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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Draft Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st March 1871 :—

We, the members of the Select Committee to which the Evidence Bill has been referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Officiating Under Secretary, Home Department, No. 423, dated 23rd October 1868, and enclosures.
From Assistant Secretary, Foreign Department, No. 323, dated 12th December 1868, and enclosure.
Remarks by the Honourable the Chief Justice, Bombay (no date).
„ by Honourable Justice Phear, dated 8th December 1868.
From Secretary to Chief Commissioner, British Burmah, No. 595—1, dated 1st December 1868.
From Assistant Secretary to Government of Bengal, Legislative Department, No. 37, dated 9th January 1869, and enclosure.
From Deputy Judge Advocate General of the Army, dated 26th January 1869, and enclosures.
From Officiating Under Secretary, Home Department, No. 258, dated 17th February 1869, forwarding memorial from Mukhtárs and Revenue Agents, Howrah, dated 4th February 1869.
From Secretary to Indian Law Commissioners, dated 6th February 1869.
From Chief Secretary to Government, Fort St. George, No. 120, dated 18th March 1869, and enclosures.
From Secretary to Government of Bombay, No. 2971, dated 7th September 1869, and enclosures.
From Secretary to Government of Bombay, No. 3188, dated 24th September 1869, and enclosure.
Fifth Report of Her Majesty's Indian Law Commissioners on the Bill.
From Officiating Inspector General of Police, Panjáb, No. 2657, dated 28th September 1870.
From Secretary to Government of India, Home Department, No. 1892, dated 18th October 1870, forwarding letter from Chief Commissioner, British Burmah, No. 61, dated 15th August 1870, and enclosures.

After a very careful consideration of the draft prepared by the Indian Law Commissioners, we have arrived at the conclusion that it is not suited to the wants of this country.

We have recorded in a separate report the grounds on which this conclusion is based. They are in a few words that the Commissioners' draft is not sufficiently elementary for the officers for whose use it is designed, and that it assumes an acquaintance on their part with the law of England which can scarcely be expected from them. Our draft, however, though arranged on a different principle from theirs, embodies most of its provisions. In general, it has been our object to reproduce the English Law of Evidence with certain modifications, most of which have been suggested by the Commissioners, though with some this is not the case. The English Law of Evidence appears to us to be totally destitute of arrangement. This arises partly from the circumstance that its leading terms are continually used in different senses, and partly from the circumstance that the Law of Evidence was formed by degrees out of various elements, and in particular out of the English system of pleading and the habitual practice of the Courts of Common Law. For instance, the rule that evidence must be confined to points in issue is founded on the system of pleading. The rule that hearsay is no evidence is part of the practice of the Courts; but the two sets of rules run into each other in such an irregular way as to produce between them a result which no one can possibly understand systematically, unless he is both acquainted with the principles of a system of pleading which is being rapidly abolished, and with the every-day practice of the Common Law Courts, which can be acquired and understood only by those who habitually take part in it. This knowledge, moreover, must be qualified by a study of text-books which are seldom systematically arranged.

Many other circumstances, to which we need not refer, have contributed largely to the general result; but we may illustrate the extreme intricacy of the law, and the total absence of anything like system which pervades every part of it, by a single instance. In Mr. Pitt Taylor's work on Evidence it is stated that "ancient documents, when tendered in support of ancient possession," form the third exception to the rule which excludes hearsay. The question is whether A is entitled to a fishery. He produces a royal grant of the fishery to his ancestor. This fact the law describes as a peculiar kind of hearsay admissible by special exception. Surely this is using language in a most uninstructive manner.

This being the case, we have discarded altogether the phraseology in which the English text-writers usually express themselves, and have attempted first to ascertain, and then to arrange in their natural order, the principles which underlie the numerous cases and fragmentary rules which they have collected together. The result is as follows:

Every judicial proceeding whatever has for its purpose the ascertaining of some right or liability. If the proceeding is criminal, the object is to ascertain the liability to punishment of the person accused; if the proceeding is civil, the object is to ascertain some right of property or of status, or the right of one party, and the liability of the other to some form of relief.

All rights and liabilities are dependent upon and arise out of facts, and facts fall into two classes, those which can, and those which cannot, be perceived by the senses. Of facts which can be perceived by the senses, it is superfluous to give examples. Of facts which cannot be perceived by the senses, intention, fraud, good faith, and knowledge may be given as examples. But each class of facts has, in common, one element which entitles them to the name of facts—they can be directly perceived either with or without the intervention of the senses. A man can testify to the fact that, at a certain time, he had a certain intention, on the same ground as that on which he can testify that, at a certain time and place, he saw a particular man. He has, in each case, a present recollection of a past direct perception. Moreover, it is equally necessary to ascertain facts of each class in judicial proceedings, and they must in most cases be ascertained in precisely the same way.

Facts may be related to rights and liabilities in one of two different ways:

1. They may by themselves, or in connection with other facts, constitute such a state of things that the existence of the disputed right or liability would be a legal inference from them. From the fact that A is the eldest son of B, there arises of necessity the inference that A is by the law of England the heir-at-law of B, and that he has such rights as that status involves. From the fact that A caused the death of B under certain circumstances, and with a certain intention or knowledge, there arises of necessity the inference that A murdered B, and is liable to the punishment provided by law for murder.

Facts thus related to a proceeding may be called facts in issue, unless, indeed, their existence is undisputed.

2. Facts, which are not themselves in issue in the sense above explained, may affect the probability of the existence of facts in issue, and these may be called collateral facts.

It appears to us that these two classes comprise all the facts with which it can in any event be necessary for courts of justice to concern themselves, so that this classification exhausts all facts considered in their relation to the proceeding in which they are to be proved.

This introduces the question of proof. It is obvious that, whether an alleged fact is a fact in issue or a collateral fact, the Court can draw no inference from its existence till it believes it to exist; and it is also obvious that the belief of the Court in the existence of a given fact ought to proceed upon grounds altogether independent of the relation of the fact to the object and nature of the proceeding in which its existence is to be determined. The question is whether A wrote a letter. The letter may have contained the terms of a contract. It may have been a libel. It may have constituted the motive for the commission of a crime by B. It may supply proof of an *alibi* in favour of A. It may be an admission or a confession of crime; but whatever may be the relation of the fact to the proceeding, the Court cannot act upon it unless it believes that A did write the letter, and that belief must obviously be produced, in each of the cases mentioned, by the same or similar means. If, for instance, the Court requires the production of the original when the writing of the letter is a crime, there can be no reason why it should be satisfied with a copy when the writing of the letter is a motive for a crime. In short, the way in which a fact should be proved depends on the nature of the fact, and not on the relation of the fact to the proceeding.

The instrument by which the Court is convinced of a fact is evidence. It is often classified as being either direct or circumstantial. We have not adopted this classification.

If the distinction is that direct evidence establishes a fact in issue, whereas circumstantial evidence establishes a collateral fact, evidence is classified, not with reference to its essential qualities, but with reference to the use to which it is put; as if paper were to be defined, not by reference to its component elements, but as being used for writing or for printing. We have shown that the mode in which a fact must be proved depends on its nature, and not on the use to be made of it. Evidence, therefore, should be defined, not with reference to the nature of the fact which it is to prove, but with reference to its own nature.

Sometimes the distinction is stated thus: Direct evidence is a statement of what a man has actually seen or heard. Circumstantial evidence is something from which facts in issue are to be inferred. If the phrase is thus used, the word *evidence*, in the two phrases (direct *evidence* and circumstantial *evidence*) opposed to each other, has two different meanings. In the first, it means testimony; in the second, it means a fact which is to serve as the foundation for an inference. It would indeed be quite correct, if this view is taken, to say 'Circumstantial evidence must be proved by direct evidence.' This would be a most clumsy mode of expression, but it shows the ambiguity of the word "evidence," which means either—

(1) words spoken or things produced in order to convince the Court of the existence of facts; or

(2) facts of which the Court is so convinced which suggest some inference as to other facts.

We use the word 'evidence' in the first of these senses only, and so used it may be reduced to three heads—1, oral evidence; 2, documentary evidence; 3, material evidence.

Finally, the evidence by which facts are to be proved must be brought to the notice of the Court and submitted to its judgment, and the Court must form its judgment respecting them.

These general considerations appear to us to supply the groundwork for a systematic and complete distribution of the subject as follows:—

I.—Preliminary.

II.—The relevancy of facts to the issue.

III.—The proof of facts according to their nature, by oral, documentary or material evidence.

IV.—The production of evidence.

V.—Procedure.

We have accordingly distributed the subject under these heads, in the manner which we now proceed to describe somewhat more fully.

I.—Preliminary.

Under this head we have defined "fact," "facts in issue," "collateral facts," "a document," "evidence," "proof" and "proved," "necessary inference," and "presume." We have also laid down in general terms the duty of the Court.

Of our definitions of "fact," "facts in issue," "collateral facts," and "evidence," we need say no more than that they are framed in accordance with the principles already stated. We may, however, shortly illustrate the effect of the definition of evidence.

It will make perfectly clear several matters over which the ambiguity of the word, as used in English law, has thrown much confusion. The subject of circumstantial evidence will be distributed into its elements, and will be dealt with thus: The question is whether A committed a crime. The facts are—that he had a motive, displayed by statements of his own, for it; that the scene of the crime shows footmarks which correspond with his feet; that he was in possession of property which might have been procured by it, and that he wrote a letter indicating his guilt. On turning to chapter II, it will be found that all these are relevant facts, either as motive, incidents of facts in issue, effects of facts in issue, or conduct influenced by facts in issue. On turning to chapter III, it will be seen how each of these facts must be proved, namely, the statements displaying motive, by the direct oral evidence of some one who says he heard them; the footmarks, by the direct oral evidence of some one who says he saw them; the possession of the property, by the production of the property in Court, and by the direct oral evidence of some one who had seen it in the prisoner's possession; and the letter, by the production of the letter itself, or secondary evidence of it, if the case allows of secondary evidence.

So the phrase "hearsay evidence," which, as the Commissioners observe, is used by English writers in so vague and unsatisfactory a manner, finds no place in our draft, and we hope we have avoided the possibility of any confusion in connection with it. Chapter II. provides specifically, and in a manner which corresponds, on the whole (though with some modifications), with the English law, in what cases the statements and opinions of third persons as to relevant facts shall, and in what cases they shall not, be themselves relevant, and Chapter V, on Proof by Oral Evidence, provides that oral evidence shall in all cases be direct, on whatever ground the fact which it is to establish may be relevant to the issue: that is to say, if the fact is one which could be seen, it must be established by a witness who says he saw it, if it could be heard, by a witness who says he heard it, whether it is fact in issue, or a collateral fact. These provisions distribute the different things described by the phrase "hearsay evidence" in the same way in which the different things described by the phrase "circumstantial evidence" are distributed by the other provisions.

So, our definition does away with a confusion which arises out of the double meaning of the word 'evidence' in the phrases "primary" and "secondary evidence." "Primary evidence" sometimes means a relevant fact, and at other times the proof of a document by its production as opposed to proof by a copy. In our draft, "primary" and "secondary" are distinctly defined, and confined to an unambiguous meaning. 'Evidence' in each case means words spoken or things (documents or not) shown to the Court.

Finally, we have substituted, for the phrase "conclusive evidence," the phrase "necessary inference." The phrase "conclusive evidence" is not open to objection on the ground of obscurity or ambiguity, but the word "evidence" in it means, not what we understand by evidence, but a fact established by evidence from which a particular inference necessarily follows. Our phrase, therefore, harmonises with the rest of our draft, whereas "conclusive evidence" would not.

The definitions of "proof," "proved," and "moral certainty" require some comment. The definition of "proof" is subordinate to that of "proved," which is, that a fact is said to be proved in two cases, that is to say when the Court after hearing the evidence respecting it—

(1) believes in its existence; or

(2) thinks its existence so probable that a reasonable man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

This degree of probability we describe as "moral certainty," and we provide that no fact shall be regarded as morally certain unless the evidence is such as to render its non-existence improbable. This is as near an approach as we have been able to make to a distinct equivalent for the phrase "reasonable doubt," which is usually employed by English Judges in leaving questions of fact to a jury. The question "When is doubt reasonable?" is one which cannot be completely answered; for at bottom it is a question, not of science, but of prudence, and our definition of the word "proved" is meant to make this plain. We have, however, attached to it the negative condition that a reasonable man ought not to be morally certain of a conclusion, merely because it is probable, if other conclusions are also probable. It is easier to illustrate this principle than to state, without a prolonged abstract discussion, which would be out of place on the present occasion, the general grounds on which it rests. Our illustrations are meant to point out to Judges that they are not to convict A of an offence which must have been committed either by him or by B, unless circumstances exist which make it improbable that the offence was committed by B. We have not attempted to carry the matter further. We believe that in all countries, and in this country more than in any other, it is absolutely necessary to leave to Judges a wide discretion as to the risk of error which they choose to incur in coming to a decision, and that this is a matter of prudence and practice, as to which rules ought to be laid down, rather with the view of guiding, than with the view of fettering, discretion.

The last provision, in the preliminary part, to which we would call attention, defines in very general terms the duty of the Court in deciding questions of fact. Its generality appeared to us to render the preliminary, rather than the concluding chapter, the proper place for it. This section declares that the duty of the Court is to determine questions of fact by drawing inferences—

(1) from the evidence given to the facts alleged to exist;

(2) from facts proved to facts not proved;

(3) from the absence of evidence which might have been given;

(4) from the admissions and conduct of the parties, and generally from the circumstances of the case.

We have said nothing of the principle on which these inferences are to be drawn, as that is a matter of logic, and does not belong specially to the subject of judicial evidence; but we wish to point out and put distinctly upon record the fact, that to infer, and not merely to accept or register evidence, is in all cases the duty of the Court. One of the many fallacies which owe their origin to the ambiguity of the word "evidence," and the looseness with which it is used, is the common assertion that direct evidence leaves no room for inference, whereas indirect or circumstantial evidence does. In fact, all evidence whatever is useful only as the groundwork for inferences, of which the inference that the facts which the witness alleges to exist do or did actually exist, is very often the most difficult to draw. The truth is, that to infer in one or other of the different shapes which we have stated is the great duty of the Judge in every case whatever, and we have thought it desirable to point this out in the plainest and broadest way.

We have added two qualifications only to this general rule: (1) that, when the law declares an inference to be necessary, the Court shall draw it, and shall not allow its truth to be contradicted; (2) that, when the law directs the Court to presume a fact, it shall infer its existence till the contrary appears. We have treated in detail of necessary inference and presumptions in other parts of the Bill.

II.—The Relevancy of Facts.

We have already pointed out the place which, in our opinion, belongs to this subject in the law of evidence. The question, What facts may you prove? obviously lies at the root of the whole matter, and unless a plain and full answer is given to the question, it is impossible to state the law systematically. The answer to the question is, we think, to be found in several of the wide exceptions which are made by English text-writers to the wide exclusive rules—that evidence must be confined to the points in issue, that hearsay is no evidence, and that the best evidence must be given, though other parts of the same exceptions are to be found in different branches of the law. We think, however, that by a comparison and collection of these exceptions we have succeeded in forming a collection of positive rules as to the relevancy of facts to the issue, which will admit every fact which a rational man could wish to have before him in investigating any question of fact.

These rules declare to be relevant—

1, all facts in issue:

2, all collateral facts, which

(*a*) form part of the same transaction;

(*b*) are the immediate occasion, cause, or effect of facts in issue;

(*c*) show motive, preparation, or conduct affected by a fact in issue;

(*d*) are necessary to be known in order to introduce or explain relevant facts;

(*e*) are done or said by a conspirator in furtherance of a common design;

(*f*) are either inconsistent with any fact in issue; or inconsistent with it, except upon a supposition which should be proved by the other side; or render its existence or non-existence morally certain, according to the definition of moral certainty given above;

(*g*) affect the amount of damages in cases where damages are claimed;

(*h*) show the origin or existence of a disputed right or custom;

(*i*) show the existence of a relevant state of mind and body;

(*k*) show the existence of a series of which a relevant fact forms a part; or

(*l*) show (in certain cases) the existence of a given course of business.

The remainder of the chapter throws into a positive shape what in English law forms the exceptions to the rule, excluding the various matters described as hearsay. They relate to—

the conduct of the parties on previous occasions:

the statements of the parties on previous occasions;

previous judgments;

statements of third persons;

opinions of third persons.

1. In reference to the conduct of the parties on previous occasions, we embody in three sections the existing law of England as to evidence of character, with some modifications. We include, under the word 'character,' both reputation and disposition, and we permit evidence to be given of previous convictions against a prisoner for the purpose of prejudicing him. We do not see why he should not be prejudiced by such evidence, if it is true.

2. Under the head of The Statements of the Parties on other Occasions, we deal with the question of admissions, as to which we have not materially altered the existing law.

We have not thought it necessary to transfer from their present position in the Code of Criminal Procedure the rules as to confessions made to the Police. This appears to us to be a special matter relating rather to the discipline of the police than to the principles of evidence.

3. Previous judgments appear to follow naturally upon previous statements. Under this head we deal with the question of *res judicata*.

We have not attempted to deal with the question of the bar of suits by previous judgments between the same parties. This is a question of procedure rather than of evidence, and will be properly dealt with whenever the Codes of Civil and Criminal Procedure are re-enacted. We have, on the other hand, dealt in substantial accordance with the principles of the law of England with the question of the relevancy of judgments between strangers. For the sake of simplicity, and in order to avoid the difficulty of defining or enumerating judgments *in rem*, we have adopted the statement of the law by Sir Barnes Peacock in *Kunya Lal* v. *Radha Churn*, 7, Suth. W. R., 339.

4. As to statements by third persons. We have made one considerable alteration in the existing law by admitting, generally, statements made by third persons about relevant facts, if attended by conduct which confirms their truth, or if they refer to facts independently proved, provided that the person making them appears to the Court to have special means of knowledge. We have given several illustrations of this, the strongest of which is suggested by Mr. Pitt Taylor. A captain about to sail on a voyage carefully examines the ship, declares his belief that she is sea-worthy, and embarks on her with his family and property uninsured. Statements of this sort are surely most unlikely to be false. Evidence of such statements will be admissible under this section, whether the person who makes them is living or dead, producible or not. Some of them would probably be admissible under the English rule which admits statements explanatory of conduct, but as the conduct explained must be relevant, and as no clear definition of relevancy is given by the law of England, it is very difficult to say how far this rule extends.

The next exception refers to statements made by a person who is dead or cannot be found or produced without unreasonable delay or expense. We declare such statements to be relevant if they relate to the cause of the person's death, or are made in the ordinary course of business, or express an opinion as to the existence of a public right, or state the existence of any relationship as to which the party had special means of knowledge, or when they are made in family pedigrees, titles, deeds, &c. We have omitted the restrictions placed by the law of England on the admission of dying declarations and statements about relationship, and as to the necessity that statements should be opposed to the pecuniary interest of the party making them, on the ground that they ought to affect the weight rather than the admissibility of what is, at best, to use Bentham's expression, "makeshift evidence."

We also provide for the admissibility of statements in public or official books, and (in certain cases) of evidence given in previous judicial proceedings.

5. The cases in which the opinions of third persons are relevant are dealt with in sections 44 to 50.

They declare to be relevant the opinions of experts, opinions as to handwriting, opinions as to usages, and opinions as to relationship and the grounds of such opinions.

This completes that part of the Bill which relates to the relevancy of facts. In the particulars stated, and in some others of minor importance, which for the sake of brevity we have not noticed, it modifies the law of England; but we believe that, substantially, it represents that part of the law which is contained in (amongst others) the rules, together with the exceptions to the rules, that evidence must be confined to points in issue; that the best evidence must be given, and that hearsay is no evidence, though these rules include other matters which we treat of under other heads.

III.—Proof.

The second chapter having decided what facts are relevant, we proceed to show how a relevant fact is to be proved.

In the first place, the fact to be proved may be one of so much notoriety that the Court will take judicial notice of it, or it may be admitted by the parties. In either of these cases no evidence of its existence need be given. Chapter III, which relates to judicial notice, disposes of this subject. It is taken in part from Act II. of 1855, in part from the Commissioners' draft Bill, and in part from the Law of England.

If evidence has to be given of any fact, that evidence must be either oral, documentary, or material, and we proceed in the following chapters to deal with the peculiarities of each of these three kinds of evidence. There, is, however, one topic which applies to all of them, of which we treat in Chapter IV. This is the distinction between primary and secondary evidence. As we have already shown, the phrase is ambiguous. We regard is as a legal way of recognizing the obvious principle that the best way of finding out the contents of a document is to read it yourself, and we have accordingly defined primary and secondary evidence thus: in the case of documents or other material things, the document or thing itself is primary evidence. A copy, model, or oral description is secondary evidence. In all other cases oral evidence is primary.

We next proceed (Chapters V., VI., VII. and VIII.) to the question of proof by the various kinds of evidence successively, namely, oral, documentary and material. With regard to oral evidence, we provide that it must in all cases whatever, whether it is primary or secondary, and whether the fact to be proved is a fact in issue or collateral, be direct. That is to say, if the fact to be proved is one that could

be seen, it must be proved by some one who says he saw it. If it could be heard, by some one who says he heard it, and so with the other senses. We also provide that, if the fact to be proved is the opinion of a living and producible person, or the grounds on which such opinion is held, it must be proved by the person who holds that opinion on those grounds.

We have, however, provided that if the fact to be proved is the opinion of an expert who cannot be called (which is the case in the majority of cases in this country), and if such opinion has been expressed in any published treatise, it may be proved by the production of the treatise.

This provision, taken in connection with the provisions on relevancy contained in Chapter II., will, we hope, set the whole doctrine of hearsay in a perfectly plain light, for their joint effect is this—

(1) the sayings and doings of third persons are, as a rule, irrelevant, so that no proof of them can be admitted;

(2) in some excepted cases they are relevant;

(3) every act done or word spoken, which is relevant on any ground, must (if proved by oral evidence) be proved by some one who saw it with his own eyes, or heard it with his own ears.

With regard to the chapters which relate to the proof of facts by documentary evidence, and the cases in which secondary evidence may be admitted, we have followed, with few alterations, the existing law. We may observe that Chapter VII. contains most of the few presumptions which we have thought it right to introduce into the Bill. They are presumptions which in almost every instance will be true—as to the genuineness of certified copies, gazettes, books purporting to be published at particular places, copies of depositions, &c.

We have inserted a few provisions in Chapter VIII. as to material evidence. They reproduce the practice and, as we believe, the law of England, upon this subject, though no distinct provisions about it and few judicial decisions upon it are, so far as we are aware, to be found in English law-books.

On the subject of the exclusion of oral evidence of a contract, &c., reduced to writing, we have (in Chapter IX.) simply followed the law of England and the Commissioners' draft.

IV.—The production of proof.

From the question of the proof of facts, we pass to the question of the manner in which the proof is to be produced, and this we treat under the following heads:—

The burden of proof (Chapter X.):

Witnesses (Chapter XI.):

The administration of oaths (Chapter XII.):

Examination of witnesses (Chapter XIII.):

With regard to the burden of proof, we lay down the broad rules, that the general burden of proof is on the party who, if no evidence at all were given, would fail, and that the burden of proving any particular fact is on the party who affirms it. These are the well-established English rules, and appear to us reasonable in themselves. We have not followed the precedent of the New York Code in laying down a long list of presumptions, agreeing with the Indian Law Commissioners in the opinion that it is better not to fetter the discretion of the Judges. We have however admitted one or two such presumptions to a place in the Code, as, in the absence of an express rule, the Judges might feel embarrassed. These are—the presumption of death from seven years' disappearance, and the presumption of partnership from the fact of acting as partners.

We may observe that we have disposed, in an illustration, of a matter in which the laws of several countries contain elaborate, and we think somewhat arbitrary, provisions, the presumption to be made in the case of the death of several persons in a common catastrophe. We treat it as an instance of the rule as to the burden of proof. The person who affirms that A died before B must prove it. This is the principle adopted by the English Courts.

We follow the English law as to legitimacy being a necessary inference from marriage and cohabitation, and we adopt one or two of the rules of English law as to estoppel.

In the chapter as to the examination of witnesses, we have been careful to interfere as little as possible with the existing practice of the Courts which in the Mofussil Courts and under the Code of Civil Procedure is of necessity very loose and much guided by circumstances, but we have put into propositions the rules of English law as to the examination and cross-examination of witnesses.

We have also considered it necessary, having regard to the peculiar circumstances of this country, to put into the hands of the Judge an amount of discretion as to the admission of evidence which, if it exists by law, is at all events rarely or never exercised in England. We expressly empower him to ask any questions upon any facts relevant or irrelevant, at any period of the trial, and we expressly declare that it is his duty in criminal cases, if he thinks that the public interest requires it, not merely to receive and adjudicate upon the evidence submitted to him by the parties, but also "to inquire to the utmost into the truth of the matter before him." The object of these provisions is to define simply and clearly the duties and the position of the Judges and those who practise before them. The English system, under which the Bench and the Bar act together and play their respective parts independently, and the professional organization on which its rests, have no doubt great advantages; but in this country such a system does not as yet exist, and will not for a very long course of time be introduced. In the Mofussil, generally speaking, the great mass of cases are conducted without the assistance of a Bar, and

when advocates are employed there, they are usually brought from a distance, and have to appear before Judges who have not had the same professional training as English Judges, and are liable to be intimidated by advocates whose technical knowledge of law is greater than their own, and to whom the extremely intricate system of appeal which prevails in this country gives a power over the Judges unlike anything which exists in England. For this reason we have thought it necessary to strengthen the hands of the Judges and to enable them to act efficiently and promptly as the representatives of the public interest.

In connection with this subject, we may refer to some provisions which we have inserted in order to prevent the abuse of the power of cross-examination to credit. We believe the existence of that power to be essential to the administration of justice, and we believe it to be liable to great abuses. The need for the power and the danger of its abuse are proved by English experience, but in this country litigation of various kinds, and criminal prosecutions in particular, are the great engines of malignity, and it is accordingly even more necessary here than in England, both to permit the exposure of corrupt motives and to prevent the use of the power of exposure as a means of gratifying malice. We have accordingly provided as follows:

Such questions may relate either to matters relevant to the case, or to matters not relevant to the case. If they relate to matters relevant to the case, we think that the witness ought to be compellable to answer, but that his answer should not afterwards be used against him.

If they relate to matters not relevant to the case, except in so far as they affect the credit of the witness, we think that the witness ought not to be compelled to answer. His refusal to do so would, in most cases, serve the purpose of discrediting him, as well as an express admission that the imputation conveyed by the question was true.

In order to protect witnesses against needless questions of this kind, we enact that any advocate who asks such questions without written instructions (which the Court may call upon him to produce, and may impound when produced) shall be guilty of a contempt of Court, and that the Court may record any such question if asked by a party to the proceedings. The record of the question or the written instructions are to be admissible as evidence of the publication of an imputation intended to harm the reputation of the person affected, and such imputations are not to be regarded as privileged communications, or as falling under any of the exceptions to section four hundred and ninety-nine of the Indian Penal Code, merely because they were made in the manner stated. Upon a trial for defamation, it would of course be open to the person accused to show, either that the imputation was true, and that it was for the public good that the imputation should be made (Ex. 1, section 449, I. P. C.), or that it was made in good faith for the protection of the interest of the person making it or of any other person (Ex. 9). This is the only method which occurs to us of providing at once for the interests of a *bonâ fide* questioner and an innocent witness.

In the same spirit, we have empowered the Court, in general terms, to forbid indecent and scandalous inquiries, unless they relate to facts in issue (as defined above), or to matters absolutely necessary to be known in order to determine whether the facts in issue existed: and also to forbid questions intended to insult or annoy.

We prefer this general power to the sections drawn by the Commissioners, which forbid questions to married persons "which substantially amount to inquiring whether that person has had sexual intercourse forbidden to him or her by the law to which he or she is subject," and "questions regarding the occurrence of sexual intercourse between a husband and wife, except in the case of Christians, where the suit is for a decree of nullity of marriage on the ground of bodily incapacity." We should regard these rules as dangerous. It is possible to imagine numerous cases in which it might be highly important to show that a married person was living with some one who was not her husband or his wife. A woman brings a false accusation against her servant. The motive is revenge for the discovery by the servant of an intrigue by the mistress. A married man comes to prove an *alibi* on behalf of his mistress. A woman sues a married man on a bond. He pleads that the consideration was adultery. In all these cases, and so in many others which might be suggested, it appears to us that it would be absolutely necessary to admit such evidence as is referred to. As to questions relating to sexual intercourse between husband and wife, we think it better to forbid indecent and scandalous inquiries in general terms, than to lay down a positive rule which, in possible cases might produce hardship.

Finally, we deal (Chapter XV.) with the question of the improper admission or rejection of evidence.

We provide in substance that in regular appeal each Court successively shall decide for itself to what evidence it will have regard. As for special appeals, we provide that if evidence is said to be improperly admitted, the objection must be taken before the inferior Appellate Court, and the Court called upon to say what its decision would be if the evidence objected to were rejected. If evidence is improperly rejected, we would permit the High Court either to look into the facts and deliver final judgment, or to remand the case.

Finally, we recommend that the Draft Bill, together with this report, should be circulated for the opinion of the Local Governments.

J. F. STEPHEN.
J. STRACHEY.
F. S. CHAPMAN.
F. R. COCKERELL.
J. F. D. INGLIS.
W. ROBINSON.

The 31st March 1871.

THE INDIAN EVIDENCE BILL.

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THE INDIAN EVIDENCE BILL.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The Indian Evidence Act."

Short title.

Extent.

It extends to the whole of British India, and applies only

(1) to proceedings in Court, in the High Courts in their original and appellate, civil and criminal, jurisdiction;

(2) to any proceedings in Court to which the Codes of Civil or Criminal Procedure are applicable, or which are taken or held under the Indian Succession Act or the Indian Divorce Act.

(3) to proceedings under commissions to take evidence;

(4) to proceedings in Court in Small Cause Courts;

Commencement of Act.

and it shall come into force on the first day of May 1872.

Repeal of enactments.

2. On and from that day the following laws shall be repealed :—

(1.) All rules of evidence other than those contained in any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

(2.) All such rules, laws and regulations as were made for the territories known from time to time as 'Non-Regulation Provinces,' otherwise than in conformity with the provisions of the 3 & 4 Wm. IV, c. 85, and of the 16 & 17 Vic., c. 95, and are referred to in the twenty-fifth section of 'The Indian Councils' Act 1861,' in so far as they relate to any matter herein provided for.

(3.) The enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall affect any provision of any Act of Parliament, or of any other Act or Regulation not hereby expressly repealed.

Interpretation-clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court."

"Court" includes all Judges and Magistrates, and all persons legally authorised to take evidence, and shall be interpreted wherever it occurs with reference to the provisions of chapter XIV., as to the duties of Judges and Juries, respectively.

"Fact."

"Fact" means and includes

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition, of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain position, in a certain place, is a fact.

(*b*) That a man said certain words, is a fact.

(*c*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, is a fact.

"Facts in issue."

"Facts in issue" means and includes

(*a*) every fact which any Court records as an issue of fact under the provisions of the law for the time being relating to Civil Procedure.

(*b*) any fact, of which any party to any suit or proceeding does not admit the existence, and from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any such suit or proceeding necessarily follows.

Illustrations.

A is accused of the murder of B and claims to be tried.

The following facts may be in issue :—

That A caused B's death.

That A intended to cause B's death.

That A had received grave and sudden provocation from B.

That A at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature.

"Collateral facts."

"Collateral facts" are facts which, not being themselves in issue, tend to prove or disprove the existence of facts in issue.

"Document."

"Document" means any thing made capable in any manner of conveying a meaning.

Illustrations.

The following things are documents :—

Writings, printed papers, photographs of writings, an I O. U., an inscription on a tombstone, a caricature, a message written in cypher, an architectural plan.

"Evidence."

"Evidence" means and includes

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence;

(3) all material things other than documents produced for the inspection of the Court;

such things are called material evidence.

"Proof."

"Proof" is the process of producing evidence in order that facts may be proved or disproved.

"Proved."

A fact is said to be proved when, after considering the evidence so produced, the Court either believes it to exist, or considers its existence so probable that, under the circumstances of the particular case, a prudent man ought to act upon the supposition that it exists.

"Disproved."

A fact is said to be disproved when, after considering the evidence so produced, the Court either believes that it does not exist, or considers its non-existence so probable that, under the circumstances of the particular case, a prudent man ought to act upon the supposition that it does not exist.

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

"Morally certain."

The existence or non-existence of a fact probable to the degree necessary for proof or disproof is said to be "morally certain."

Moral certainty.

4. The Court shall not regard any fact as morally certain unless it is of opinion that every supposition consistent with its non-existence is improbable.

Illustrations.

(*a*) A credible witness affirms that he witnessed a fact of ordinary occurrence, and which, if it occurred, he must have had an opportunity of observing.

Here the possible suppositions are—

(1) that the fact occurred;

(2) that the witness is mistaken; and

(3) that the witness is telling an untruth.

But, by the supposition, (2) and (3) are improbable. Therefore, every supposition consistent with the non-existence of the fact is improbable.

(*b*) The circumstances of a case are such that a given crime must have been committed by A or B.

The crime was one which required great physical strength. A is a strong man, B a weak woman.

The crime was one for which A had a strong motive, and against which B had a strong motive.

These facts make every supposition except that of A's guilt improbable.

Explanation.—The Court need not regard a fact as morally certain, merely because every supposition consistent with its non-existence is improbable.

Illustration.

In illustration (*a*) the Court is not bound to believe the witness.

Inferences to be drawn by Court.

5. Courts shall form their opinions on matters of fact by drawing inferences

(1) from the evidence produced to the existence of the facts alleged;

(2) from facts proved or disproved to facts not proved;

(3) from the absence of witnesses who, or of evidence which, might have been produced;

(4) from the admissions, statements, conduct and demeanour of the parties and witnesses, and generally from the circumstances of the case.

Necessary inferences.

6. When any inference is declared in this Act to be necessary, the Court shall in all cases draw that inference, and shall not permit proof that it is false.

Presumptions.

When the Court is directed by this Act upon the proof of any fact, or upon the production of any document, to presume the existence of any fact, it shall, when the fact is proved, or when the document is produced, regard as true the fact which it is directed to presume, unless and until the contrary appears or is proved, or unless, after considering the whole evidence on the matter, it is of opinion that such fact is not proved.

Chapter II.—Of the relevancy of facts.

Evidence for or against relevant facts only.

7. Parties to any suit or proceeding may, subject to the provisions of this Act, give evidence for and against such facts as are hereinafter declared to be relevant and no others.

Facts in issue relevant.

8. Every fact in issue, and every incident connected with any such fact which took place at its occurrence, is relevant.

Illustration.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death. B claims to be tried.

The following facts are in issue—

A's beating B with the club.

A's causing B's death by such beating.

A's intention to cause B's death.

Whatever was done or said by A or B, or the bystanders immediately before, during, or immediately after the beating of B by A, are relevant facts.

Explanation.—This section shall not enable any person to give evidence of any fact which he is disentitled to prove by any provision of the law for the time being relating to Civil Procedure.

Illustration.

(*b*.) A, a suitor does not bring with him and have in readiness for production at the first hearing a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings.

Collateral facts relevant to the issue.

Facts forming part of same transaction.

9. Facts which, though not in issue, are so connected with facts in issue as to form part of the same transaction, are relevant.

Illustrations.

(*a*.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose are relevant facts, though they do not contain the libel itself.

(*b*.) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are occasion, cause, or effect of facts in issue.

10. Facts which are the occasion, cause, or effect of facts in issue or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.

Illustrations.

(*a*.) The question is whether A robbed B.

The facts that shortly before the robbery B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*.) The question is whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(*c*.) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison are relevant facts.

Motive, preparation and subsequent conduct.

11. Any fact which shows or constitutes a motive or preparation for any fact in issue, or previous or subsequent conduct influenced by any fact in issue, is relevant.

Illustrations.

(*a*.) A is tried for the murder of B.

The facts that, twenty years before A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*.) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(*e*.) A is accused of a crime.

The facts that, after the commission of the alleged crime he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*f*.) The question is whether A was ravished.

The fact that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which the complaint was made, and the terms in which it was made, are relevant.

(*g*.) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, it was made, are relevant.

(*h.*) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts in issue an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it are relevant.

12. Facts which explain or introduce relevant facts, or which rebut an inference suggested by a relevant fact, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Illustrations.

(*a.*) The question is whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b.*) A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c.*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his home, is relevant, under section eleven, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

13. Where several persons conspire together to commit an offence or an actionable wrong, any thing said, done or written by any such person in furtherance of their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons so conspiring.

Things said or done by conspirator in furtherance of common design.

Explanation.—Such facts may also be relevant upon the question of the existence of the conspiracy itself.

Illustrations.

(*a.*) A conspires to wage war against the Queen.

The facts that a conspiracy to wage war against the Queen existed in which A, B, C, D, E, F, G and others were parties; that, in furtherance of the conspiracy, B procured arms in Europe, C collected money in Calcutta, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, are each relevant as against A, upon proof that he was a party to the conspiracy, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him.

(*b.*) A sues B for conspiring with C, D and E to injure A's credit.

The facts that C caused articles to be inserted in a newspaper reflecting on A's credit, that D spread a report that A was insolvent, and that E tried to dissuade a banker from lending A money, are relevant, as tending to show acts done by conspirators in furtherance of a common intent.

14. Facts not otherwise relevant are relevant—

Facts inconsistent with relevant facts, or making their existence morally certain.

(1) If they are inconsistent with any relevant fact;

(2) If they are inconsistent with any relevant fact, except upon a supposition the truth of which, in the opinion of the Court, is highly improbable in itself or ought to be proved by the party against whom such facts are alleged;

(3) If by themselves or in connection with other facts they make the existence or non-existence of any relevant fact morally certain.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.

The fact that at the time when the crime was committed A was at such a distance from the place where it was committed that he could not by the use of ordinary means of locomotion have reached the place at the time, is relevant if the Court thinks, under the circumstances of the case, that it is highly improbable, or that the prosecution ought to prove that extraordinary means of locomotion were at A's disposal.

(*b*) The question is whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, or that it was not committed by either B, C or D, is relevant.

15. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

In suits for damages, evidence may be given of facts tending to determine amount.

16. Where the question is as to the existence of any right or of any custom the following facts are relevant—

Facts relevant when right or custom is in question.

(*a.*) Any transaction by which the right in question was created, modified, recognised or denied, or which was inconsistent with its existence.

(*b.*) Particular instances in which the right in question was exercised, or in which its exercise was prevented as of right.

(*c.*) Particular instances in which the custom in question was recognised or departed from.

Illustrations.

(*a.*) The question is whether certain lands belong to A.

Transfers of the land from one person to another and finally to A are relevant facts.

(*b.*) The question is whether a horse belongs to B, the executor of A, or to C who is in possession of it.

The fact that A gave the horse to C in A's lifetime is relevant.

17. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is relevant:

Facts showing existence of state of mind, or of body or bodily feeling.

Provided that no party to any proceeding shall be permitted to prove any statement made by himself for the purpose only of proving any state of his own mind, or any feeling of his own body, unless such statement was accompanied, either by contemporaneous conduct on his part which it explains, or by contemporaneous circumstances which render its falsehood improbable, and unless it was made at or about the time when such state of mind or bodily feeling existed.

Proviso.

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*.) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he became possessed of it, he knew to be counterfeit.

The fact that at the time of its delivery he was possessed of a number of other pieces of counterfeit coin is relevant.

(*c*.) A sues B for damage done to A by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*.) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person is relevant, as showing that A knew that the payee was a fictitious person.

(*e*.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*). A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent C was supposed to be solvent by his neighbours and by persons dealing with him is relevant, as showing that A made the representation in good faith.

(*g*.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that credit was given to C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*.) A is accused, under section 403 of the Indian Penal Code, of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it he did in good faith believe that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew or had reason to believe that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*.) The question is whether A has been guilty of cruelty towards B, his wife.

Expressions of their feelings towards each other shortly before or after the alleged cruelty, are relevant facts.

(*j*.) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(*k*.) The question is what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(*l*.) A is accused of defaming B by publishing an imputation intended to harm his reputation.

A may not prove previous statements of his own that he did not wish to harm B's reputation made in ordinary conversation.

(*m*.) In the last illustration, A might prove that he wrote a letter to the Editor of a newspaper to whom he sent the matter complained of, requesting him not to publish the matter complained of if he thought it would harm B's reputation.

Act forming part of series of occurrences.

18. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The fact that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to A was not accidental.

Course of business when relevant.

19. When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Illustration.

(*a*.) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

Character when relevant.

In civil cases, character to prove conduct imputed irrelevant.

20. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

21. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Previous conviction in criminal trials relevant, but not previous bad character, except in reply.

22. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant, but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

23. In civil cases, the fact that the character of any person was such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections twenty, twenty-one, twenty-two and twenty-three, the word 'character' includes both reputation and disposition.

24. In trials for rape, or attempts to commit rape, the fact that the woman on whom the alleged offence was committed is a common prostitute, or that her conduct was generally unchaste, is relevant.

Character for chastity in trials for rape.

Admissions when relevant.

25. An admission is a statement, oral or documentary, which suggest any inference as to any relevant fact, and which is made by any person included in any of the classes hereinafter mentioned.

Admissions defined.

(*a.*) Parties to the proceeding.

(*b.*) Agents to such parties whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by them to make admissions.

(*c.*) Persons who have any interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested.

(*d.*) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit.

(*e.*) Third persons whose position or liability it is necessary to prove, as against any party to the suit, when the admission would be relevant as against such persons in relation to such position or liability in a suit brought by or against them.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

(*f.*) Third person to whom a party to the suit has expressly referred for information in reference to a matter in dispute. No inference from such an admission is necessary.

(*g.*) Conspirators in relation to any matter connected with their common intention.

Explanation 1.—The interest referred to in (*d*) must be derived from, and not merely subsequent to, that of the person making the admission. Otherwise the statement is not an admission.

Explanation 2.—Statements made by members of the classes *c*, *d* or *e*, are not admissions, unless they were made during the existence of their respective interests in the matter to which such statements relate.

Explanation 3.—Statements made by parties to suits sued in a representative character are not admissions, unless they were made while the party making them held that character.

Explanation 4.—Admissions as to the contents of documents are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such documents under the rules hereinafter contained.

Exception.—In civil cases, no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that it was the intention of the parties that evidence of it should not be given.

26. Admissions are relevant facts only as against the person who denies the inference which they suggest. They are not relevant on behalf of the person who asserts the truth of such inference.

Relevancy of admissions.

Illustration.

A, a party to a suit, says that a certain deed is forged.

This is relevant as an admission if A maintains that the deed is not forged, but is irrelevant if A maintains that the deed was forged.

27. The conduct of any party to any proceeding upon the occasion of anything being done or said in his presence in relation to matters in question, and the things so said or done, are relevant facts, when they render probable or improbable any relevant fact alleged or denied in respect of the person so conducting himself.

Admissions by conduct.

Illustrations.

(*a.*) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,'—and that immediately afterwards A ran away, are relevant.

(*b.*) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees,'—and that A went away without making any answer, and did not renew his request to C, are relevant facts.

28. An admission made by an accused person is irrelevant in a criminal proceeding if the making of the admission appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that he would gain any advantage or avoid any evil in reference to the proceedings against him by making it.

Admission of crime caused by inducement, threat or promise irrelevant.

29. If such an admission is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

Admission made after removal of impression caused by inducement, threat or promise relevant.

30. If such an admission is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Admission otherwise relevant not irrelevant on certain grounds.

Evidence to be given of the whole of any statement containing an admission.

31. Whenever evidence is given of a statement containing an admission, evidence must be given of the whole statement, in so far as it relates to the matter in question.

What evidence to be given when statement containing admission forms part of a conversation, document, book, or series of letters or papers.

32. Where the statement containing the admission forms part of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the alleged admission, and of the circumstances under which it was made.

Judgments in other suits when relevant.

Previous judgments relevant to bar a second suit or trial.

33. The existence of any judgment, order or decree which, under any provision of the Codes of Civil or Criminal Procedure, prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Judgments in probate, &c., jurisdiction.

34. Any judgment, order or decree of any competent Court in the exercise of probate, matrimonial, Admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is a relevant fact when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

It is a necessary inference from the existence of any such order, judgment or decree that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment declares that it had been or should be his property.

Judgments, order or decree between third parties when irrelevant and when not.

35. Judgments, orders or decrees other than those mentioned in section thirty-four, made in suits between persons other than parties or those through whom they claim or between a party to the suit, and any person who is not a party or the representative in interest of a party, are irrelevant, unless they relate to matters of a public nature, in which case they are relevant, though no inference from them is necessary, or unless the fact that there was such a judgment between such parties, is relevant under some other provision of this Act as to the relevancy of facts.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant in a suit by A against C for a trespass in the same place in which C alleged the existence of the same right of way, is relevant, but the inference that the right of way exists is not necessary.

(*c*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

Fraud, collusion and incompetency of court may be proved.

36. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections thirty-three, thirty-four or thirty-five, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Statements of third persons when relevant.

When statements of third persons are relevant.

37. Statements, written or verbal, made by any person about any relevant fact are themselves relevant facts, if it appears to the Court from the circumstances of the case that the person making such statements had special means of knowing the truth of that which he asserted, and special motives for not making a false assertion on the subject, and if such statements are corroborated by the conduct of the person making them, or if they refer to facts which are independently proved to be true.

Acts other than statements, done by any person which render probable the existence of any relevant fact are themselves relevant.

Illustrations.

(*a*.) A is accused of murder.

The facts that, soon after the murder, A's mother was seen washing A's clothes, and heard to tell A's father that A had told her to do so in order to get out stains of blood upon them, is relevant.

(*b*) A is accused of stealing rupees. The facts that A's intimate friend was heard to say to A's wife,—'A has given me these rupees for you and says you are to hide them,'—and was seen at the same time to give her a bag of rupees, are relevant.

(*c*.) The question is whether a ship was seaworthy when she sailed on a certain voyage.

The facts that the captain, after carefully examining the ship, wrote a letter to his wife saying that he was satisfied of the ship's seaworthiness, and that he afterwards embarked upon the ship with his wife and children, and with property which he did not insure, are relevant.

The washing of the clothes in illustration (*a*), the acceptance and delivery of the bag of rupees in illustration (*b*), and the examination of the ship by the captain and his embarkation on her in illustration (*c*), would be relevant whether any statement was made or not.

When statement by person who is dead or cannot be found, &c., is relevant.

38. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evi-

dence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1.) When the statement is made by a person, since dead, as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consisted of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of acknowledgments written or signed by him of the receipt of money, goods, securities or property of any kind; or of documents used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(4.) When the statement relates to the existence of any relationship between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(5.) When the statement relates to the existence of any relationship between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(6.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section sixteen, clause (*a*).

Illustrations.

(*a*) The question is whether A was murdered by B.

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B.

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration are relevant facts.

(*b*) The question is the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*.) The question is whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*.) The question is whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(*f*.) The question is what was the cause of the wreck of a ship.

A protest made by the captain whose attendance cannot be procured, is a relevant fact.

(*g*.) The question is whether a given road is a public way.

A statement by A, a deceased headman of the village that the road is public, is a relevant fact.

(*h*.) The question is what was the price of grain on a certain day in a particular market. A statement of the price made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*i*.) The question is whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*j*.) The question is what was the date of the birth of A.

A letter from A's deceased father to a friend announcing the birth of A on a given day, is a relevant fact.

(*k*.) The question is whether, and when, A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A at a given date, is a relevant fact.

Entry in public record, made in performance of duty enjoined by law when relevant.

39. Any entry in any public or other official book, register, or record stating a relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Maps and plans when relevant.

40. Statements of relevant facts made in published maps or charts, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts: Provided that such maps, charts, and plans were not made with reference to the proceeding in which they are to be proved.

Evidence in a former judicial proceeding when relevant.

41. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that the proceeding was between the same parties or their representatives in interest;

That the adverse party in the first proceeding had the right to cross-examine;

That the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section, and an inquiry before a Magistrate shall be deemed to be an earlier stage of a judicial proceeding, of which the trial before the Magistrate or the Court of Session are the later stages.

Statement as to fact of public nature contained in any Act or Notification of Government, when relevant.

42. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of the Governor General of India in Council or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or in any printed paper purporting to be the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Statements in newspapers as to public meeting, when relevant.

43. When the Court has to decide whether or not a public meeting or public proceeding was held or took place, any statement made by any newspaper that it did take place, is a relevant fact; but statements made by newspapers as to what passed at any such meeting or public proceeding, are irrelevant.

Opinions of third persons when relevant.

Opinions of experts.

44. When the Court has to form an opinion upon a point of foreign law, science or art, in order to determine any question before it, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts.

Such persons are called experts.

Illustrations.

(*a.*) The question is whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b.*) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A are ordinary symptoms of unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c.*) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same or by different persons are relevant.

Facts bearing upon opinions of experts.

45. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts.

Illustrations.

(*a.*) The question is whether A was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) The question is whether an obstruction to a harbour is caused by a certain sea wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting.

46. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself, or under his authority, and addressed to that person, or when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him.

Illustrations.

The question is whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

Opinion as to existence of right or custom, when relevant.

47. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression 'general custom or right' includes rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

48. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

49. When the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act.

Illustrations.

(*a.*) The question is whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*.) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion when relevant.

50. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

PART II.

OF PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

No evidence required of relevant fact judicially noticed.

51. No evidence need be given of any relevant fact of which the Court will take judicial notice.

Facts of which Court must take judicial notice.

52. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or heretofore in force in any part of British India:

(2.) All public Acts of the Parliament of the United Kingdom of Great Britain and Ireland, and all local and personal Acts directed by such Parliament to be judicially noticed:

(3.) Articles of War for Her Majesty's Army or Navy:

(4.) The course of proceeding of the said Parliament and of the Councils for the purpose of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto:

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

(6.) All seals of which English Courts would take judicial notice. The seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General in Council:

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government:

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown:

(9.) The seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public:

(10.) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(11.) The territories under the dominion of the British Crown:

(12.) The commencement, continuance, and termination of hostilities between Her Majesty and any other State or body of persons.

(13.) The names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakíls, pleaders and other persons authorised by law to appear or act before it:

(14.) And in the Presidency Towns and Military Cantonments, the rule of the road.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted.

53. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which they agree to admit before the hearing, by any writing under their hands: Provided that, when admissions are made in proceedings under the Code of Criminal Procedure, the Court may in its discretion require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF PRIMARY AND SECONDARY EVIDENCE.

Kinds of evidence.

54. All facts which it is necessary to prove, must be proved either by oral or by documentary, or by material evidence, and such evidence may be either primary or secondary.

Oral evidence when primary.

55. Oral evidence is primary in relation to all facts other than the existence or contents of any document, or the existence, appearance or condition of any material thing.

Primary evidence as to documents and material things.

56. When the fact to be proved is the existence or contents of any document, or the existence, appearance or condition of any material thing, the document or material thing itself is primary evidence. An oral description, or a copy of the document or material thing, is secondary evidence.

Explanation.—The word 'copy' includes all documents and all other things which represent to the eye any document or other material thing.

Documents and material things must be identified.

57. When any document or material thing is produced to the Court, it must be proved to be the document or material thing which it is alleged to be, and if it is a copy, to be a correct copy of that of which it is alleged to be a copy, except in cases in which the court is directed or authorised to make any presumption as to any such document.

CHAPTER V.—OF PROOF BY ORAL EVIDENCE.

Oral evidence to be direct.

58. Oral evidence must in all cases whatever be direct. That is to say—

If the fact to be proved is one which could be seen, it must be proved by the evidence of a witness who says that he saw it:

If the fact to be proved is one which could be heard, it must be proved by the evidence of a witness who says that he heard it:

If the fact to be proved is one which could be perceived by any other sense, it must be proved by the evidence of a witness who says that he perceived it by that sense.

This section applies equally to cases in which oral evidence is primary and to cases in which it is secondary, to the proof of facts in issue and to the proof of collateral facts.

Opinions of experts and others, and the grounds on which they are held, must be proved by their own statements.

59. If the fact to be proved is the opinion of any person whose opinion is declared to be a relevant fact by sections forty-four, forty-six, forty-seven or forty-eight, respectively,

or if the fact to be proved is the ground on which any such opinion is held by any such person,

the existence of such opinion and the fact that it is held on such ground must be proved by the evidence of the person himself that he holds that opinion on that ground:

Provided that, if the opinion is relevant under section forty-four, and was expressed in any published treatise, and if the person expressing it is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable, such opinion, and the grounds on which it was or is entertained, may be proved by the production of such treatise.

Chapter VI.—Of proof by documentary evidence.

Primary evidence to be given to prove contents, &c., of documents, except in certain cases.

60. When the existence, condition, or contents of any document are to be proved, they must be proved by primary evidence, except in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of or not subject to the process of the Court, or of any person not legally bound to produce it, and when, after the notice mentioned in section sixty-one, such person does not produce it.

(*b.*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

(*c.*) When the original is a record or other document in the custody of a public officer.

(*d.*) When the original is a document of which a certified copy is permitted by this Act or by any other law in force in British India to be given in evidence.

(*e.*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

(*f.*) When the original is of such a nature as not to be easily moveable.

In cases (*a*), (*b*) and (*f*), secondary evidence of the contents of the document is admissible:

In cases (*c*) or (*d*), a certified copy of the document is admissible.

In case (*e*) evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

61. Secondary evidence of the contents of the documents referred to in section sixty (*a*) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases:—

(1.) When the secondary evidence proposed to be given is a duplicate original, or a counterpart executed by the adverse party.

(2.) When the document to be proved is itself a notice.

(3.) When from the nature of the case, the adverse party must know that he will be required to produce it.

(4.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force.

(5.) When the adverse party or his agent has the original in Court.

(6.) When the adverse party or his agent has admitted the loss of the document.

The Court may, whenever it thinks fit, excuse the giving of the notice mentioned in this section.

Proof of signature and handwriting of person alleged to have signed or written document produced.

62. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

63. If a document is required by law to be attested, it shall not be used as evidence until the fact of its execution has been proved by one attesting witness at least, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

An attested document not required by law to be attested may be proved as if it was unattested.

Proof where no attesting witness found.

64. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission by party of execution.

65. The admission of a party to an attested document of its execution by himself shall be a relevant fact as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

66. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Comparison of handwritings.

67. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words and figures so written with any words or figures alleged to have been written by such person.

Documents thirty years old.

68. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court shall presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Chapter VII.—Of proof by certain kinds of documentary evidence.

Public documents.

69. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

(1) of the sovereign authority,

(2) of official bodies and tribunals, and

(3) of public officers, legislative, judicial and executive, whether of British India, or of any other part of her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

70. All other documents are private.

Certified copies of public documents.

71. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and such copies so certified shall be called certified copies.

Production of such copies.

72. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Presumption as to genuineness of certified copies.

73. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, to be genuine: Provided that such paper is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such paper purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumptions on production of record of evidence.

74. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume—

that the document is genuine, that the statements purporting to be made by the person signing it are true, and that such evidence was duly taken.

Presumption as to due execution, &c., of documents not produced.

75. The Court shall presume that every document called for and not produced after notice to produce was attested, stamped and executed in the manner required by law.

Presumption as to Gazettes.

76. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer.

Presumption as to collections of laws and reports of decisions.

77. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country,

and the Court may infer from the statements contained in such books, or in any books, proved to be usually referred to by the Courts of the country as authoritative, that the laws which they assert to exist do exist.

Presumption as to books and maps.

78. The Court may in its discretion presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

79. The Court shall presume that photographs, machine copies and other representations of material things produced by any process affording a reasonable assurance of correctness correctly represent their objects, and that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered, or caused to be delivered, for transmission by the person by whom the message purports to be sent.

Presumption as to photographs, machine copies and telegraphic messages.

80. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Proof of maps made for purposes of any cause.

81. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to powers of attorney.

82. When any document is produced to any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to documents admissible in England without proof of seal or signature.

83. The Court may in its discretion presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

84. An uncertified copy of any judicial record may be produced in order to prove the contents of the record upon proof—

Production of uncertified copies of judicial records.

(1) that the copy produced has been compared by the witness with the original, and is an exact transcript of the whole of it;

(2) that such original was in the custody of the legal keeper of the same; and

(3) if the copy purports to be signed by the legal keeper of the original, or sealed with the seal of the Court, that such signature or seal is genuine.

85. Other official documents may be proved as follows:—

Proof of other official documents.

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments, respectively,

or by any document purporting to be printed by order of any such Government:—

(2.) The proceedings of the legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4.) The Acts of the executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council:

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body.

(6.) Documents of any other class,

by the original, or by a copy certified by the legal keeper thereof:

(7.) Documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Chapter VIII.—Of material Evidence not documentary.

86. The existence, appearance and condition of material things other than documents must be proved by primary evidence;

Evidence of material things not documentary.

but the Court may, if it thinks fit, excuse the production of any material thing other than a document, and admit secondary evidence as to its existence, appearance or condition.

87. When the absence of any material thing other than a document can be accounted for to the satisfaction of the Court, or when its production would be impossible, inconvenient, indecent, or repugnant to religious feeling or the custom of the country, secondary evidence may be given of its existence, appearance or condition.

Secondary evidence of such things when producible.

Illustrations.

Secondary evidence may be given of the existence and condition—

of anything shown to have been lost, destroyed or altered,

of any immoveable property,

of very large or heavy moveable objects, such as ships, boats or railway carriages,

of a dead body, or of wounds upon a living person,

of idols or other things held sacred.

Proof required when material objects other than documents produced for inspection.

88. When any material thing other than a document is produced for the inspection of any Court, the fact that it is the object, the existence, appearance or condition of which is to be proved, or, if it is a copy or representation, the fact that it represents the original correctly, must be proved.

Chapter IX.—Of the exclusion of oral by documentary evidence.

Evidence of terms of written contract.

89. When the terms of a contract, or of a grant, or of any other disposition of property, other than a testamentary disposition thereof, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence of the same fact.

Exception.—When the appointment of any public officer is required by law to be made by writing, and when it is necessary to prove that a particular person holds such an appointment, the fact that he acted in that capacity is sufficient proof of his appointment, and his written appointment need not be proved.

Illustrations.

(*a.*) If a contract be contained in several letters, all the letters in which it is contained must be proved, and no other evidence of its provisions can be given.

(*b.*) If a contract be contained in a bill of exchange, the bill of exchange must be proved.

(*c.*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

90. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or substracting from, its terms:

Provided that, where a suit is instituted for the purpose of setting aside or varying a document on the ground of a mistake in the writing thereof, evidence may be given for the purpose of proving that mistake:

Provided also, that where a suit is instituted for the specific performance of a written contract, evidence may be given by the defendant for the purpose of showing that such contract is not the contract into which the parties have really entered.

Facts relevant in relation to instruments.

91. Evidence may be given of any of the following facts in relation to any such contract, grant or other disposition of property:—

(1.) Any fact showing to what specific things or persons any description used in the document relates.

(2.) Any fact showing that words, plain in themselves, have several applications, of which one only can have been intended, and any fact showing which of such applications is intended.

But where the words used are in themselves ambiguous, evidence may not be given to show in what sense they were used.

(3.) The fact that any word used in the writing was used in any sense other than the ordinary one.

(4.) The meaning of illegible or not commonly intelligible characters, or of foreign, obsolete, technical, local or provincial expressions.

(5.) Any fact which would invalidate the document, such as forgery of the whole or of any part, fraud, duress, illegality, want of due execution, want of capacity in the contracting party, or want or failure of consideration.

(6.) Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Illustrations.

(*a.*) A agrees to sell to B 'my white horse.'

Evidence may be given to show what particular horse was meant.

(*b.*) A agrees to accompany B to Hyderabad.

Evidence may be given to show whether Hyderabad in the Deccan or Hyderabad in Scinde was the place intended.

(*c.*) A agrees with B to buy a certain house 'for rupees 1,000 or rupees 1,500.'

Evidence may not be given to show whether the price was to be rupees 1,000 or rupees 1,500.

Other agreements which may be proved.

92. Nothing in this chapter contained shall prevent evidence from being given of—

(1) the existence of any distinct oral agreement on any matter collateral to any such contract, grant or disposition of property;

(2) the existence of any oral agreement constituting a condition on which the performance of any such contract, grant or disposition of property is to depend;

(3) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, except in cases in which such contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents.

PART III.

PRODUCTION OF PROOF.

CHAPTER X.—OF THE BURDEN OF PROOF.

Burden of Proof.

93. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.

A must prove the existence of those facts.

General burden of proof.

94. The general burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) A sues B for money due on a bond.

The execution of the bond is not disputed, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

95. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A and B, husband and wife, are both drowned in the same wreck. C is entitled to certain property if B survived A, but not if A survived B. D is entitled to the property if A survived B, but not if B survived A. If C claims the property, he must prove that B survived A. If D claims the property he must prove that A survived B.

Burden of proving fact to be proved to make evidence admissible.

96. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrctions.

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b.*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of establishing general exceptions.

97. When a person is accused of any criminal offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grevious hurt, shall be subject to certain punishments.

A is charged with voluntarily causing hurt under section 325.

The absence of circumstances bringing the case under section 335 shall be presumed.

Burden of proving fact especially within knowledge.

98. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustration.

When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

Estoppel.

99. When one person has by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant.

100. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

101. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Necessary inference as to legitimacy.

102. Where the legitimacy of any person is in question, his legitimacy shall be a necessary inference from the fact that he was born during the existence of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Illustrations.

(*a.*) The question is whether A is the legitimate son of B by C, his wife.

Evidence is offered to show that, during the cohabitation of B with C, she committed adultery with D.

The evidence is not admissible.

(*b.*) Evidence is offered to show that, for a year before the birth of A, B was in India and C in England. Evidence of C's adultery with D is admissible.

(*c.*) A is born six months after B's death. Evidence is offered to show that, for a year before B's death B was impotent, and that C committed adultery with D during that period. The evidence is admissible.

Presumption as to death.

103. When it is proved that a person has not been heard of for seven years by the persons who would naturally have heard of him if he had been alive, the Court shall presume that he is dead.

Presumption as to co-partnership.

104. When it is proved that persons have been acting as co-partners, or landlord and tenant, the Court shall presume that they have entered into a contract of co-partnership or tenancy, and such co-partnership or tenancy shall be presumed to continue till proved to be dissolved.

Chapter XI.—Of witnesses.

Who may testify.

105. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, unsoundness of mind, or any other cause of the same kind.

Dumb witnesses.

106. A witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but the writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Married persons in civil and criminal proceedings.

107. In all civil proceedings the parties and their husbands and wives shall be competent witnesses. In criminal proceedings against husbands or wives, the wives or husbands, respectively, shall be competent witnesses.

Judges and Magistrates.

108. No Judge or Magistrate shall be required without his own consent to give evidence as to what occurred in any proceeding before him in Court.

Communications during marriage.

109. No person, who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married, nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents.

Evidence as to affairs of State.

110. No one shall be permitted to give any evidence as to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

111. No public officer shall be compelled to disclose communications made to him in official confidence, when the public interests would suffer by the disclosure.

Information as to commission of offences.

112. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

113. No barrister, attorney, pleader, or vakíl shall be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, attorney or vakíl by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any criminal purpose;

(2) any fact, other than those mentioned in the former part of this section, observed by any barrister, attorney or vakíl in the course of such employment, whether his attention was or was not directed to such fact by or on behalf of his client.

Illustrations.

(*a.*) A, a client, says to B, an attorney,—'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) A being charged with embezzlement retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of the proceedings.

This being a fact observed by B in the course of the proceedings, it is not protected from disclosure.

(*d.*) An attorney is asked the contents of a deed shown him by his client, or whether it was stamped, or whether it contained erasures.

He must not answer either of these questions without his client's express consent.

He is asked whether the deed produced in Court has been shown him during his employment, and whether it is now in the same state as to stamps, erasures or otherwise, as it was in when he saw it first.

He must answer the question, as it relates to facts observed by him during his employment.

Waiver of privilege if party volunteers evidence.

114. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in the last section, and if any party to a suit or proceeding calls any such barrister, attorney or vakíl as a witness, he shall be deemed to have consented to such disclosure only in so far as relates to the matters, as to which he requires such barrister, attorney or vakíl to testify, and as to such other matters as may appear to the Court necessary to be known in order to the full understanding thereof.

Confidential communication with legal advisers.

115. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain, or to test the truthfulness of any evidence which he has given, but no others.

Production of witness' title-deeds.

116. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents belonging to another person.

117. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness bound to answer criminating questions.

118. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Persons jointly charged with offence.

119. No person charged with an offence shall be a competent witness for or against himself, or for or against any person charged jointly with him.

Examination or confession of accused as against a person jointly accused.

120. Evidence of the examination before the Magistrate of any accused person or of any confession made by any accused person, which might be proved as against such person, may be given against any person jointly accused with him in reference to the same transaction.

Statement by person jointly accused.

121. In determining whether any one of two or more persons jointly accused of any offence is guilty, the Court may have regard to any statement made by any other such person under the provisions of the law for the time being relating to the examination or addresses to the Court of persons accused.

Accomplice.

122. An accomplice shall be a competent witness against an accused person.

Number of witnesses.

123. No particular number of witnesses shall in any case be required for the proof of any fact.

Chapter XII.—Of the administration of oaths.

Witnesses.

124. All witnesses are bound to state the truth in their evidence.

Form of oath.

125. The Court shall administer to all witnesses an oath in the following form:—

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth."

Except in the following cases:—

(1) The Court may, in its discretion, permit any witness to omit the words "in the presence of Almighty God" in the said form, and shall do so if it is satisfied that the witness has a conscientious objection to their use, or does not understand them, or regards them as unmeaning or useless.

(2.) If the Court has reason to believe that any witness attaches peculiar sanctity to any form of swearing, and that the employment of such form of swearing would be likely to make him tell the truth, it may employ that form either instead of or in addition to the form above-mentioned, and either in relation to the whole of the witness' evidence, or in relation to such part of it as has reference to any particular fact.

Interpreters and translators.

126. All persons who are appointed to act as interpreters or translators by any Court, whether generally or on any particular occasion, shall be deemed to be public servants, and shall well and truly interpret or translate such matters as they shall be required to interpret or translate to the best of their ability; but such person shall not be sworn to interpret or translate.

Chapter XIII.—Of the examination of witnesses.

Power to produce evidence and question witnesses.

127. The order in which witnesses are produced and examined shall be regulated as follows:—

(1) In the High Courts, by the law and practice of those Courts for the time being.

(2) In proceedings under the Codes of Civil and Criminal Procedure, by the laws for the time being relating to Civil and Criminal Procedure, respectively.

(3.) In other cases, by the discretion of the Court.

Judge to decide as to relevancy of facts.

128. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact if proved would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-eight.

The fact that the person is dead must be proved before evidence is given of the statement.

(*b.*) It is proposed to prove the contents of a document said to be lost, by a copy.

The fact that the original is lost must be proved before the copy is produced.

(*c.*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

Examination-in-chief.

129. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of the witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination, subsequent to the cross-examination by the party who called the witness, shall be called his re-examination.

Order of examinations. Direction of re-examination.

130. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination, and if new matter is introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

131. A witness called merely to produce a document may be cross-examined by the party who does not call for the document, although such witness gives no evidence in the case.

Witnesses to character.

132. Witnesses to character may be cross-examined and re-examined.

Leading questions.

133. Any question suggesting the answer which the person who puts it wishes or expects to receive, is called a leading question.

When they must not be asked.

134. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

135. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

136. Any witness may be asked, whilst under examination, whether any matter as to which he is giving evidence was not stated in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, or as to any material thing which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document or material thing is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

137. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him; but if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

138. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend to test his veracity, or to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or undirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

139. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and eighteen shall apply thereto.

When witness not to be compelled to answer.

140. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the witness shall not be compelled to answer it, and if he does answer it, or refuses to answer it, no evidence shall be given of any such answer or refusal to answer in any subsequent suit or proceeding, except a criminal prosecution of such witness for giving false evidence by such answer.

No such question to be asked by barrister, &c., without written instructions.

141. No such question as is mentioned in section one hundred and forty shall be asked by any barrister, advocate, attorney, pleader or other agent without express written instructions signed by the party on whose behalf he appears, or by the agent of such party.

Court may require production of instructions. If none, or if insufficient, contempt of Court.

142. When any such question is asked by any such barrister, attorney, pleader or agent, the Court may, if it thinks fit, require from the person asking it the production of such written authority, and if he does not produce it, or if, when produced, it appears to the Court insufficient to authorize the question asked, the person asking such question shall be deemed to have committed a contempt of Court; but no such barrister, attorney, pleader or agent shall be held to have committed any other offence, or to have subjected himself to any civil proceedings by asking any such questions.

Court may impound instructions and deliver them to witness.

143. The Judge may, if he thinks fit, take possession of such written instructions upon their production and write upon them a memorandum identifying the document as one called for by him under the power hereby conferred upon him, and specifying the time, place and occasion on which, and the person by whom the question suggested in them was asked. The Judge shall sign such memorandum with his name and official title, and deliver the instructions and memorandum to the person of whom the question was asked. Upon the production in any civil or criminal proceeding of any document purporting to be such a document, the Court shall presume that it is genuine, and that the person signing it published the imputation suggested by it with the intention of harming the reputation of the person of whom it was asked.

Such questions asked by party may be recorded.

144. When any such question is asked by any party to any suit or proceeding, the Judge may make a memorandum of the question or questions asked, and the answers given to them, and sign the same and give such memorandum to the witness of whom such question was asked.

Instructions and questions not privileged.

145. No such instructions and no such questions shall be deemed to fall within any of the exceptions to section four hundred and ninety-nine of the Indian Penal Code or to be a privileged communication merely because the instructions were given, or because the question was asked under the provisions of this Act.

Indecent and scandalous questions.

146. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters absolutely necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

147. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

148. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to test his veracity or credibility, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and does not admit it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Cross-examination by party producing witness.

149. The Court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross examination by the adverse party.

Impeaching credit of witness.

150. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:—

(1.) By the evidence of persons who testify that they, from previous knowledge of the witness, believe him to be unworthy of credit.

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

(2.) By proof that the witness has been bribed or has had the offer of a bribe, or has received any other corrupt inducement to give his evidence.

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

Illustrations.

(*a*.) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Corroborative facts are relevant.

151. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other facts which he observed at or near to the time or place at which such relevant fact occurred, and the truth of such statements is relevant if the Court is of opinion that proof of them would corroborate the testimony of the witness as to the relevant fact to which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Evidence in reply to evidence of former inconsistent statements.

152. If evidence is given that a witness has, on a former occasion, made a statement inconsistent with his evidence given in Court, evidence may be given, in reply, of any other statement made by such witness relating to the fact in question at or about the time when the fact took place, or made at any time before any authority legally competent to investigate the fact.

Refreshing memory.

153. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transactions concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Court may permit a copy of document to be used to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Producing writing used to refresh memory.

154. Any such writing as is mentioned in the last section must be produced and shown to the adverse party if he requires it, who may, if he pleases, cross-examine the witness thereupon.

Production of documents.

155. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence of document called for and produced on notice.

156. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving as evidence of document production of which was refused on notice.

157. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards give the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

158. The Judge may ask any question he pleases in any form at any time of any witness about any fact relevant or irrelevant, or may order the production of any document or thing, and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which under any provision of this Act he would be entitled to refuse to answer or produce if the question were

asked or the document were called for by the adverse party, nor shall it authorize any Judge to dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

159. The jury or assessors may put any questions to the witnesses through or by leave of the Judge which the Judge considers proper.

PART IV.

PROCEDURE.

CHAPTER XIV.—OF THE DUTIES OF JUDGES AND JURIES.

Duty of Judge.

160. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents which may arise in the course of their trial; and in his discretion to prevent the production of evidence not hereby declared to be admissible, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which has been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Judge's duty to inquire into truth of matter before him.

161. It is the duty of the Judge in criminal cases, if he thinks that the interests of the public require it, not merely to hear and decide or direct the jury, as the case may be, according to the evidence produced before him, but also to inquire to the utmost into the truth of the matter in question; and he shall for that purpose ask all questions and require the attendance of all persons and the production of all documents and things that he considers necessary, whether such questions might be asked, or such persons or things which might be produced by a party to the proceeding or not.

Duty of jury.

162. Where there is a jury it is the duty of the jury—

(1) to decide upon all questions of fact submitted to them by the Judge at the trial, having regard in such decision to the statement of the law given to them by the Judge;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular case unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

(*c.*) The question is whether certain facts constituted probable cause for a prosecution.

This is a question for the Judge. The existence of the facts is a question for the jury.

When juryman or assessor may be examined.

163. If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined either by the parties or by the Judge, in the same manner as any other witness.

CHAPTER XV.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

Improper admission or rejection of evidence in regular appeals.

164. The improper admission or rejection of evidence shall not in itself be a ground of regular appeal, but whenever any regular appeal is brought on the ground that the evidence did not warrant the finding of the Court below, the appellant may contend before the Court of appeal that it ought not to pay attention to any evidence which such appellant considers to have been improperly admitted by the Court below, or that it ought to admit any evidence which such appellant considers to have been improperly rejected by the Court below. If the Court of Appeal considers that any such evidence was improperly admitted, it shall decide the case without having regard to such evidence. If it considers that any evidence was improperly rejected, it shall admit such evidence, and have regard to it in its decision. No evidence shall be admitted before any Appellate Court which the party tendering it would have been prevented from tendering before the subordinate Court by any provision of the laws for the time being relating to Civil or Criminal Procedure.

Improper admission of evidence in special appeals.

165. No special appeal shall lie from the decision of any Court on the ground of the improper admission of evidence; but, if any party to a suit considers that any Court from which a special appeal would lie has taken

into consideration any evidence which it ought not to have taken into consideration, he may call upon such Court to state in its judgment what its judgment would have been if such evidence had been excluded, and he may on special appeal call upon the High Court to decide whether the judgment actually given or the judgment which would have been given had such evidence been excluded shall stand, and the High Court shall affirm the one or the other judgment according as it thinks that the evidence ought or ought not to have been admitted.

Improper rejection of evidence in special appeals.

166. Special appeals may be brought on the ground that the inferior Appellate Court has improperly rejected evidence, and if the High Court is of opinion that evidence has been improperly rejected, it may either itself admit such evidence and look into the facts of the case, and deliver final judgment in the case, or remand the case to the inferior Appellate Court with such direction as it thinks fit.

Procedure of High Court acting under its powers of revision in case of improper admission or rejection of evidence by subordinate Court.

167. Whenever any High Court acting under the powers of revision contained in the Code of Criminal Procedure, is of opinion that any subordinate Court has admitted or has taken into consideration, or has rejected or has failed to call for evidence, which it ought not to have admitted or rejected, or which it ought to have called for, such High Court shall have power to call for any further evidence under section four hundred and twenty-two of the Code of Criminal Procedure, and shall make such final order on the case as it considers just.

Objections to rejection of evidence.

168. When any party to any suit objects to the rejection of any documentary or material evidence, he may, upon the rejection of the evidence, apply to the Court to write upon or attach to such evidence a memorandum that it was tendered and rejected, and the Court shall thereupon write or attach such memorandum upon or to such document or thing, and no appeal shall be brought upon the ground that any documentary or material evidence was rejected; and no such document or thing shall be tendered as evidence before any Appellate Court, unless it was so tendered before the inferior Court, and unless it has such memorandum written upon or attached to it.

Appellate Court may refer to record of inferior Court.

169. Nothing in this Act contained shall prevent any Appellate Court from referring to the record of the evidence taken by any inferior Court according to the provisions of any law, or according to any practice now in force.

SCHEDULE.

Number and year.	TITLE.	Extent of repeal.
Stat. 26 Geo. III., C. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act made in the twenty-fourth year of the reign of his present Majesty (intituled, An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic., C. 99.	To amend the Law of Evidence	Section eleven, and so much of section nineteen as relates to British India.
Act V. of 1840.	An Act concerning the oaths and declarations of Hindoos and Mahomedans.	The whole Act.
Act XV. of 1852....	To amend the Law of Evidence	The whole Act.
Act XIX. of 1853 ..	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II. of 1855	For the further improvement of the Law of Evidence.	The whole Act.
Act XXV. of 1861..	For simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty-seven.
Act I. of 1868.	The General Clauses Act, 1868	Section seven.

INDEX.

(Nothing hereinafter contained shall be deemed to have the force of law.)

H. S. CUNNINGHAM,

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