cause is pending such court shall indorse thereon the date of such receipt and the manner in which it came to hand, and the same shall be placed on file with the other papers in said cause. If said envelope is still properly sealed and has not been tampered with, it shall be opened at the time of the trial of the cause for which it was intended and the evidence of the witnesses contained therein may be used on said trial and shall be given with the same force and effect as if the same had been taken before the court in which the cause is pending.

To M A C. Sharpe.

Mayor Judge Advocate.

Dear Sir:

Answering your letter of yesterday I tell you that the purposes of the order that you enclose in it are already wrote in the laws now in force here.

The following articles of both laws of civil and criminal procedüre show it:

"Civil Law of procedure:

"Article 501.-Besides the cases expressed in the article 496 that who pretend to demand could not ask replies, depositions of witnesses and no other pruve excepting when by the old age of
" any witness, an imminent peril against the life of the witness,
" proximity of an absence to a point with wich the comunications
"be tardy or difficult, or another powerful reason, could be ex-
" posed the claimant to lose his right for absence of justifica-
" tion, in wich case he could ask and the Judge will determine
" that the witness or witnesses that be in those ~~circumstances~~ be
" examined, effecting their examination in the form prescribed
" in the respective articles of this law. Those papers will be
" united to the law suit after the claim be presented."

The articles 636 and subsequents give the form for the examination of the witnesses in all general cases.

The article 448 of the criminal law of procedure says:

448- If the witness exposes- on asking him as the ar-
ticle 446- the impossibility of his asistance because he be obli-
ged to go to Spain, and also in the case that should be any ra-
tionally enough motive to fear his death or phisical or intellec-

tual incapacity before the opening of the trial, the Judge of Instruction will notify the accused to design in the term of 24 hours, a lawyer, if he had it not yet, or by the contrary the lawyer shall be appointed officially in order to counsel him in the moment of being examined. Being past that term the Judge will receive oath and examine the witness before the accused and his lawyer, and also before the Attorney and the claimant, if they wish to assist, allowing them to ask as many questions as they believe convenient excepting those that the Judge believe clearly impertinent.

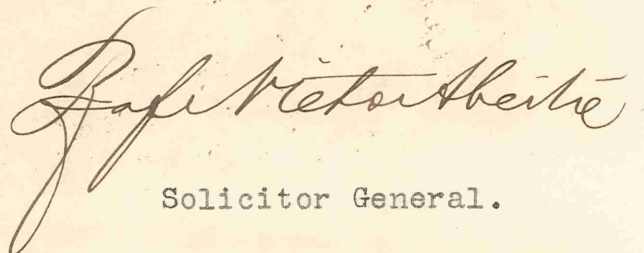
In the paper will be wrote the replies to these questions, and will be signed by all the presents.

499.- In case of imminent peril of death of the witness it will prosecute with the highest urgency to receive the declaration in the form before expressed in the article 448 though the accused could not be assisted by a lawyer.)

As you can appreciate by the transcription the laws now in force prevent the case of the proposed order, and the others articles of the civil law complet the mind of said order.

I enclose here two orders more received to day, with my suggestions.

Very Respectfully,



Solicitor General.

San Jhon 18 July 1899.

P.S. The articles 2001 and sequents of the Civil Law state also other rules for informations ad perpetuam memoriam in civil cases

3 enclosures.