PART II

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

56. Fact judicially noticeable need not be proved.—No fact of which the Court will take judicial notice need be proved.

COMMENTARY

Facts which need not be proved.—The second Chapter which ends with section 55 deals with the question, "Of what facts may evidence be given?" A fact, in order to be admissible in evidence, must be either a fact in issue[1] or relevant under some section of the second Chapter[2] which deals with relevant facts.[3] Having thus defined in Part I the area of acts which may be given in evidence in a suit or proceeding, the Act proceeds in Part II to lay down the manner in which facts in issue or relevant facts which are sought to be given in evidence must be proved. As a general rule, every fact on which a party relies has to be proved; but to this general rule there are two important exceptions which are dealt with in this Chapter. These exceptions consist of (i) facts of which a Court is directed by Section 57 to take judicial notice, and (ii) facts which are admitted by the parties[4] Neither of these classes of facts need be proved in the ordinary way by evidence.

The death penalty has a deterrent effect and it does serve a social purpose. Further a judicial notice can be taken of the fact that the law and order situation in the country has not only improved, but has deteriorated over the years and is fast worsening today.(See Bachan Singh's case 1979 (3) SCC 727).[5]

57. Facts of which Court must take judicial notice.—The Court shall take judicial notice of the following facts:

[6][(1) All laws in force in the territory of India;]

(2) All public Acts passed or hereafter to be passed by Parliament [7][of the United Kingdom], and all local and personal Acts directed by Parliament [7][of the United Kingdom] to be judicially noticed;

(3) Articles of War for [8][the India], Army, [9][Navy or Air Force;]

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1. See definition of "facts in issue" in Section 3.
2. Section 6 to 55.
3. See Section. 5.
4. Section 56 and 58.
5. *Shashi Nayar* v. *U.O.I.*, AIR 1992 SC 395.
6. *Subs.* by the A.O. 1950 for the former paragraph.
7. *Ins.* by the A.O. 1950, ibid.
8. *Subs.* by *Ibid.*, for "Her Majesty's".
9. *Subs.* by Act 10 of 1927, S 2 and Sch. 1 for "or Navy",

[1][(4) The Course of proceedings of Parliament of the United Kingdom of the Constituent Assembly of India, of Parliament and of the legislature established under any laws for the time being in force in a Province or in the State;]

(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 take judicial notice; the seals of all the [2][Courts] in [3][India] and of all Courts out of [3][India] established by the authority of [4][the Central Government or the Crown Representative]; the seals of Courts of Admiralty and Maritime Jurisdiction and Notaries Public and all seals which any person is authorised to use by [5][the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [3][India];

(7) The accession to office, names, titles, 'functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in [6][any Official *Gazette*].

(8) The existence, title, and national flag of every State or Sovereign recognized by [7][the Government of India]:

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official *Gazette;*

(10) The territories under the dominion of [1][the Government of India];

(11) The commencement, continuance and termination of hostilities between [7][the Government of India] and any other State or body of persons;

(12) 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, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road [8][on land or at sea].

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1. *Subs.* by the A.O. 1950 for the former clause (4).
2. *Subs.* by the A.O. 1948 for, "Courts of British India".
3. *Subs.* by Act 3 of 1951, S. 3 and Sch. I for "The States".
4. *Subs.* by the A.O. 1937 for "the G.G. or any L.G. in Council".
5. *Subs.* by the A.O. 1950 for "any Act of Parliament or other".
6. *Subs.* by the A.O. 1937 for "the *Gazette* of India or in the Official *Gazette* of any L.G."
7. *Subs.* by the A.O. 1950 for "The British Crown".
8. *Ins.* by Act 18 of 1872, S. 5.

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.

COMMENTARY

Judicial notice; facts of which Courts may take judicial notice.—Judicial notice is the cognizance taken by the Court itself for certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary.[1]

In the words of the Supreme Court in *Onkar Nath* v.*Delhi Administration*.[2] "Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerate facts of which the Court 'shall' take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge.[3]

Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof".

"With regard to the facts enumerated in Section 57, if their existence comes into question, the parties who assert their existence or the contrary need not, in the first instance, produce any evidence in support of their assertions. They need only ask the Judge to say whether these facts exist or not, and if the Judge's own knowledge will not help him, then he must look the matter up; further the judge can, if he thinks proper, call upon the parties to assist him. But in making this investigation the judge is emancipated entirely from all the rules of evidence laid down for the investigation of facts in general. He may resort to any source of information which he finds handy, and which he thinks helps him. Thus, he might consult any book or obtain information from a bystander. Where there is a jury, not only the judge but the jury also must be informed as to the existence or non-existence of any facts in question. In the cases mentioned in Section 57, therefore, the judge must not only inform himself, but he must communicate his information to the jury,"[4] and when he relies on a book of reference under this section, he should also inform the parties during the trial so that they may have an

1. Phipson, Ev., 7th Ed. 8 ; Taylor §§ 3-21 ;Best §§ 252-4.
2. 1977 SC 1108 (Para 6).
3. *See* Taylor 11th edn. pp. 3-12; Wigmore *see* 2571 footnote ; Stephen's Digest, notes to Article 58 ; Whitley Stokes' Anglo-Indian Codes Vol.II p. 887.
4. Markby Ev., 40.

opportunity of adducing evidence or argument on the point.[1]

Clause(1) ; Judicial notice of laws and rules having the force of law.–Under this clause the Court is bound to take judicial notice of all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of India. The term 'law' includes within its connotation, not only legislative Acts and Ordinances etc., but also rules, regulations and orders made in exercise of delegated powers of legislation. An order though statutory, must be legislative and not executive in character, before it can qualify to be termed law. It must be passed in exercise of legislative, though delegated, functions and powers of the Legislature. Such an order, which is legislative in character and made by an authority in exercise of legislative powers conferred on it by statute has the same force and efficacy as law made by the Legislature which enacted the statute.[2] The same rule would, it is apprehended, apply to any such order made under an Ordinance, for an Ordinance is equivalent to an Act of Legislature though made by the Executive. Thus, judicial notice must be taken of a statutory notification issued by the Government or any other competent authority in the exercise of its delegated powers of legislation.[3] Of course, the Court may require the production of the notification or the copy of the Gazette containing it, before taking judicial notice of it.[4]

The Court may take judicial notice of a form of licence granted under a statute.[5] Even a notified order, not having the force of law, or any other Act or order of the Government, may be proved by producing the Official Gazette, if it is published there, or in any of the modes prescribed by Section 78 for proving that class of public documents, among others. The public documents prove themselves. In that sense the Court take notice of them without requiring proof of them, but that is different from taking judicial notice of facts required to be taken under Section 57. Thus, a Government notification by itself does not come under Section 57, although mere production of the Gazette published under the authority of the Government is sufficient proof of the notification.[6] Statutory rules, framed by a municipality but which have the force of law, can be taken judicial notice of.[7]

Rules of Hindu law, Mohammadan law, or custom to be judicially noticed.–Where the Legislature has declared that the parties will be governed in certain matters by Hindu law or Mohammadan law, as the case may be, the rules of Hindu law or Mohammadan law on those matters will be judicially noticed by the Courts.[8]

The personal law will be ascertained by reference to authoritative text books, judicial decisions and the opinions of persons well vested in those systems of law. These authorities are sufficient proof of the general Hindu law prevailing over large tracts of country and populous communities. Any body living among them must be taken to fall

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1. *Weston* v. *Pearey Mohun Das*, 40 C 898 ; 23 IC 25.
2. *Edward Mills Co. Ltd.*, v. *State of Ajmer*, 1955 SC 25; 1955 (1) SCR 735; *State of Bombay* v. *F.N. Balsara*, 1951 SC 318 ; 1951 SCR 682 ; *State* v. *Gopal Singh*, 1955 MB 138 (FB).
3. *Tek Chand* v. *Firm Amar Nath*, 1972 P & H 46, at p. 50 ; *State Bank of Trav.* v. *Vinaya Chandran*, AIR 1989 Ker. 302.
4. *State* v. *Gopal Singh*, 1956 MB 138 (FB).
5. *Ram Lakhan Sao* v. *State*, 1953 p. 54.
6. *Collector of Cawnpore* v. *Jugal Kishore*, 107 IC 578 : 1928 A 355 ; *Mathura Das* v. *State*, 1954 N 296.
7. *Committee of Management of Hyderabad* v. *Ramchand Zownkiram*, 87 IC 258: 1923 S. 1.
8. *Q.E.* v. *Ramzan*, 7 A 461 (FB), per Mahmood J.

under those general rules of law, unless he can show some valid local, tribal or family custom to the contrary. In order to bring a case under any rule of law laid down by recognized authority for Hindus generally, it is not necessary to give evidence of actual events to show that in point of fact the people subject to that general law regulate their lives by it. Special custom may be pleaded by way of exception, which it is proper to prove by evidence of what actually is done.[1] There is one essential feature in the operation of customs which necessarily differentiates them from the operation of Acts of Legislature. In the case of laws enacted by the Legislature, Courts have to take judicial notice not only of the rules but also of those facts which are necessary for showing that they have the force of law, such facts consisting of the proceedings of the legislative body. In the case of customs, the facts showing that they have the force of law and that they govern the parties or the properties concerned include the fact that the alleged rules of conduct have been uniformly followed by the parties concerned or the community to which the parties belong. This fact is one of which the Courts cannot take judicial notice, unless it has been so often proved in the Courts as to make further proof unnecessary.[2] Thus, the Courts may take judicial notice of a custom if it is generally prevalent among a certain class of people[3] or is well established by long usage, e.g. a customary right of privacy prevailing in Oudh.[4] When the existence of a custom is generally known and judicially recognized it is necessary to prove it by specific evidence.[5] Where a custom is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom to be introduced into the law without the necessity of proof.[6]

Reference to Law Reports.—No Court is bound to hear cited, or to treat as authority binding on it, the report of any case decided by any High Court other than a report published under the authority of any State Government.[7] This rule does not, however, prevent the Court from looking at an unreported judgment of other judges of the same Court,[8] or at the reports other than the officially authorised reports of is own judgments or the judgments of the other High Courts or of the Supreme Court of India, or of the superior Courts of the United States of America, or the United Kingdom, or the member countries of the British Commonwealth of Nations.[9]

Class (2): Acts of British Parliament.—Judicial notice will be taken of the existence and contents of all public Statutes; and all Acts of Parliament of the United Kingdom of whatever nature passed since 1850, unless the contrary is expressly provided.[10]

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1. *Bhagwan Singh* v. *Bhagwan Singh*, 21 A 412 : 26 IA 153 (PC).
2. *Secretary of State* v. *Santarja Shetty*, 21 IC 432.
3. *Baji Nath Singh* v. *Bahadur Singh*, 91 IC 533 : 1926 O 101; *Nihal Chand* v. *Mst. Bhagwan Dei*, 1935 A 1002 : 159 IC 683.
4. *Baqridi* v. *Rahim Bux*, 93, IC 332 : 1926 O 352.
5. *Jadu Lal Sahu* v. *Janki Koer*, 35 C 575 ; See also *Jadu Lal Sahu* v. *Janki Koer*, 30 C 915 : 39 IA 101 : 15 IC 659(PC).
6. *Venkata Mahipathi Gangadhara Rama Rao* v. *Raja of Pittapur*, 41 M 778 : 45 IA 148 : 47 IC 354 (PC) ; *Tulsidas Keshowdas* v. *Fakir Mohamed*, 93 IC 321 : 1926 S. 161 ; *Sano* v. *Puran Singh*, 78 IC 461 : 1927 N 174.
7. Section 3, Indian Law Reports Act, 1875 (XVIII of 1875).
8. *Mahomed Ali Hoseein* v. *Nazar Ali*, 28 C 289 ; See also Section 38 and 84 and notes to those sections.
9. 52 & 53 Vict. c. 63 ; Phipson, Ev., 7th Ed., 20.
10. *The Englishman Ltd.* v. *Lajpat Rai*, 37 C 760 : 6 IC 81.

Clause (4) course of proceedings of Parliament.—The course of proceedings of Parliament is something distinct from the proceedings themselves. The debates in Parliament are not covered by the expression "course of proceedings of Parliament."[1] The Court will, however, take judicial notice of the stated days of general political elections and of the date and place of the sitting of the Legislature.[2] A Court can take judicial notice of the course of proceedings in the Legislative Assembly, but there should be some indications on the record when and in what circumstances the statement of which judicial notice is taken was made. Such statement is of course no proof of the facts stated.[3]

Clause (6); seals of which English Courts take judicial notice.[4]

Signature or seal of a Sub-Registrar or of a Foreign Notary Public.—The seal of a foreign Notary Public has been judicially noticed under section 57 of the Evidence Act.[5] A Court can take judicial notice of the endorsement of a Sub-Registrar and his signature appearing on a registered document.[6] If a seal is not distinctly legible, it will not be judicially noticed.[7]

Clause(7) ; judicial notice to be taken of Gazetted Officers.—Under this clause judicial notice must be taken of the accession to office, names, titles, functions and signatures of all "Gazetted" officers. Thus judicial notice has been taken of the signature of the Chief Secretary to Government,[8] the Deputy Commissioner of police[9] a Sub-Registrar,[10] an Honorary Magistrate while acting as such,[11] and, before the passing of the Act, of a jailor's signature under section 16 of the Prisoners' Testimony Act.[12] A Court is bound to take judicial notice of the fact that a certain person was Justice of the Peace for Bengal.[13] Where there is nothing to show that a person's appointment was notified in any Government Gazette, the Court cannot take judicial notice of the appointment.[14] Therefore, a Magistrate in a native State was held as not falling within the scope of this clause of the section.[15]

Gazette need not be exhibited.—If there is no doubt as to the fact of a particular person's appointment and its notification in the Gazette, the exhibition of a copy of the Gazette is not a necessary legal preliminary to a Court taking judicial notice of the genuineness of his signature.[16]

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1. Woodroffe, Ev., 9th Ed. 491.
2. *E. v.Mohammad Hassan*, 1943 L 298.
3. See Phipson, Ev.,7th Ed., 22-24 ; Taylor, § 6 ; Halsbury, Vol. 13, para 685.
4. See the Registrar's note in In *re Henderson*. 22 C 491.
5. *Radha Mohun Dutt v. Nripendra Nath Nandy*, 105 IC 422 : 1928 C 154; See *Kristo Nath Koondoo v.Brown*, 14 C 176 : *Thama v.Govind Bilal*,9 Bom LR 401 ; but see *Salimatul Fatima v.Koylashpoti Narain Singh*, 17 C 903.
6. *Jaker Ali Chowdhury v. Cajchunder Sen*,8 C 831 [note]; 10 CLR 469.
7. *Lal Rajendra Singh v. Madan Singh*, 10 Cut LT 62.
8. *Cholancheri Ayammad v.E.*, 72 IC 515 : 1923 M 600 : 24 Cr LJ 403 ; *Kali Prasad v.E.*, 1945 P 59.
9. *Walvekar v. E.*,53 C 718 : 96 IC 264 : 1926 C 966 : 27 Cr LJ 920.
10. *Radha Mohun Dutt v. Nripendra Nath Nandy*, 105 IC 422 : 1928 C 154.
11. *Ramjihan Bhuttacharjee v. Ahmed Khan*, 5 IC 537.
12. *Tamor Singh v. Kalidas*, 4 BLR (OC) 51.
13. *R. v. Navadip*, 1 BLR (O Cr) 15. This decision is of a date prior to the passing of the Act.
14. *Jaker Ali Chowdhury v.Cajchunder Sen*, 8 C 831 [note]: 10 CLR 469.
15. *E. v. Dhanka Amra*, 24 IC 169 : 15 Cr LJ 433.
16. *Cholancheri Ayammad v. E.*, 72 IC 515 : 1923 M 600 : 24 Cr. LJ 403.

Clause (8); States recognized by the Government of India.—The Court can take judicial notice of the existence, title and national flag of a State or Sovereign only if the State or Sovereign has been recognized by the Government of India and not otherwise.[1] Courts in India are bound to take judicial notice of the fact whether a foreign State has or has not been recognized by the Government of India.[2] If, upon a civil war in any country, one part of a nation separate from the other and establish an independent Government, the newly founded nation cannot, without proof, be recognized as such by the judicial tribunals of other nations, unless it has been acknowledged by the Sovereign power under which those tribunals are constituted.[3]

Clause (9) ; divisions of time.—Under this clause of the section the *Bengali, Willaiti, Fasli, Hindi, Hijri* and *Falus* eras will be judicially noticed in those districts in which they are current, and reference may be made to the usual almanacs, when occasion requires.[4] The Court may refer to an almanac, to ascertain what particular date in the English Calendar corresponds to a certain date of the *Fasli* Calendar.[5]

Geogaphical divisions.—Notice will be taken of the territorial and administrative divisions of the country into countries, towns, parishes,etc.[6] and of the geographical position and general names of the districts. But the Court will not take judicial notice of the precise extent or limits of the various countries and divisions; nor whether particular places are or are not situated therein; nor of the local positions of particular places with respect to each other.[7] The Court can take judicial notice of the fact that Central Government is located at New Delhi.[8]

Public festivals, facts and holidays.—Under clause (9) of section 57, the Court will take judicial notice of public festivals, fasts and holidays notified in the Official Gazette. Thus, where the period of limitation prescribed for a suit expires when the Court is closed for the summer vacation and the plaint is presented on the day, the Court reopens, it is not necessary to state in the plaint the ground of exemption[9] as the Court is bound to take judicial notice of the holidays,[10] and the plaintiff is entitled to presume that judicial notice would be taken of this fact.[11]

Dispute about inter-state river water.——The court can take cognizance of fact that government, at centre is run by one political party while in two States by different political parties.[11a]

Clause (10); territories under the dominion of the Government of India.—Courts are bound to notice the territorial extent of the jurisdiction and sovereignty exercised *de facto* by their own Government,[12] and this being so, they must independently of the

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1. See *City of Berne* v. *Bank of England*, 9 Ves., 341 : *E.v Juma*, 22 B 54, 61 ; *Lachmi Narain* v. *Raja Partap Singh*, 2 A 1, 17.
2. Section 84 (2), CP Code ; *Chimandas Tek Chand* v. *E.*, 1944 S 188.
3. *City of Berne* v. *Bank of F igland*, 9 Ves., 347.
4. Field. Ev., 8th Ed., 420.
5. 4 OC 182.
6. Deybel's CAse, 4 B & Ald 243 ; *R.* v. *Fly*, (1850) 15 QB 827 ; *R.* v. *St. Maurice*, 16 QB 908.
7. Phipson. Ev., 7th Ed., 22.
8. *P.N. Films Ltd.*, v. *Union of India* , 1955 B 381.
9. *Tekchand* v. *Patto*,56 IC 926 ; see also *Gyan Singh* v. *Budha*,14 L 240 : 149 IC 958 : 1933 L 558.
10. *Gyan Singh* v. *Budha*, 14 L 240 : 149 IC 958 : 1933 L 558 : *Tekchand* v. *Patto*, 56 IC 926.
11. *Gyan Singh* v. *Budha*, 14 L 240 : 149 IC 958 : 1933 L 558 : *Tekchand* v. *Patto*, 56 IC 926.

11a. *Tamil Nadu N.V.V.N.U.P. Sangam* v. *U.O.I.*, AIR 1990 SC 1316.

12. See Taylor § 17 ; *E.v Juma*, 22 B 54, 61 ; *Lachmi Narain* v. *Raja Partap Singh*, 2 A 1, 17.

Gazette,take judicial notice of the fact that there has been a cession of territory.[1]

Section 57 (10).—Judicial notice of annexation of territory –Rule as to –Under S. 57 (10) of Indian Evidence Act the Court can certainly take judicial notice of the fact that a particular territory is a part of India or not. If there were any public notification or declaration by which the Government declared a particular territory as a part of the territory of India, the Court is bound to take notice of it. But the case of a foreign territory seized in course of a combat is different.[2]

Clause (II) : state of war between the Government of India and any other State.–Indian Courts are bound to take judicial notice of the commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons.[3] They are however, not bound to take judicial notice of a war between Foreign Powers[4] though, where the Executive has recognized a state of war between Foreign Powers, the Court *might* take judicial notice of this fact as a fact of public notoriety.[5]

The court could take judicial notice of the fact that there was a commencement of war between India and Pakistan in June 1965.[6]

The present section not being exhaustive of the facts of which the Courts *can* take judicial notice.[7] In order to take judicial notice of the hostilities between the Government of India and any body of persons, the Court may refer to official correspondence on the subject.[8]

Clause (13); rule of the road.–The Courts shall take judicial notice of the custom or law of the road, *viz.*, that horses and carriages should respectively keep on the near left side; and the following rules with respect to navigation:–Ist, that ships and steam boats, on meeting 'end on or nearly end on, in such a manner as to involve risk of collision," should port their helms, so as to pass on the port, or left side of each other;next,that steam boats should keep out of the way of sailing ships; and next, that every vessel overtaking another should keep out of its way.[9]

Though the date of the establishment of a Telephone Exchange in the city of Calcutta is not such as to attract Section 57(13), still it can be proved by a competent officer therein or by an affidavit.[10]

List of facts enumerated in Section 57 not exhaustive of the facts of which Courts may take judicial notice –The Maxim *expressio unius exclusio alterius* is often a valuable servant, but a dangerous master to follow in the construction of Statutes. The *exclusion* is often the result of inadvertence or accident and the maxim ought not to be applied when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.[11] This maxim is not appli-

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1. *Damodar Gordhan* v. *Deoram Kanji*, 1 B 367 : 3 IA 102 (PC).
2. *S.R.Bhansali* v. *Union of India* , AIR 1973 Raj. 49.
3. See *E.v. Juma*,22 B 54, 61.
4. The English rule was so stated in *Dolder* v. *Huntingfield*, 11 Ves., 292.
5. See Halsbury, Vol. 13, para, 682. and footnote at p. 493.
6. *State of Assam* v. *Bansidhar Shewbhagavan & Co.*, 1981 SC 1957 (Para 8).
7. See notes to this section under the heading "list of facts enumerated in section 57, whether exhaustive of the facts of which Courts may take judicial notice".
8. See *R.* v. *Amiruddin*,7 BLR 63 : *E.* v. *Juma*, 22 B 54, 61.
9. Taylor § 5.
10. *Sourendra Basu* v. *Saroj Ranjan*, 1961 Cr LJ 204 FB.
11. *Krishna Kamini Dasi* v *Nil Madhab Saha*, 73 IC 312 : 1923 C 66.

cable to Section 57 of the Evidence Act, as it has been held that the list mentioned in the section is not exhaustive of the facts of which the Courts may take judicial notice.[1] It is doubtful whether an absolutely complete list of the facts of which Courts can take judicial notice could be framed, as it is practically impossible to enumerate everything which is so notorious in itself or so distinctly recorded by public authority that it would be superflous to prove it.[2] The tendency of modern practice is to enlarge the field of judicial notice, and the penultimate paragraph of this section indicates both an approval of this practice as also the kinds of subjects of which judicial notice may be taken. The Indian case law and practice also appear to have proceeded on a liberal application of the power to take judicial notice.[3] There is, however, this difference between the facts mentioned in Section 57 and others which are not so mentioned but of which judicial notice may properly be taken; that, whereas the Court is bound to take judicial notice of the former, the Court has a discretion in the case of the latter, which it may or may not judicially notice.[4] Matters directed by statute to be judicially noticed must be so noticed by the Courts; but beyond this, the Courts have a wide discretion and may notice much which they cannot be required to notice.[5] Thus, the Court may take judicial notice of any fact which, though not mentioned in Section 57, is judicially notified by the English Courts,[6] and of other facts which are notorious.—e.g., the ordinary course of nature, the standards of weight and measure, the public coin and currency, and its difference of value in early and modern times.[7] A court is entitled to take judicial notice of the fact that there is almost invariably a delay of 24 hours between the arrival of a registered letter at its destination and its distribution from the Post Office, in other words, that a registered letter takes 24 hours longer than an ordinary letter.[8] Judicial notice may be taken of the fact that the original records of a district were destroyed during the Mutiny of 1857,[9] or that a district had been the scene of frequent and recent dacoities,[10] or that there was extensive smuggling of rice from the district,[11] or of a national strike of coal miners,[12] but not of thefts on a Railway.[13] Judicial notice can be taken of the fact that a particular part of the country is a surplus area with regard to the production of rice.[14] Judicial notice may properly be taken of current events and notorious facts,[15] e.g., like a world-wide economic depression[16] or a political movement.[17] e.g., the "Quit India" compaign and the accompanying disturbances of August, 1942.[18]

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1. *The Englishman Ltd* v. *Lajpat Rai*, 37 C 760 : 6 IC 81 ; *R.* v. *Navadip*, 1 BLR (O Cr.) 15.
2. Steph. Dig., note to Article 58; see Whitley Stokes, Vol II, 887.
3. *The Englishman, Ltd* v. *Lajpat Rai*, 37 C 760 : 6 IC 81.
4. *The Englishman, Ltd* v. *Lajpat Rai*, 37 C 760 : 6 IC 81, per Woodroffe, J.
5. *The Englishman, Ltd.*, v. *Lajpat Rai*, 37 C 760 : 6 IC 81 ; Phipson, Ev., Ed., 19.
6. *R.* v. *Navadip*, 1 BLR (O. Cr) 15.
7. Phipson Ev., 7th Ed., 25.
8. *Chaturbhuj, Ram Lal* v. *Secretary of State*, 99 IC 622 : 192 A 215.
9. *Ishri Prasad Singh* v. *Lalli Jas Kunwar*, 22 A 294, 302.
10. *Q.E.* v. *Bholu etc.*, 23 A 124.
11. *Sheonath* v. *State*, 1953 Orissa 53 : 1953 Cr LJ 544.
12. *Girdhardas Coorji* v. *Kerawala Karsandas & Co.*, 93 IC 622 : 1926 B 253.
13. *Secretary of State* v. *Ghanaya Lal Sri Kishen*, 10 L 329 : 111 IC 523 : 1928 L 837.
14. *Sheonath* v. *State*, 1953 Orissa 53: 1953 Cr LJ 544.
15. In the matter of a Pleader, 1943 M 475.
16. *Ram Tarak Singha* v. *Saligram Singha*, 1944 C 153.
17. *Salig Ram* v. *E.*, 1943 A 26.
18. *Kedar* v. *E.*, 1944 A 94 : 212 IC 309 : 45 Cr LJ 573 ; *Jubba Mallah* v. *E.*, 1944 P 58 : 22 P 667 : 212 IC 266.

Courts can take judicial notice of the anti-corruption propaganda carried on by a State Government.[1] A Court can take judicial notice of facts transpiring in Court.[2] A record of custom purporting to be prepared by a public officer is admissible under Section 57 without proof that it was prepared by the officer by whom it purports to have been prepared.[3] The extent to which, and the pictorial delineation of a scene are not matters of common knowledge but are matters for experts.[4] Judicial notice may be taken of the fact that original telegrams are destroyed by the Telegraph Department after three months.[5] The Court may take judicial notice of the rules of executive business of the Government.[6] It may also take judicial notice of the fact that the Courts of Wards is much concerned with the welfare of its wards.[7] A Court Martial may take judicial notice of any matter within the general Military knowledge of its members.[8] The Court is justified in taking judicial notice of the practice with the banks of charging interest on the overdrawn amount.[9]

Court can take judicial notice of the fact there is a flourishing colony of *satsang* at Agra and there are centres in most of the big cities in U.P.[10]

Facts of which judicial notice may be taken are not limited to those of the nature specifically mentioned in clauses (1) to (13) of this section. These are mentioned because, as regards them, the Court is given no discretion. They must be recognised by the Courts. As to others the Courts have a wide discretion and may notice many facts which they cannot be required to notice. Thus a Court can take judicial notice of "notorious fact," but the question whether a particular fact is a "notorious fact" may be a matter of opinion and somewhat controversial. The Court cannot smuggle into the evidence its own opinion of controversial situation distinguished as notorious facts.[11] The Court must determine in each case, whether the fact is of such well-known and established character as to the proper subject of judicial notice. A proclamation of emergency is a matter of general information of which a Court can take Judicial notice.[12] A matter of public history may be such a fact.[13] Consequently, the rule of exclusion should not be applied in construing statutes, when the application of the rule is likely to lead to injustice.[14]

In *Devichand Jestimall & Co.* v. *The Collector*, the Counsel for the department explained that in 1957 smuggling of gold was on such an extensive scale that the Court would be justified in taking judicial notice of the fact, and contended, in view of illustration (a) to Section 114, that the Court would be justified in presuming that the petitioners were concerned in the unlawful importation of the gold. The Court observed that

1. *Public Prosecutor* v. *P.V.Audinarayana Chetty*, 1953 M 481 : 1953 Cr LJ 1004 : 1953 1 MLJ 75.
2. *Chattra Kumar Devi* v. *Mohan Bikram Shah*, 121 IC 337 : 1931 P 114.
3. *Tula Ram Sah Jagati* v. *Shyam Lal Sah Thulgharia*, 86 IC 729 : 1925 A 648.
4. *United States Shipping Board* v. *The Ship "St. Albans"*, 131 IC 771.
5. *Bishambhar Nath Tondon* v. *E.*,90 IC 706 : 1926 O 161 : 26 Cr LJ 1602.
6. *Kamla Kant Azad* v. *E.*, 1944 P 354 : 23 P 252.
7. *Bhagwati Saran Singh* v. *Parmeshwari Nandan Singh*, 1912 A 267 (2).
8. Section 89. The Indian Army Act,VIII of 1911.
9. *U.P. Union Bank Ltd.*, v. *Dina Nath Raja Ram*, 1953 A 637.
10. *Commissioner of Income-tax* v. *Radhaswami Satsang Sabha*, 1954 A 291
11. *Abid Khatoon* v. *State of U.P.*, AIR 1963 A 260.
12. *S.C. Mills* v. *Sales Tax Officer*, AIR 1965 A 86.
13. *Surendra Mohan* v. *Saroj Ranjan*, AIR 1961 C 416 (FB).
14. *Jit Singh* v. *Managing Committee*, (1960) 1 Punj. LR 803.

there was no warrant for presuming that the gold was imported in 1957, or at any particular time, and that there was no scope for the application of any such presumption.[1]

Under this section, the following could be taken judicial notice of : (i) Signature (though indecipherable) followed up by the initial D.M.(District Magistrate) authorising sanction to prosecute under the Arms Act;[2] (ii). The regulation of entry into Pakistan by Indian National would be only by permits;[3] (iii) The explosive situation between India and Pakistan on both sides of the Radcliffe line in August, 1949[4] and (iv) Appointment of the Drug Inspector under the Drugs Act.[5]

Section 156 combined with Section 57 (1) has been held by the Allahabad High Courts in *Gaya Din* v. *State*, to authorise the Court to take judicial notice of the signature of the District Magistrate in a sanctioning order and presume that it was a genuine one.[6]

The Court can take judicial notice of the fact that the Central Government of India is located in New Delhi.[7]

The Supreme Court has said that it "can take judicial notice of the fact that the vast majority of the petitions under Articles 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other."[8]

Constitution of India Articles 14 and 226.—Admission to Post Graduate Course in Medical Colleges. It was held on facts that cut off date was unreasonable and arbitrary court could take judicial notice of uncertainly about commencement and close of academi sessions.[8a]

Reference to appropriate books and documents of reference.—It frequently happens that it is necessary or proper for the Court to refer to sources of information concerning matters which have not been referred in the evidence, in which case it is its duty to resort to any source of information which in its nature is calculated to be trustworthy and helpful, always seeking first for that which is not appropriate.[9] If a party asks the Court to take judicial notice of a matter of which judicial notice may properly be taken, the Court may refuse to take judicial notice unless the party produces any such book or document as the Court may consider necessary to enable it to do so. The Court itself may, without calling upon a party, refer to appropriate books and documents of reference. There is nothing to prevent the Court itself making an inquiry if it has only imperfect information, or none at all, on the subject; and the Courts have in several cases made, or caused to be made, such inquiries.[10] The Court can take

1. 73 LW 13 : 1960 MLJ 75.
2. *Dhanpat* v. *State*, ILR (1959) 2 All 185 : 1960 Cr LJ 19.
3. *Hari Singh* v. *Dewani Vidyavati*, AIR 1960 J & K 91.
4. *Chaki Mal* v. *Great American Insurance Co.*, 62 Punj. LR 241.
5. *Ramlagan Singh* v. *State of Bihar*, 1960 Cr LJ 845.
6. 1958 Cr LJ 9.
7. *P.N Films Ltd.*, v. *Union of India*, ILR 1955 Bom. 346 : 57 Bom LR 753.
8. *Asst. Collector of Central Exice* v. *Dunlop India Ltd.*, 1985 SC 330 (Para 3).

8a. *Basanta Kumar* v. *State* AIR 1988 Ori. 124 (F.B.).

9. Burr Jones, 132 (134) ; *Nathulal Salikram* v. *Bangoba Narbad*, 1952 N 133 : 1952 NLJ 190 ; *Mahadeo* v. *Vyankamnabai*, 1948 N 287 : ILR 1947 N 781 ; *Jitibai* v. *Zabu*, 1933 N 274 : 30 NLR 18 ; *Ishwari Prasad* v. *Hari Prashad*, 6 P 506 : 1927 P 145.

10. See *Hossain Ali Mirza* v. *Abid Ali Mirza*, 21 C 177 ; *Triccan Panachand* v. *B.B. & C.I.Ry. Co.*, 9 B 244 : In re *Bhagwandas Hurjivan*, 8 B 511 ; see also *E.* v. *Juma*, 22 B 54 61 ; *Lachmi Narain* v. *Raja Pratap Singh*, 2 A 1, 17.

judicial notice only if unimpeachable books or documents are put before it or are otherwise accessible for its reference. Under the last paragraph of the section, the Court is given the discretion to refuse to take judicial notice of any fact, unless such person calling upon the Court to take any judicial notice to a fact produces any such book or document as it may be necessary to enable it to do so.[1]

Matters of history, literature, science or art, of which judicial notice may be taken; reference to standard works.—The penultimate paragraph of this section does not say whether the Court may or may not take notice of any fact, nor does it say or mean that the Court shall or may take judicial notice of every matter which comes under the heads of description given there. It merely provides that when the Court does take judicial notice of the fact of which it is bound to take judicial notice under clauses 1 to 13, then it may refer to appropriate books of reference about that fact.[2] Matters of history, literature, science and art are not mentioned in the section as matters of which the Court must take judicial notice, but, as pointed out elsewhere, the section is not exhaustive of the facts of which the Court may take judicial notice.[3] The Court can take judicial notice, not of all matters of history, literature, science and art indiscriminately, but only of such matter of public history, literature, science and art as are of such a notoriety that they may be presumed as forming part of the common knowledge of every educated citizen. The Court can take judicial notice only of what may be regarded as notorious facts of public history; it cannot treat letters though 75 years old, without any sort of legal proof, as proof of where certain missionaries were residing and when they died.[4] Before any judicial notice may be taken of any passages in books relating to an alleged tradition, something more than the mere existence of the passages has to be proved before the passages may be regarded as evidence of the existence of the tradition. It must be shown that the writer had some special knowledge of the alleged tradition.[5] The existence of a national strike of coal-miners is a matter of public history.[6] The question of title to a historical mosque is not a matter of public history;[7] nor the question whether certain property is wakf or not[8] historical works on such matter cannot, therefore, be referred to.[9] The fact that there has been a political agitation in the country; that certain persons have been deported in consequences of the part said to have been take by them in it, and that such agitation, conduct and deportation were the subject of debates in Parliament, and in a general way what was said in such debates and therefore became widely known to the alleged cause of deportation, are matters of public history;[10] but the terms of a speech made by a person, who is not yet a historical personage, in the presence of persons who still exits, is not a matter of public

1. *Public Prosecutor* v. *Illur Thipaya* 1949 M 459 : 1948 2 MLJ 649 : 50 Cr LJ 641 : 1949 MWN 103 : ILR M 371 : 63 MLW 270.
2. *The Englishman, Ltd.*, v. *Lajpat Rai*, 37 C 760 : 6 IC 81.
3. See notes "list of facts enumerated in Section 57 whether exhaustive of the facts of which Courts may take judicial notice."
4. *Ambalam Pakkiya Udayan* v. *Bathe*, 36 M 418 : 13 IC 599; see also *Bhagwati Charan Shukla* v. *Prov. Govt. C.P. & Berar*, 1947 N 1.
5. *Achal Singh* v. *Girdhari Das*, 1937 L 529 : 171 IC 970.
6. *Girdhardas Coerji* v. *Kerawala Karsandas & Co.*, 93 IC 622 : 1926 B 253.
7. *Farzand Ali* v. *Zafar Ali*, 46 IC 119.
8. *Sant Singh* v. *Rallia Ram*, 126 IC 171 : 1930 L 744.
9. *Sant Singh* v. *Rallia Ram*, 126 IC 171 : 1930 L 744 ; *Farzand Ali* v. *Zafar Ali*, 46 IC 119.
10. *The Englishman, Ltd.*, v. *Lajpat Rai*, 37 C 760 : 6 IC 81.

history.[1] A judge is entitled to take judicial notice of matters which have reached the Courts, e.g., prosecutions for political crimes or the general trend of evidence adduced for the prosecution and defence in such case.[2] Judicial notice may be taken of the fact that certain district in England had been attacked by aircraft;[3] or that a district had been the scene of recent and frequent dacoities;[4] or that the original records of a district destroyed during the Mutiny of 1857.[5] In *Dorab Ali* v. *Abdul Aziz*[6] the Privy Council was inclined to treat the fact that the Province of Oudh was not, when first annexed to British India, annexed to the Presidency of Fort William as a fact of which judicial notice could be taken under the Evidence Act. Judicial notice cannot be taken of land revenue reports which must be proved like any other document requiring proof.[7] Judicial notice may be taken of proceedings in the Legislative Assembly, not of the truth of the facts asserted in the speeches but of the fact that such speeches were made.[8] Vernacular histories which have never received any recognition as historical works of value and reliability relating to matters of public or general interest nor have been referred to in any well-known historical work are inadmissible.[9] Dictionaries may properly be referred to by the Court in order to ascertain not only the meaning of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put.[10] In order to determine the meaning of names and terms used in a particular religion the Court is entitled under Section 57 to refer to works dealing with the history and beliefs of that religion.[11] Judicial notice can be taken of economists' definitions but it should be done under exceptional circumstances and with proper safeguards.[12]

Thurston's Castes and Tribes of Southern India cannot be considered to be a conclusive authority in regard to information collected by him.[13]

Reference to works of science or art; Section 57 and Section 60.—Opinions stated in Court by experts in science or art are relevant under Section 45. If the expert is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an unreasonable amount of delay or expense, his opinion expressed in any treatise commonly offered for sale, and the grounds on which such opinion is held may, under Section 60, be proved by the production of the treatise. But when a Court is asked to refer to a work of science or art under Section 57, it is not necessary to show, as it is under Section 60, that the condition as to the unavailability of the author of the work exists. There is thus, an apparent conflict between Sections 45 and 60 on the one hand and Section 57 on the other. This conflict is, however, more

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1. *The Englishman, Ltd.* v. *Lajpat Rai*, 37 C 760 : 6 IC 81.
2. *Bhagwati Charan Shukla* v. *Prov. Govt. C.P. & Berar*, 1947 N 1.
3. *Re A Petition of Night*, (1915) 2 KB 649, 658.
4. *Q.E.* v. *Bholu, etc.*, 23 A 124.
5. *Ishri Prasad Singh* v. *Lalli Jas Kunwar*, 22 A 294.
6. *Dorab Ally Khan* v. *Executors of Khajah Moheeoodden*, 3 C 806 : 5 IA 116 (PC).
7. *Boodhan Gope* v. *Saira*, 27 IC 470 : 20 CLJ 516 ; but see *Somar Ram* v. *Budhu Ram*, 1937 P 463 : 171 IC 115, where reference to a Settlement Report was held permissible.
8. *Bhagwati Charan Shukla* v. *Prov. Govt. C.P. & Berar*, 1947 N 1.
9. *Mohamnad Azad Ali Khan* v. *Sadiq Ali Khan*, 1943 O 91.
10. *The Coca Cola Co.* v. *Pepsi Cola Co.*, 1942 PC 40.
11. *Dayalsing Charansing* v. *Tulsidas Tarachand*, 1945 S 177 : ILR (1945) K 224.
12. *Central India Spinning, Weaving and Manufacturing Co., Ltd.* v. *Municipal Committee, Wardha*, 1950 N 169 (FB).
13. *P.L.P.N. Subramanian Chettiar* v. *P.L.P.N. Kumarappa Chettiar*, 1955 M 144.

apparent than real, as the true view seems to be that when the matter of science or art is one of which the Court may properly take judicial notice, the Court may refer to any standard work on the subject, whether its author be dead or alive; but when the matter is one of which the Court cannot properly take judicial notice, the work can be referred to only if the condition mentioned in Section 60 as to the unavailability of its author exists.[1] If this view be correct, then the law in this country is the same as that in England. But if the penultimate paragraph of this section be taken to mean as authorizing the Court to refer to books and documents on all matters of science or art, irrespective of whether any such matter is or is not a fit subject for judicial notice, then the section seems to go beyond the English law,[2] according to which such books can be referred to only on matters which are subjects of judicial notice.[3] Another distinction between a book produced under Section 60 and a book referred to by the Court under Section 57 is that the former becomes "evidence" in the case, but not so the latter.[4] For further discussion of this subject, see notes to Section 60.

Attention of the parties must be drawn to books and documents referred to by the Court under this section.—When the Court refers to a book or document of reference under the authority of this section, he should inform the parties during the trial and give them an opportunity to adduce evidence or argument against its authority.[5] Reference to works of history at the appellate state is irregular and should be avoided.[6]

The Judge cannot utilize his personal knowledge of particular facts which are not subject of judicial notice.—A Judge can take judicial notice of facts transpiring in Court.[7] But a Judge is not to use from the bench under the guise of judicial knowledge that which he knows only as an individual observer. The former is in truth "known" to him merely in the peculiar sense that it is known and notorious to all men.[8] A Judge cannot base his judgment on his own personal knowledge of specific facts;[9] but he can use his general knowledge and experience in determining the credibility of evidence adduced before him, and can also apply it to the decision of the specific facts in dispute in the case.[10] Similarly he may use his own knowledge of general or public facts, historical, scientific, political or otherwise.[11]

Constitution of India Article 32.—Writ petition by erstwhile Burmah Shell Staff pensioners claim for adequate escalation in pension. Judicial Notice cannot be taken of this fact. Petitioner would be entitled to hike in pension.[12]

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1. Markby reconciles this conflict by observing that what perhaps is meant is that though the parties must obey the law as laid down in sections 45 and 60,the Judge may resort for his aid to appropriate books without restriction, Markby, 49.
2. *The Englishman, Ltd.*, v. *Lajpat Rai*, 37 C 760, 787, 6 IC 81.
3. *Collier* v. *Simpson*, (1831) 38 RR 796.
4. See the definition of "evidence" in section 3.
5. *Weston* v. *Peary Mohan Das*, 40 C 898 : 23 IC 25 ; *Durga Prasad Singh* v. *Ram Dayal Chowdhri*, 38 C 163 : 10 IC 955 : 12 Cr LJ 355 ; *Vallabha* v. *Madusudan*, 12 M 495.
6. *Manu* v. *Abraham*, 1941 P 146 : 192 IC 290.
7. *Chatra Kumar Devi* v. *Mohan Bikram Shah*, 121 IC 337 : 1931 P 114.
8. Wigmore, § 2569.
9. *Mulpuru Lakshmayya* v. *Varadaraja Apparow*, 36 M 168 : 17 IC 353, per *Sundara Ayyar, J.* ; *Durga Prasad Singh* v. *Ram Dayal Chowdhri*, 38 C 153 : 10 IC 955 : 12 Cr LJ 355 ; *Hupershad* v. *Sheo Dayal*, 26 WR 55 (PC).
10. *Mulpuru Lakshmayya* v. *Varadaraja Apparow*, 36 M 168 : 17 IC 353, per *Sundara Ayyar, J.*
11. *Bhagwati Charan Shukla* v. *Prov. Govt. C.P. & Berar*, 1947 N 1.
12. *Bharat Petroleum MSP* v. *Bharat Petroleum Corporation Ltd.*, AIR 1988 SC 1407.

58. Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, requiring the facts admitted to be proved otherwise than by such admission.

COMMENTARY

Admissions in pleadings; principle.—This section normally relates to agreed statements of facts made between both parties to save time and expense at a trial.[1] Generally a Court has to try the questions on which the parties are at issue, not those on which they are agreed.[2] Issues of and denied by the other.[3] Therefore, where an allegation of fact is made by party, and this allegation is either admitted or is not denied by the other, no issue as to that fact would arise; and, on the principle that what is admitted need not be proved, no question of the proof of that fact would arise.

While a Court of law is entitled to accept a part of evidence of a witness and to reject another part a pleading cannot be so dissected, but must be taken either as a whole or left alone altogether. In other words, if a written statement contains an admission of certain facts which are favourable to the plaintiff but contains a denial of other facts favourable to him, or an assertion of other facts which are unfavouable, the written statement must be taken as a whole.[4]

How and when may admissions be made?—An admission may be made at the hearing, and, when there are more hearing than one, at any time before the time hearing.[5] Thus, an admission may be made in the pleadings, in which case it may be either express or implied;[6] it may be made in the course of the preliminary examination of a party before the settlement of issue,[7] or in the course of examination of a party as a witness.[8] An admission may also be made in the answers to interrogatories,[9] or by notice[10] or in pursuance of a notice to admit served on the party.[11] An admission made in a written statement may be subsequently withdrawn,[12] with the permission of the Court. Where an admission is made at the hearing, the Judge's note recording the admission must be taken to be correct, unless it is contradicted by an affidavit, or the

1. *Over* v. *Over*, 49 B 368 : 91 IC 20 : 1925 B 231.
2. *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji*, 5 B 145, 152.
3. O. 14, r. 1, C.P.Code.
4. *Fateh Chand Murlidhar* v. *Juggilal Kamlapat*, 1955 C 465.
5. Whitley Stokes, Vol. II, 889.
6. See O. 8, r. 5, C.P. Code.
7. See O. 10, r. 1 & O. 11, r,1. (5) C.P.Code ; *Abdul Aziz* v. *Maryam Bibi*, 49 A 219 : 97 IC 176 : 1926 A 710 : 1907 UBR Ev. 1.
8. *Lakhichand Chattarbhuj Marwadi* v. *Lalchand Ganpat Patti*, 42 B 352 : 45 IC 555 ; *Nga Tun Lu* v. *Nga Shwe Chin*, 29 IC 698.
9. O.11, rr. 1, 8, C.P.Code.
10. O. 12, r.1, C.P.Code.
11. O. 12, rr. 4, 5, 7, C.P.Code.
12. *Muhamnad Altaf Ali Khan* v. *Hamid-Ud-din*, 21 IC 81.

Judge's own admission that the record he made was wrong.[1] If the admission is made before the hearing, it must be in writing signed by the parties.

Implied admissions or admissions by non-traverse.—Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or not stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.[2] Such admissions by omission to deny allegations of fact specifically are called implied admissions, or admissions by non-traverse. For purposes of Section 58 of the Evidence Act, they stand on the same footing as express admissions. Thus, where an allegation of notice contained in the plaint was not specifically denied by the defendant, proof of notice was dispensed with under the provisions of Section 58 read with O. 8, r. 5 of the C.P.Code.[3] A plea of ignorance of the execution of a bond accompanied by an alternative plea of payment does not constitute an admission of the execution of the bond.[4] If, in a suit based upon a bond said to be lost, the execution of the bond is denied by the defendant, the alternative plea that the bond was paid does not amount to an admission of its execution so as to relieve the plaintiff from proving the loss of the original deed and to entitle him to sue upon a copy.[5] But where the executant of a document alleged to have been lost is proved or admitted, and the defendant merely pleads payment, it is not necessary for the plaintiff to prove the loss of the original.[6] Admissions by non-traverse are not governed by Section 17.[7]

Implied admission as to jurisdiction.—As a rule parties cannot by consent give jurisdiction to the Court where none exists. But this rule applied only where the law gives no jurisdiction. It does not prevent the parties from waiving inquiry by the Court as to fact necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained. Thus, where the market value of the property mentioned in the plaint exceeded the limits of the pecuniary jurisdiction of the Court, but the parties allowed the trial to proceed on the merits, it was held, on the principle of Section 58 of the Evidence Act, that the parties admitted the market value of the property to be within the limits of the pecuniary jurisdiction of the Court.[8]

Admissions by Counsel.—A Counsel is duly authorized agent of the party and an admission made by him is within the section. A Counsel or any other agent of a party has, in the conduct of a suit, power to abandon, an issue[9] and to make admissions for the purpose of dispensing with proof.[10] Therefore, an admission of fact made by Counsel is binding on the client,[11] but not an erroneous admission on a point of

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1. *Hur Dyal Singh* v. *Heera Lall*, 16 WR 107 ; but see 10 Bom. HC 75, according to which such note would seem to be conclusive.
2. O. 8, r.5, C.P.Code.
3. Commissioners for the Port of *Rangoon* v. *Moola Dawood*, 9 IC 470.
4. *Sri Ram* v. *Ram Lal*, 18 IC 878.
5. *Muhammad Zafar* v. *Zahur Hussain*, 49 A 78 : 97 IC 82 : 1926 A 741.
6. *Beni Madho* v. *Ram Lakhan*, 81 IC 570 : 1925 O 100.
7. *Mst Diali* v. *Lachhman Singh*, 48 PLR 21 : 1946 L 256.
8. *Barreto* v. *Rodrigues*, 35 B 24 : 7 IC 950.
9. *Venkata Narasimha Naidu* v. *Bhashyakarlu Naidu*, 22 M 538.
10. *Vishandas Nihalchand* v. *Municipality of Hyderabad*, 34 IC 494.
11. *Vishandas Nihalchand* v. *Municipality of Hyderabad*, 34 IC 494 ; *Jagapati Mudaliar* v. *Ekambara Mudaliar*, 21 M 274, 277 ; *Bhut Nath Sircar* v. *Ram Lall Sircar*, 6 CWN 82. *Kalee Kanud Bhuttocharjee* v. *Gireebala Debia*, 10 WR 322 ; *Kower Narain Roy* v. *Sreenath Mitter*, 9 WR 485 ; See also *Mahadeo Vasudeo* v. *Sundrabai*, 3 Bom. LR 467 ; for an admission in appeal by the pleader of the accused; See *Bansilal Gangaram Vani* v. *E.*, 52 B 686 : 112 IC 110 : 1928 B 241 : 29 Cr LJ 990.

Law,[1] the latter not being an admission of a fact so as to make the admission a matter of estoppel.[2] As a rule Counsel has no authority to make admissions in a criminal case so as to relieve the prosecution of the duty of proving its case by evidence.[3] An admission by a counsel in a criminal case does not relieve the prosecution of its duty of satisfying the Court by proper evidence.[4] See notes to Sections 117, 18 and 31.

Distinction between evidentiary admissions and admissions in pleadings.—Section 58 applies to admissions in pleadings,[5] and not to evidentiary admissions; the rule embodied in it is, therefore, more properly a rule of pure procedure than of evidence. There is a fundamental distinction between admissions in pleadings governed by the present section and evidentiary admissions made relevant by the thirty-first section of the Act.[6] The former are conclusive, but the latter are merely relevant and not conclusive unless they operate as estoppels,[7] the former are made in contemplation of a particular litigation; but not so the latter.[8] An admission in a pleading is a different thing from an evidentiary admission. It is generally understood to be a concession made by one of the parties that a fact alleged in the pleading of the party opposed to him need not be proved.[9] The section is, therefore, inapplicable where no pleadings have been filed.[10] But an admission in a pleading is binding only in the proceedings in which it is made and may be shown to be wrong in subsequent proceedings.[11]

Admission of the execution and the terms of a document renders proof of the document unnecessary, even though the documents is inadmissible for want of registration, sufficient stamp or proper attestation.—If the execution and the terms of a document are admitted, the party relying on the transaction embodied in the document is relieved of the duty of proving the document.[12] The rule enacted in section 91 of the Evidence Act requiring the terms of a contract, grant or disposition of property, embodied in a document, to be proved by the production of the document itself, is abrogated in cases where the execution and the contents of the document are admitted. When the execution and the terms of a document are admitted, proof of the document or its production becomes unnecessary in consequence of the admission,[13] even though the

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1. *Beni Pershad Koeri* v. *Dudhnath Roy*, 27 C 156 : 26 IA 216 : 4 CWN 274 (PC) ; *Krishnaji Narayan Parkhi* v. *Rajmal Manikchand Marwadi*, 24 B 360 ; *Narayan* v. *Venkatacharya Balkrishnacharya*, 28 B 408.
2. *Jagwant Singh* v. *Silan Singh*, 21 A 285.
3. *Rangappa Goundan* v. *E.*, 1936 M 426.
4. *S.C. Mitter* v. *State*, 1950 C 435 : 86 CLJ 21.
5. 1907 UBR Ev., 1.
6. 1907 UBR Ev., 1.
7. See *Abdul Aziz* v. *Maryam Bibi*, 49 A 219 : 97 IC 176 : 1926 A 710, where the admission was under O. 10, r. 1 C.P.Code and to which the present section was clearly applicable ; See also *Over* v. *Over*, 49 B 368 : 91 IC 20 : 1925 B 231.
8. See Phipson, Ev., 7th Ed., 198.
9. *Over* v. *Over*, 49 B 368 : 91 IC 20 : 1925 B 431 ; *Appavu Chettiar* v *Nanjappa Goundan*, 20 IC 792.
10. *Over* v. *Over*, 49 B 368 : 91 IC 20 : 1925 B 231.
11. *Ramabai Shriniwas Nadgir* v. *Govt. of Bombay*, 1941 B 144.
12. *Bahadur Singh* v. *Mulk Raj*, 1934 L 898 ; *Ramachandra Sau* v. *Kailashchandra Patra*, 58 C 532 : 133 IC 701 : 1931 C 667 ; *Ram Lal Singh* v. *Septi*, 94 IC 558 : 1926 P 295 ; *Arjun Sah* v. *Kelai Rath*, 2 P 317 : 74 IC 150 : 1923 P 436 ; *Lakhichand Chatrabhuj Marwadi* v. *Lalchand Ganpat Patil*, 42 B 352 : 45 IC 555 ; *Maung Pya* v. *Maung Oza*, 9 IC 770 ; *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji*, 5 B 143.
13. *Bahadur Singh* v. *Mulk Raj*, 1934 L 898 ; *Ganda Singh* v. *Bhan*, 73 IC 758 : 1923 L 310 ; *Banarsi Das* v. *Bul Chand*, 1921 L 64 ; *Maung Kan* v. *Maung Myat Thaing*, 11 IC 850 ; See *Maung Po Kin* v. *Maung Shwe Bya*, 1 R 405 : 76 IC 855 : 1924 R 155 ; *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji*, 5 B 143.

document is inadmissible in evidence for want of registration,[1] sufficient stamp[2] or proper attestation.[3] A Court can take no account of the informality of a transaction which having been admitted is not put in issue.[4] It has, however, been remarked that if the legislative provision declaring a document to be inadmissible in evidence or ineffectual for certain purposes is based on reasons of public policy, a Court ought to go behind the admission in the pleadings and refuse to act on the admitted facts in favour of either party.[5] Provisions relating to the compulsory registration of documents, or to the legal impotence of certain unregistered or unattested documents to create title or to convey property must be deemed to have been enacted on high grounds of public policy, and Courts should not be astute in creating loopholes for evading the plain intention of the Legislature.[6] If an admission is accompanied by the denial of liability on the ground of the inadmissibility of a document, e.g., owing to its being unregistered or not properly attested, the admission is not binding.[7] Enactments relating to revenue, e.g., the Stamp Act, do not involve such grave and large principles of public policy as enactments relating to the registration or attestation of documents.[8] If however, the Legislature had enacted not only that an unstamped promissory note should not be receivable in evidence, but also that it should not be acted upon, the Court is precluded from acting on the note by giving a decree on it, even if the execution of the note is admitted.[9] But where there is a cause of action complete in itself before the making, and independently of the promissory, note, the plaintiff can prove it, though the note is inadmissible. Therefore, if the plaintiff has an independent cause of action apart from the note, the admission of the loan in the written statement is, under section 58 of the Evidence Act, sufficient to waive the requirements of further proof and to enable the plaintiff to succeed thereupon. But if there is no such cause of action, the mere admission of the fact by the defendant cannot give him a cause of action, and this is not a matter cured by section 58 or any other section of the Evidence Act.[10] See notes to section 91.

Admission of a subsequent oral agreement varying the terms of a registered

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1. *Bahadur Singh* v. *Mulk Raj*, 1934 L 898 ; *Ramchandra Sau* v. *Kailashchandra Patra*, 58 C 532 : 133 IC 761 : 1931 C 667 ; *Ganda Singh* v. *Bhan*, 73 IC 758 : 1923 L 310 ; *Bansari Das* v. *Bul Chand*, 1921 L 64 ; *Nga Tun Lu* v. *Nga Shwe Chin*, 29 IC 698 : UBR 1904, 3rd Qr. Ev., 1.
2. *Rahimotla* v. *Murray*, 11 IC 810 : *Ponnusami Chettiar* v. *Kailasam Chettiar*, 1947 M 422 : 60 MLW 442 : 1947, 2 MLJ 116 ; *Alimane Sahiba* v. *Kolisetti Subbarayudu*, 1932 M 693 ; but see *Chenbasapa* v. *Lakshman Ramchandra*, 18 B 269.
3. *Maung Kan* v. *Maung Myat Thaing*, 11 IC 850 : *Mt. Hava* v. *Lokumal*, 1944 S 61 : but see *Bajnath Singh* v. *Brijraj Kuer*, 2 P 52 : 68 IC 383 : 1922 P 514.
4. *Maung Kan* v. *Maung Myat Thaing*, 11 IC 850.
5. *Kotamreddi Seetamma* v. *Vannelakanti Krishnaswamy Row*, 35 IC 18 ; *Bashesh Nath* v. *K.S. Mian Feroz Shah*, 1935 Pesh. 12.
6. *Kotamreddi Seetamma* v. *Vannelakanti Krishnaswamy Row*, 35 IC 18 *Bashesh Nath* v *K.S. Mian Feroz Shah*, 1935 Pesh. 12.
7. *Basheshar Nath* v. *K.S. Mian Feroz Shah*, 1935 Pesh. 12 ; *Kotamreddi Seetamma* v. *Vannelakanti Krishnaswamy Row*, 35 IC 18.
8. *Kotamreddi Seetamma* v. *Vannelakanti Krishnaswamy Row*, 35 IC 18 .
9. *Alapati Achutarmanna* v. *Vasireddi Jagannadham*, 140 IC 833 ; 1933 M 117 ; *Chenbasapa* v. *Lakshman Ramchandra*, 18 B 369 ; See *Mallappa* v. *Matam Naga Chetty*, 42 M 41 ; 18 IC 158 ; but see *Alimane Sahiba* v. *Kolisetti Subbarayudu*, 139 IC 486 ; 1932 M 693 ; *Rahimtolla* v. *Murray*, 11 IC 810.
10. *Alapati Achutaramanna* v. *Vasireddi Jagannadham*, 140 IC 833 ; 1933 M 117 ; *See*, however, *Alimane Sahiba* v. *Kolisetti Subbarayudu*, 139 IC 486 ; 1932 M 693.

instrument.—A subsequent oral agreement to take less than is due under a registered mortgage bond is an agreement modifying the term of a written contract and if it has to be proved, oral evidence in proof of it will be inadmissible. But if such agreement has been admitted in the pleadings, no question of the admissibility of evidence, oral or documentary, would arise, as proof of it would be dispensed with, in consequence of the admission, under section 58 of the Evidence Act.[1] See notes to sections 91 and 92.

Section 58—Original need not be proved.—Where a Plaintiff has admitted the copy of a document filed by the defendant, although the original could be got at the original need not be produced for purposes of formal proof.[2]

Section whether applicable to criminal trials?—The question how far a conviction can be based on the admissions of the accused is one that has never been thoroughly cleared up in Indian practice. In England the rule is clear. The accused may plead guilty and he may be convicted on that plea : but no admission. which falls short of being a plea of guilty, counts against him at all. The rule that nothing need be proved which is admitted, is, in England, confined to civil cases, It has no application to criminal trials.[3] In India there are decided cases in which section 58 has been held to be applicable to criminal cases,[4] though it has been suggested that the section applies to civil suits only, and the suggestion receives warrant from the phraseology of the section which is more suitable to civil than to criminal proceedings.[5] It is the duty of the prosecution in every case to make out its case by evidence ; and a gap in the evidence for the prosecution cannot be filled up by any admission made by the accused in his examination under section 342, Cr. P. Code.[6] Thus, where the Counsel for the prosecution and the Counsel for the defence made certain admissions on questions of fact and asked the Court to give a finding in law on the basis of those admissions, the Court treated the case as one of no evidence and remarked that an accused person cannot be asked to make admissions for the purpose of enabling the Crown to procure a legal decision.[7] This being the principle governing criminal trials, even if section 58 be taken to be technically applicable to criminal cases, the Court should act under the Proviso to section 58 and require all really essential facts to be proved by the prosecution, even if they have been admitted by the accused.[8]

Consent of the accused to an unauthorized course of procedure.—A prisoner can onsent to nothing,[9] and his consent or that of his Counsel cannot validate a course of rocedure which the law does not authorize.[10] Similarly, consent of the accused, or his

1. *Mallappa* v. *Matam Naga Chetty*, 42 M 41 ; 48 IC 158 ; *See Ramchandra Sau* v. *Kailashchandra Patra*, 58 C 532 ; 133 IC 701 ; 1931 C 667.
2. *Vishram* v. *Irukulla*, AIR 1957 Andh. Pra. 784.
3. *Bhulan* v. *E.*, 91 IC 233 . 1926 O 245 ; 27 Cr. LJ 57 ; *R.* v. *Thornhill*, 8 C & P 575 ; *R.* v. *Stevens*, 151 CCC Sess Pap. 182 ; Steph. Dig. Art. 60 ; Best, 97 ; Phipson, Ev., 7th Ed., 19 ; See also *Bansilal Gangaram Vani* v. *E.*, 52 B 686 ; 112 IC 110 ; 1928 B 241 ; 29 Cr. LJ 990.
4. *Bansilal Gangaram Vani* v. *E.*, 52 B 686 ; 112 IC 110 ; 1928 B 241 ; 29 Cr. LJ 990 *Bhulan* v. *E.*, 91 IC 233 ; 1926 O 245 ; 27 Cr. LJ 57; *See* Rat. Un. Cr. C 769.
5. Norton, Ev., 238.
6. *Devi Dial* v. *E.*, 4 L 55 ; 73 IC 805 ; 1923 L 225 ; 24 Cr. LJ 693.
7. *E.* v. *Jaswant Rai & Co.* 5 L 404 ; 84 IC 464 ; 1925 L 85 ; 26 Cr. LJ 320 ; *See also Rangappa Gaundan* v. *E.*, 1936 M 426 ; 1936 MWN 110.
8. *Bhulan* v. *E.*, 91 IC 233 ; 1926 O 245 ; 27 Cr. LJ 57 ; but see *Bansilal Gangaram Vani* v. *E.*, 52 B 686 ; 112 IC 110 ; 1928 B 241 ; 29 Cr. LJ 990.
9. *Reg* v. *Bertrand*, (1867) 1 PC 520.
10. *Allu* v. *E.*, 4 L 376 ; 75 IC 980 ; 1924 L 104 ; 25 Cr. LJ 68.

omission to object to the admission of evidence which is really inadmissible under section 33 will not under this section, make the evidence admissible.[1]

Admissions in probate suits and divorce cases.—Admissions on account of the danger of fraud, do not in certain cases evidence of the facts admitted. e.g., in probate suits[2] and divorce case.[3] Proceedings in probate Courts and Divorce Courts are proceedings *in rem*,[4] in the result of which the State is interested. The admission of the actual Parties to such proceedings are not, therefore, binding on the State. This section of the Act has, in general, no application to divorce cases. No English divorce Judge would grant a divorce merely on an agreed admission of misconduct by the parties or their attorneys . If any such attempt was made, it would in all probability, result in the suit being dismissed for collusion. The express provisions laid down in section 7, 12, 13 and 14 of the Indian Divorce Act as to the requisites for a decree for divorce cannot be overridden by any such section as section 58.[5]

Section 58—Denial.—a denial, though in general terms, imposes on the plaintiff an obligation to prove the essential facts.[6] And in divorce cases, the Court does not usually decide the matter merely on the basis of the admissions of the parties. This is a rule of prudence and not a requirement of law: for the parties might make collusive statements admitting allegations against each other in order to gain the common object that both desire for personal reasons. A decision on such admission would be against public policy, and affect not only the parties to the proceedings, but also their issues, if any, and the general interest of the Society. The provisions, both of this Section and Order of XII of C, P. C., allow a party to apply the Court for a judgment or order upon admissions of fact made either on the pleadings or otherwise, And the Court may make the judgment or order, if it thinks that the parties are not colluding.[7] The admission, however, must be clear and specific.[8] A party cannot be fastened with liability on the basis of a qualified admission.[9]

Section 51—Admission—weight of.—Law is settled that an admission is not conclusive unless it amounts to estoppel. An admission is, however, a very strong piece of evidence. The maker thereof is, however, entitled to prove the admission to be wrong unless displaced by satisfactory explanation an admission is also determinative of the facts admitted.[10]

Proviso : Court may require admitted facts to be proved ; discretion to call for proof should be exercised where the admission is fraudulent or erroneous or where the document admitted is inoperative by reason of want of registration or proper attestation.—Under the proviso to this section and O, 8, r, 5, C. P. Code, the Court may require admitted facts to be proved otherwise than by the admission. The Court will

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1. *Annavi Muthiriyan* v. *E.*, 39 M 449 ; 28 IC 518 ; 16 Cr LJ 294.
2. *Hadley* v. *Grindstone*, 5 PD 24.
3. *Boucher* v. *B.* (1893) 1 R 404, Phipson, Ev., 7th Ed., 18-19 ; *Wenmanand Marak* v. *Smt. Poiby Momin*, AIR 1988 Gau. 50 (Divorce Act, Section-11).
4. See section 41.
5. *Over* v. *Over*, 49 B 3698 ; 91 IC 20 ; 1926 B 231.
6. *Hardiyan* v. *Gangadhar*, AIR 1963 C 500.
7. *Mahendra* v. *Sushila*, AIR 1965 SC 364.
8. *Marudanayagam* v. *Sola*, 77 Raj. LW 697.
9. *Ganga Ram* v. *Het Ram*, 1964 Raj. LW 573.
10. *Bhaskar Raut* v. *Ramahba Bewa*, (1973) 39 CLT 774.

exercise this discretion where the admission has been obtained by fraud or where there is other good and sufficient cause,[1] *e.g.*, where the admission is erroneous and was made under a misapprehension. If the admission is of a matter contained in a document which, on grounds of public policy has been declared by a legislative provision to be inadmissible in evidence, the Court ought to go behind the admission and refuse to act on the admitted fact.[2] Provisions relating to the compulsory registration of documents, or to the legal importance of certain unregistered or unattested documents to create grounds of public policy and Courts should not let such legislative provision be defeated by the admissions of parties.[3]

The Legislature, while giving discretion to the Court under the Proviso to this section, does not define the circumstances under which the discretion may be exercised. In a case where a court finds that a certain document would not be valid in law unless certain facts were proved, and it is doubtful whether those facts existed the Court should ignore the admission as to those facts and call for proof under the Proviso to this section.[4] The provisions of Section 59 of the Transfer of Property Act relate to the question of the legal operation of the document itself apart from the mode of proving it, and without a proper attestation the document would be ineffectual to create a mortgage. Therefore the admission of the executant in the pleadings that he executed the document will not cure the defect arising from the want of proper attestation. Even where the execution of a mortgage is admitted, it is competent to the Court to frame an issue whether the document has been validly attested and to require proof of the same.[5] But cases where the document which is admitted in the pleadings is inadmissible in evidence, owing to its having been insufficiently stamped stand on a different footing from those where the document is inadmissible by reason of want of registration or proper attestation, as the Stamp Act, being a revenue enactment, is not likely to be treated by the Courts as involving such large and grave principles of public policy as the enactments relating to the registration and attestation of documents.[6]

Discretion when to be interfered with the appellate Court.—There is a discretionary power in Courts to call for proof of facts which may be considered to have been admitted under Section 58. And there may be cases when the failure to exercise this discretion may be so grossly improper as to make it incumbent upon the High Court to interfere even in second appeal.[7]

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1. *Oriental Govt. Security Life Assurance Co. Ltd.* v. *Narasimha Chari*, 26 M 183; 206.
2. *Kotamreddi Seetamma* v. *Vannelkanti Krishnaswamy Row*, 35 IC 18; *Basheshar Nath* v. *K.S. Mian Feroz Shah*, 1935 Pesh 12.
3. *Kotamreddi Seetmma* v. *Vannelkanti Krishnaswamy Row*, 35 IC 18.
4. *Muniappa Chettiar* v. *Vellachamy Mannadi*, 49 IC 278, following *Shamu Patter* v. *Abdul Kadir Rowthan*, 35 M 607, 39 IA 218; 116 IC 250 (PC).
5. *Muniappa Chettiar* v. *Vellachamy Mannadi*, 49 IC 278. *See also Baijnath Singh* v. *Brijiraj Kuer*, 2 P 52, 68 IC 383; 1922 P 514.
6. *See Kotamreddi Seetamma* v. *Vannelkanti Krishnaswamy Row*, 35 IC 18. But *See Sohan Lal Nihal Chand* v. *Raghu Nath Singh*, 153 IC 1076; 1934 L 606, and notes to Section 91.
7. *Appavu Chettiar* v. *Nanjappa Goundan*, 20 IC 792.

CHAPTER IV

OF ORAL EVIDENCE

Having defined in Chapter III the facts which need not be proved by reason of their being the subject of judicial notice or by reason of their having been admitted, the Act now proceeds to consider the question as to how facts which require proof may be proved. "Oral evidence" and "documentary evidence" are the two important but not the only media of proof.[1] This Chapter deals with only a part of this subject, being limited in its application to "oral evidence", "documentary evidence" being the subject-matter of a separate Chapter. The Chapter enacts two broad rules with regard to oral evidence; firstly, that all facts except the contents of documents may be proved by oral evidence[2] and secondly, that oral evidence must in all cases, be "direct".[3]

59. Proof of facts by oral evidence.—All facts, except the [4][contents of documents or electronic records] may be proved by oral evidence.

COMMENTARY

Facts that may be proved by oral evidence.—This section is not properly worded. The section must be read subject to the provisions of Sections 61-65. The true meaning of the section, therefore, is that all facts may be proved by oral evidence, except the contents of a document, which cannot be proved by oral evidence, unless oral evidence becomes admissible as secondary evidence under the provisions of Section 65.

Meaning of oral evidence.—"Oral evidence" means statements which the Court permits or requires to be made before it by witnesses in relation to matter of fact under inquiry.[5] "Oral" ordinarily means "by word of mouth"[6] but a witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs.[7]

Evidentiary function of oral evidence.—Oral evidence is as much less satisfactory medium of proof than documentary evidence.[9] But however fallible such evidence may be and however carefully it may have to be watched, justice can never be administered in the most important cases without recourse to it.[10]

Election cases.—It is true that in election cases oral evidence has to be examined with a great deal of care because of the partisan atmosphere continuing even after the election. But it will be wrong on the part of Courts to just brush aside the oral evidence even when the evidence is highly probable and the same is corroborated by unimpeachable documentary evidence.[11]

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1. *See* definition of "proved" in Section 3 and notes thereto.
2. Section 59.
3. Section 60.
4. **Substituted by Information Technology Act, 2000 (Act 21 of 2000), S. 92 and Sch. II (w.e.f. 17-10-2000).**
5. Section 3
6. *Q.E.* v. *Abdullah*, 7 A 385 (FB); for distinction between oral and verbal statements; *See Alexander Perera Chandarose Sekera* v. *The King*, 1937 PC 24; 166 IC 330; 38 Cr LJ 281.
7. Section 119.
8. *See* Best, § 60.
9. *See Thomas Alexander Wise* v. *Jugbundoo Bose*, 4 MIA 431, 441.
10. *Bunwaree Lal* v. *Hetnarain Singh*, 7 MIA 148, 167.
11. *T.C. Purushothama Reddiar* v. *S. Perumal*, 1972 SCJ 469.

ELECTION CASES

"Election petition alleging corrupt practices are proceedings of a quasi-criminal nature and the onus is on the person who challenges the election to prove the allegations beyond reasonable doubt."[1]

In *Rahim Khan* v. *Khurshed Ahmad*[2] the Supreme Court emphasized, "The danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents" and proceeded to observe: "It must be remembered that corrupt practice may perhaps be proved by hiring half a dozen witnesses apparently respectable and disinterested to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no x-ray whereby the dishonesty of the story can be established and, if the court were gullible enough to gulp such oral versions and invalidated elections a new menace to our electoral system could have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of Kilkenny cats election competitions and partisan witnessese wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances on unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life." These observations were quoted with approval in *Kanhaiya Lal* v. *Manna Lal*[3] and again in *Amolak Chand* v. *Bhagwandas*.[4]

The Supreme Court reiterated the legal position, observing : "There is a total consensus of judicial opinion that a charge of corrupt practice under the Act has to be proved beyond reasonable doubt and the standard of proof is the same as in a Criminal case.[5] The case referred to by the Supreme Court there was that of *Mahant Shree Nath* v. *Choudhary Ranbir Singh*.[6]

A broad and general comment that a particular witness was the election agent of a candidate, and cannot, therefore, be relied upon is not a judicial assessment of evidence. Evidence can be assessed only after a careful analysis. Interested witnesses are not necessarily false witnesses though the fact that a witness has a personal interest or stake in the matter must be subjected to a closer scrutiny and indeed the court may be justified in a given case in rejecting the evidence unless it is corroborated from an independent source. The reasons for corroboration must arise out of the context and texture of the evidence. Even an interested witness may be interested in telling the truth, and, therefore, the Court must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it.[7]

Oral evidence should be judged in the light of probabilities, admitted fact and principles of human action.—In all civilised systems of jurisprudence there is a presumption against perjury, as the law generally presumes against misconduct and dis-

1. *Amolak Chand* v. *Bhagwandas*, 1977 SC 813 (Paras 12 and 13).
2. (1975) 1 SCR 643 ; 1975 SC 290 (Para 21).
3. (1976) 3 SCC 646 ; 1976 SC 1886.
4. 1977 SC 813 (paras 12 and 13).
5. *A. Younus Kunju* v. *R.S. Unni*, 1984 SC 690 (Para 6).
6. (1970) 3 SCC 647 (2).
7. *Birbal Singh* v. *Kedar Nath*, 1977 SC 1 (Para 5).

honesty of all sorts, English Judges who administered justice in the early part of the Britsh occupation of India frequently complained of the untruthful nature of the evidence with which they had to deal, and almost inverted the presumption with which the testimony of a witness has to be received, from one of truthfulness to one of falsehood.[1] Field, commenting on this phenomenon, remarks : "While, on the one hand, it would be a gross slanter to predicate of all natives of India, as of the Cretans, that they are liars, it would, on the other hand, be misleading the young judicial functionary to tell him that he may safely look for as much truth in an Indian as in an English witness-box "[2] The correct rule, therefore, is not to start with a presumption of perjury,[3] but to judge the evidence with reference to the conduct of the parties, and the presumptions and probabilities legitimately arising in the case.[4] where evidence is fallible, it is safer and proper to look to the probabilities.[5] Another important test by which oral evidence has to be appraised is to see whether the evidence is consistent with the common experience of mankind, with the usual course of nature and of human conduct, and with well known principles of human action.[6] "There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute, and to examine which of the two cases best accords with these facts according to the ordinary course of human affairs and the usual habits of life".[7]

The ocular version of an incident deposed to by a person injured in the same occurrence is of great value.[8]

But the mere fact that a witness did not receive any injury could not be valid ground for rejecting his entire testimony.[9]

Even if the genesis or the motive of the occurrence was not proved the ocular testimony of the witness as to the occurrence could not be discarded, only on that account, if otherwise it was reliable.[10]

The Supreme Court has held it to be well settled that where the direct evidence regarding the assault is worthy of credence and can be believed. the question of motive becomes more or less academic,. Sometimes the motive is clear and can be proved, at others it is shrouded in mystery and it is difficult to locate it.[11]

It is not the law that the evidence of an interested witness should be equated with tainted evidence or that of an approver so as to require corroboration as a matter of necessity, It does not suffer from any infirmity as such but the courts require as a rule of Precedence, not as a rule of law, that the evidence of an interested witness should be scrutinized with a little care. Once that approach is made and the court is satisfied that

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1. *See* Norton, Ev. 2nd Ed., 414.
2. *See* Norton, Ev. 2nd Ed., 414.
3. *Mathoora Pandey* v. *Ram Ruchya Tewaree*, 11 WR 482, Per Mitter, J., *Raghunandan Bhagat* v. *Prabhu Singh*, 1943 PWN 12; *Goomanee and others*, 17 WR 59 ; Norton, Evi, 2nd Ed., 7.
4. *Mathoora Pandey* v. *Ram Ruchya Tewaree*, 11 WR 482 , per Mitter, J.
5. *Mst. Edun* v. *Mst. Bechun*, 11 WR 345.
6. *See* Norton, Ev. 2nd Ed., 414.
7. *Meer Usd-oollah* v *Mst. Beeby Imaman*, 1 MIA 19 , 44-45 per Baron Parke.
8. *Vishwas* v. *State of Maharashtra*, 1978 SC 414 (Para 6) ; *Ramaswami* v. *State of Tamil Nadu*, 1976 SC 2027 ; 1976 Cr LJ 1563; *Ram Janam* v. *State of U. P.*, 1979 SC 1507.
9. *Molu* v. *State of Haryana*, 1976 SC 2499 (Para 9) : 1976 CR LJ 1895.
10. *Bahal Singh* v. *State of Haryana*, 1976 SC 2032 ; *Dasa Kendha* v. *The State*, 1976 Cr LJ 2010 (Para 6).
11. *Molu* v. *State of Haryana*, 1976 SC 2499 (Para 11) : 1976 CR LJ 1895. *See also Bhola Nath* v. *State*, 1976 Cr. LJ 1409 (Para 20).

the evidence has a ring of truth, it could be relied upon even without corroboration. Relationship by itself is not a ground to discredit the testimony of witness if it is otherwise found to be constant and true.[1]

"There is no magic in the word chance witness, If the presence of a witness is assured and the witness is present at the time of occurrence, he cannot be termed a chance witness."[2]

The mere fact that all the witness were employed in the same department as the complainant does not detract from their credibility as witnesses of truth. Their presence being natural, they could not be dubbed as interested witnesses merely because they were employed in the same department as the complainant.[3]

All public servants, if not always, at the time when they carry on their duty entrusted to them of preventing crime, have to perform unpleasant tasks against the person who is suspected of committing any offence, but for that reason the evidentiary value of such public servant is not affected unless there is something specific against them. The fact that the public servant was previously suspended but reinstated was by itself not sufficient for holding that his statement was not reliable.[4]

The evidence of investigating officers cannot be branded as highly interested on the ground that they want that the accused are convicted. *Prima facie* public servants must be presumed to act honestly and conscientiously and their evidence must be assessed on its intrinsic worth. It cannot be discarded merely on the ground that they are interested in the success of their case. The courts have to judge the evidence by applying the test of basic human probabilities.[5]

There is no rule of law that concoction cannot be based on the sole testimony of a Food Inspector. It is only out of a sense of caution that the courts insist that the testimony of a Food Inspector should be corroborated by some independent witness..... this is a rule of prudence not a rule of law.[6]

A child witness is a competent witness. But the rule of prudence requires that the court should examine a child's evidence with caution. Where the injuries on her *fourchette* showed that an attempt was made to ravish her she was the best person to say as to who was the person who molested her, and made statement in a natural manner which was comnmensurate withe her intelligence her statements was fit to be believed. She or her parents had no interest to trump up a false charge against the accused. People usually do not involve their female children who are to grow and one yet to be married for the purpose of bringing a false sex charge.[7]

The evidence of a child witness of 6 years should be approached with great caution, where there are serious infirmities and contradictions, his evidence cannot be accepted.[8]

Where it was found that the evidence of teenaged children was truthful and was not

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1. *Swarn Singh* v. *State of Punjab*, 1976 Cr. LJ 1895 ; 1976 Cr. LJ 1757 ; 1976 SC 2304 , *Molu* v. *State of Haryana*, 1976 SC 2499 (Para 10) ; See *also Bhola Nath* v. *State*, 1976, 1976 Cr LJ 1409 (Para 21) ; *Babu* v. *State of U.P.*, 1980 SC 443.
2. *Chaman Lal* v. *State of Jammu and Kashmir*, 1976 Cr. LJ 1310 (Para 116).
3. *Jagdish B. Rao* v. *Union Territory of Goa*, 1976 Cr. LJ 132.
4. *State* v. *Sant Prakash*, 1976 Cr. LJ 274 (FB) (Para 3).
5. *State of Kerala* v. *M. M. Mathew*, 1978 SC 1571 ; 1978 Cr. LJ 1690 (Para 3).
6. *Prem Ballabh* v. *State (Delhi Administration)*, 1977 SC 56 (Para 3).
7. *Suresh Chand* v. *State of Haryana* , 1976 Cr. LJ 45 (Paras 8 & 9).
8. *C.P. Fernandes* v. *Union Territory of Goa*, 1977 SC 135 (Para 5).

tutored, it was fit to be accepted and rightly believed.[1]

Boy of 13 years from rural areas with mature understanding cannot be treated as a child witness. His evidence could not be rejected on that score. In the circumstances and looking at the evidence the Supreme Court agreed with the comments "that weight be attached to his evidence."[2]

The evidence of an unsophisticated adivasi woman was held to have been rightly accepted by the High court, the discrepancies pointed out in her evidence being minor and nominal.[3]

In *Kishan Chand* v. *State of Rajasthan*.[4] The Supreme Court observed, "Truth is neither the monopoly nor the preserve of the affluent or of highly placed persons. In a country where renunciation is worshipped and the grandeure and wild display of wealth frowned upon, it would be the traversty of truth if persons coming from humble origin and belonging to officewise, wealth wise, lower strata of society are to be disbelieved or rejected as unworthy of belief solely on the ground of their humble position in society."

There is no rule either of law or of prudence that family members of the deceased are incompetent witnesses at the trial for his murder. There may be cases where only the family members are witnesses of the occurrence. Their evidence is not to be jettisoned merely on the ground of interestedness, provided it is otherwise credible and fits in with the broad probabilities of the case.[5]

A witness could not be disbelieved merely because he was the elder brother of the deceased where his evidence received ample corroboration in a trial particulars from the First Information Report which had been lodeged by him on the very day of occurrence., Nor could his evidence be rejected merely because the doctor who had conducted the autopsy did not find any marks of strings on either wrist of the dead body with which, according to the eye witness, the hands of the deceased were said to have been tied at his back, when he has forcibly taken by the accused to the area field and shot.[6]

The Supreme Court enunciated the proper rule to be that, when a witness holds a position of relationship favouring the party probing him or of possible prejudice against the contesting party, it is incumbent on the court to exercise appropriate caution when appraising his evidence and to examine its probative value with reference to the entire mosaic of fact appearing from the record," and that "It is not open to the Court to reject the evidence without any thing more on the mere ground of relationship or favour, or possible prejudice.[7]

A close relative who is very natural witness cannot be regarded to be an "interested witness". The term postulates that the person concerned must have direct interest in seeing that the accused is somehow or the other convicted, either because he had some animus against the accused or for some other reason. Relatives could not be treated to be interested witnesses on the ground of relationship alone. Relatives may be independent

1. *Dalip Singh* v. *State of Punjab* , 1979 SC 1173 : 1979 Cr. LJ 700 (Para 7).
2. *Tehal Singh* v. *State of Punjab*, 1979 SC 1347 (Para 5).
3. *Beti Padia* v. *State of Orissa*, 1981 SC 1163.
4. *Kishan Chand* v. *State of Rajasthan* 1982 SC 1511.
5. *State of Orissa* v. *Danana Manjhi*, 1976 Cr. LJ 605.
6. *Maharaj Singh* v. *State of Rajasthan*, 1981 SC 936, (Paras 4, 6, 12).
7. *Madhusudan Das* v. *Narayani Devi*, 1983 SC 114 (Para 18).

witnesses, witness is normally to be considered independent unless he springs from sources which are likely to be tainted and that normally means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. The mere fact of relationship is often a sure guarantee of truth. Evidence should not be discarded only on the ground that it is the evidence of a partisan or interested witness. The mere fact that a witness is a relation of the victim is not sufficient to discard his testimony.[1]

The mere fact that the witnesses are relations or interested would not by itself be sufficient to discard their evidence straightway unless it is proved that it suffers from serious infirmities which raise considerable doubt in the mind of the Court.[2]

Where there is no previous enmity between the deceased or his relatives on the one side and the accused on the other, the evidence given by the relatives of the deceased cannot be regarded as suspect needing corroboration from independent witnesses.[3]

"Enmity by itself is, however, not a sufficient ground for rejecting the testimony of a witness."[4] The fact that name of a witness is not mentioned in the first information report, is of some relevance in judging the weight of his evidence, but it is by itself not sufficient to entail rejection of his evidence.[5]

And the fact that a witness, who was not a eye witness of the occurrence, was examined by the police 20 days after the occurrence was undoubtedly a matter to be taken into consideration, but this lapse on the part of the police was not a sufficient ground to reject the evidence of the witness, which was intrinsically sound. The delay by the police in examining the witness was possibly explained by the fact that he was not an eye witness and the Investigating Officer might have thought, rightly or wrongly that he would record his statement after collecting other material evidence in the case.[6]

Where the witness was the father of the deceased and also inimical to the accused, he was a partisan witness and his testimony should be viewed with great caution, but that by itself is not a sufficient ground to reject it unless it is found to be untruthful due to other infirmities.[7]

The enmity of a witness with the accused cannot be a ground for a total rejection of his evidence.[8]

Where the Supreme Court found that there was long standing bitter enmity between the two communities to which the prosecution and the accused respectively belonged, that some four days before the occurrence there was a scuffle between the two sides in which some of the accused and the prosecution witnesses were injured and that except

1. *Dalbir Kaur* v. *State of Punjab*, 1977 SC 472 (Para 13) ; *Gopal Singh* v. *State of U.P.* 1979 SC 1822 (Para 11 & 12). (*See other cases also*) ; *Dalip Singh* v. *State of Punjab* 1954 SCR 145 ; 1953 SC 364 ; *Rameshwar* v. *State of Rajasthan*, 1952 SCR 377 ; 1952 SC 54 ; *Masalti* v. *State of U.P.* 1964 (8) SCR 133 ; 1965 SC 202 ; *State of Punjab* v. *Jagir Singh*, 1974 (3) SCC 277 ; 1973 SC 2407 ; *Ram Adhar* v. *State of U.P.* 1979 SC 702 (Paras 7 & 8) ; *State of U.P.* v. *Hakim Singh*, 1980 SC 184 ; *Ananta Mahanto* v. *State of Orissa*, 1979 SC 1433, (Para 2) ; *State of Punjab* v. *Ramji Das*, 1977 SC 1085 ; 1977 Cr. LJ 705 (Para 5) (brother of deceased) ; *Nathu* v. *State of U.P.* v. 1977 SC 2096 ; 1977 Cr. LJ 1578 (Para 11) (son of the deceased) ; *Vishvas* v. *State of Mahara Babboo*, 1978 SC 1084 (Para 6) ; *State of Rajasthan* v. *Kalki*, 1981 SC 1390 (Para 5-A) ; *State of U.P.* v. *Suresh*, 1982 SC 1076 (Para 13).
2. *State of Gujarat* v. *Naginbhai*, 1983 SC 839 (Para 5) ; 1983 Cr. LJ 1112.
3. *Varghese Thomas* v. *State of Kerala*, 1977 SC 701.
4. *Raman Kalia* v. *State of Gujarat*, 1979 SC 1261 (Para 1).
5. *Narpal Singh* v. *State of Haryana*, 1977 SC 1066 (Para 10) : 1977 Cr LJ 642.
6. *Ibid.*
7. *Raman Kalia* v. *State Gujarat*, 1979 SC 1261 (Para 1) ; *Sadhu Singh* v. *State of U.P.*, 1978 SC 1506 (Para9).
8. *State of U.P.* v. *Sughar Singh*, 1978 SC 191 (Para10).

for one prosecution witness the others belonged to the party of the prosecution and had bitter enmity and even that one prosecution witness was not an independent witness, he was examined by the police after considerable delay and it could not be said that he was connected with the faction. Under the circumstances the Supreme Court said they had to proceed on the basis that the prosecution witnesses belong to one faction and that their testimony will have to be closely scrutinised. It observed: "In cases where there is admitted enmity and when.....persons belonging to the prosecution as well as the accused are injured, it is necessary to look into the facts that have been proved rather than accept the testimony of the witnesses at their face value."[1]

Where all the material witness in a murder case are either related or otherwise interested in the prosecution, their testimony had to pass the test of close and severe scrutiny before it could be safely acted upon. In the absence of corroboration to a material extent in all material particulars, it is extremely *hazardous* to convict the accused on the testimony of such highly interested inimical and partisan witnesses, particularly where it bristles with improbabilities and material infirmities.[2]

Of the three eye witnesses in a murder case, one was the brother of the deceased, the second a milk vendor of a neighbouring village who was carrying milk to the diary, and the third a vegetable hawker who was pushing his laden cart along the road. The evidence of the last two 'independent witnesses' was criticised on the ground that they were 'chance witnesses' implying that their presence at the scene was doubtful and their evidence was suspect. On this the Supreme Court observed : ``We do not understand the expression 'chance witnesses'. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses If murder is committed in a brothal prostitutes and paramours are natural witnesses. if murder is committed in a street, only passers by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.''[3]

Referring to the comment that the conduct of the witnesses is not going to the rescue of the deceased when he was in the clutches of the assailants, was most unnatural, and on that basis their testimony was doubtful, the Supreme Court observed ; "The comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reactions. To discard the evidence of witnesses on the ground that they did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."[3]

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1. *Ghunnu* v. *State of U.P.*, 1980 SC 864 (Para 6).
2. *Ram Ashrit* v. *State of Bihar*, 1981 SC 942 : 1981 Cr. LJ 484 (Paras 12,18).
3. *Rana Pratap* v. *State of Haryana*, 1983 SC 680 (Paras 3, 6).

Where the Supreme Court found that one of the prosecution witnesses was the maternal uncle of the deceased, although he did not figure as an accused, or respondent or as a witness, or in any other capacity in any previous incident, litigation or proceeding, and another prosecution witness was the son of person who was being prosecuted along with the deceased for the murder of a person belonging to the opposing faction of the accused, it observed that they were interested witnesses : "But it is well settled that interested evidence is not necessarily unreliable evidence. Even partnership by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful, as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person? If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however, true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony.....these are only broad guidelines which may often be useful in assessing interested testimony, and not iron cased rules uniformly applicable in all situations."[1]

Where the Sessions Judge had observed that: "merely because a particular witness is independent, it does not mean that his evidence should be accepted without scrutiny": The Supreme Court stated: Here, the Sessions Judge.....erred in law in holding that even though the witnesses were independent, their evidence was to be scrutinized with one. The rule of careful scrutiny applies only to inimical or interested witnesses but not to independent witness. Even in case of interested witnesses, the rule of scrutiny is merely a rule of caution rather than a rule of law."[2]

There is no hard and fast rule that the evidence of a partisan witness cannot be acted upon. If his presence at the scene of occurrence cannot be doubted and his evidence is consistent with the surrounding circumstances and the probabilities of the case and strikes the Court as true, it can be a good foundation for a conviction, more so if some

1. *Hari Obulap Reddi* v. *State of A.P.*, 1981 SC 82 (Para12).
2. *Prahlad* v. *State of Maharashtra*, 1981 SC 1241 (Para 4).
3. *Piara Singh* v. *State of Punjab*, 1977 SC 2274 (Para 4); *Tameshwar Sahi* v. *State of U.P.*, 1976 SC 59 (Para 25) : 1976 Cr. LJ 6.

Homogeneity of descent among all or most of the proprietors in a hinjat village is not unusual. The mere fact that the witness a collateral of the deceased, in some degree, is no ground to hold, that he is not a disinterested independent witness.[1]

Where in a murder case most of the witnesses having turned hostile the question was whether the evidence of the remaining witness who alone had remained unshaken, and was the brother of the deceased,could be believed, the Supreme Court said, that the real test of the credibility of that witness was the material evidence. If his version was corroborated by the medical evidence there could be no ground to discard his sole evidence just because he happened to be the brother of the deceased. On the other hand, if medical evidence contradicted his version, the prosecution could not succeed.[2]

The eye witness being a close relative of the deceased was an interested witness, but there was no evidence that she had any previous ill-will or hostility against the accused or motive to falsely implicate them. Medical evidence supported her testimony. The circumstances that three persons were hacked to death in broad day light indicated that the murderers of assailants could be more than eight, and the large number of injuries also point to the same conclusion. The Supreme Court held that the High Court was, therefore, not justified in setting aside the conviction.[3]

Where the Medical Officer who had performed the postmortem examination gave clear, irrefutable reasons found on physical facts noted by him for his firm opinion that the external injury on the body of the deceased could not be the result of two simultaneous blows and in the ordinary course of human events and experience also it was extremely improbable that three blows simultaneously given by three different persons from different directions would land with such precision and exactitude as to cause the single wound with clean-cut margins and of the dimensions and other characteristics as found by the medical officer, the eye witnesses who deposed that the injury was the result of three separate blows, could not be believed as their evidence was intrinsically incredible and could not be accepted in preference to the medical evidence.[4]

Having regard to the manner in which the occurrence took place, the brutal and ghastly actions of the accused who were bent upon taking the lives of one person after another, it would be impossible for any witness to give a meticulous account of the nature or the number of shots fired by the accused persons. In the melee and the confusion that followed the dastardly killing of as many as five persons it would be very difficult for the witnesses to remember with absolute precision and accuracy the number of shots inflicted. The cartridges contain several pellets which enter the body and spread and may result in multiple injuries. The doctor was not cross-examined on that. It was not a case where the evidence shows the killing of the deceased with guns,but the injuries found by the doctor are either *lathi* or *bhala* injuries nor was it a case where the evidence shows that the deceased were fired at by guns where as the ballistic expert says that the deceased had injuries which could be caused only by a rifle. It is in such cases of direct conflict between the ocular and medical evidence that the court rejects the prosecution case-not in a case where the medical evidence showed that the deceased fired only one shot at the deceased, and later on stated that after the deceased had died,

1. *Labh Singh* v. *State of Punjab*, 1976 SC 83 (Para18) : 1976 Cr. LJ 21.
2. *Shamu Balu Chaugle* v. *State of Maharashta*, 1976 SC 557 (Para 6) : 1976 Cr. LJ 492.
3. *P.P. Government of Andhra Pradesh* v. *B. Taggapwan Venkateswarlu*, 1980 SC 1876.
4. *Purshottam* v. *State of M.P.*, 1980 SC 1973 (Para 13).

another shot was fired. Here there was no real inconsistency between the ocular and medical evidence such as to render the prosecution case unbelievable.[1]

Where direct evidence of eye witness of the firing was available, some inconsistency relating to the distance from which the gun shot were fired between the medical evidence and the eye-witnesses is of no significance.[2]

Where the husband and son of a woman were killed and she was herself injured, the description of the accused, given by her while in hospital, could not be rejected merely because she failed to state that the accused was wearing a turban, though the description of the accused given by her was otherwise satisfactory. Her explanation that she failed to mention the turban because of anguish was found acceptable by the Supreme Court.[3]

In the case of a melee, in a faction ridden society involving rival factions in a village, where a large number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence, and they are undoubtedly partisan witnesses, the distinct possibility of innocent being falsely included with the guilty cannot be easily ruled out. But to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities to the village life in India, and a large number of accused would go unpunished if such an easy course is charted. However, it has to be borne in mind, simultaneously, that tendency to involve as many persons of the opposite party as possible in such a situation, by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with the utmost care and caution. Thus although the evidence of partism witnesses must not be discarded on that ground alone the court must be on guard to scrutinise their evidence with more than ordinary care. It must focus its attention on whether there are discrepencies in the evidence, whether the evidence strikes the court as genuine and whether the story narrated is probable. Judicial approach has to be cautious in dealing with such evidence.[4]

It is not the number of witnesses examined, nor the quantity of evidence adduced. It is the quality that counts.[5]

A first information report made by a rustic lay woman is not to be treated as or equated with a summary of the entire presecution case,and a mere omission to mention an incidental fact cannot have the effect of nullifying an otherwise prompt and impeachable report. Further the fact that the eye witnesses were made to affix their thumb marks on statements made by them at the inquest did not necessarily show that the police was not confident of the reliability of the witnesses; and it was not axiomatic that whenever the police did so despite the ban of section 162 Cr. P.C. it must be presumed that the witness was not considered reliable by the Police.[6]

Presumption arising from partial prejury or forgery to be applied with caution –The maxim *falsus in uno falsus in omnibus* (false in one particular, false in all) is everywhere a somewhat dangerous maxim, but it is especially dangerous in this coun-

1. *Narpal Singh* v. *State of Haryana*, 1977 SC 1066 (Paras, 17,18,20,21) : 1977 CLJ 642.
2. *State of U.P.* v. *Sughar Singh*, 1978 SC 191 (Para 12) ; *Karnail Singh* v. *State of Punjab*, 1971 SC 2119 ; 1971 CLJ 1463.
3. *Ramanathan* v. *State of Tamil Nadu*, 1978 SC 1204 (Para 11).
4. *Mathu Naicker* v. *State of Tamil Nadu*, 1978 SC 1647, (Para 6 and 17)
5. *Maqsoodan* v. *State of U.P.*,1983 SC 126 : 1982 ALJ 1524, (Para 6).
6. *Gurnam Kaur* v. *Bakshish Singh*, 1981 SC 61 (Para 7,11).

try; for if a whole body of testimony were to be rejected because the witness was evidently speaking untruth in one or more particulars, it is to be feared that witnesses might be dispensed with, as, in the great majority of cases, the evidence of a witness will be found tainted with falsehood. There is almost always a fringe or embroidery to a story, however true in the main. The falsehood should be considered in weighing the evidence; and it may be so glaring as utterly to destroy confidence in the witness. Where a witness has lied on a material point, it is impossible for a Court of law to rely upon the other parts of his testimony.[1] Where the falsehood is merely an embroidery to a story, that would not be enough to discredit the whole of the witness's evidence. But if the falsehood is on a major point in the case, or if one of the essential circumstances of the story told is clearly unfounded, this is enough to discredit the witness altogether. Hence the implication of a man in a murder in which he could not possibly have taken part, in the absence of convincing circumstantial evidence against the other accused, is a reason for acquitting them all.[2]

When a particular witness or witnesses are shown to have swerved from the path of truth, either by suppression or by concoction, or by embellishment of facts which are untrue, such evidence must, as a rule, be discarded in the absence of any independent and reliable corroboration by aid of which the truth can be sifted out of the tarnished evidence and falsehood distinguished.[3]

But when there is reason to believe that the main part of the deposition is true, it should not arbitarily be rejected because of veracity on perhaps some very minor point.[4] If a witness is not found to have told the truth in one or two particulars, the whole of his statement cannot be ignored. The Court must sift the evidence, separate the grain from the chaff and accept what it finds to be true and reject the rest.[5]

Thus even where it was found that dying declaration spoken to have been made by deceased to the witness was an unecessary embellishment or ordination. The Supreme Court, held that did not detract from the acceptability of the other part of his testimony which was believable and corroborated by the facts and circumstances of the case. Oberving that it was well settled that merely because a portion of the testimony of a witness is not reliable that is no ground to brush aside his entire evidence, it being the duty of the courts to make an effort to in disengaging truth from falsehood.[6]

On the same principle, an entire history should not be thrown aside because the evidence of some of the witnesses is incredible or untrustworthy.[7]

The Supreme Court, held it to be well settled that the mere fact that some out of many accused are acquitted is not sufficient to merit rejection of the entire prosecution

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1. *Chaudharja Singh* v. *Bhuneshwari Prasad Pal*, 161 IC 881 (PC).
2. *Nandia* v. *E.*, 1940 L 457 : 190 IC 663 : 42 PLR 570.
3. *State* v. *Dwari Behera*, 1976 Cr. LJ 262.
4. *Hanmantrow* v. *The Secretary of State for India*, 25 B 287, 297 ; see *Nooku Naidu* v. *E.*, 1937 MWN 986 ; *Pradeshi Rambharose* v. *Devanth Rahipal*, 1936 N 273 : 165 IC 558.
5. *E.* v. *Muzaffar Hussain*, 1944 L 97 : 212 IC 440 : 45 Cr LJ 634 : *State of U.P.* v. *Lalla Singh*, 1978 SC 368, (Para 9) ; *Rai Singh* v. *State of Haryana*, 1971 SC 2505 : 1971 Cr. LJ 1738 : *State of Punjab* v. *Hari Singh*, 1974 SC 308 : 1974 Cr. LJ 822 ; *Laxman* v. *State of Maharashtra*, 1974 SC 308 : 1974 Cr. LJ 369 ; *Nandu* v. *The State*, 1976 Cr. LJ 250 (Para 4) ; *Kesoram* v. *State of Assam*, 1978 SC 1096 (Para 7) ; *Sheo Darshan* v. *State of U.P.* 1971 SC 1794; *Sohrab* v. *State of Madhya Pradesh*, 1972 SC 2020 ; *Neeraj* v. *State*, 1978 ALJ 1293.
6. *Soma Bhai* v. *State of Gujarat*, 1975 SC 1453 ; *Ghisa* v. *State of Rajasthan*, 1976 Cr. LJ 39.

case. The court should make every effort to disengage the truth from falsehood and to sift the grain from the chaff rather than take the easy course of rejecting the entire prosecution case merely because there are some embelishments.[1]

Improvements made by witnesses, and variations between their earlier and later statements are by themselves not sufficient to hold their testimony to be infirm. It is the duty of the court to remove the grain from the chaff where the presence of the witnesses at the time and place and occurrence cannot be doubted.[2]

Forgery or fraud in some material part of the evidence, if it be shown to be the connivance of a party to the proceedings, may afford a fair presumption against the whole of the evidence adduced by that party, or at least against such portion of that evidence as tends to the same conclusion with the fabricated evidence. It may perhaps have the further effect of gaining a more ready admission for the evidence of his opponent. But the presumption should not be pressed too far as it happens not uncommonly that falsehood and fabrication are employed to support a just cause.

The maxim *Falsus in uno falsus in omnibus* merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence.[3]

The Supreme Court has even observed that "the principle of *Falsus in uno falsus in omnibus* does not apply to criminal trials and it is the duty of the court to separate, the grain from the chaff instead of rejecting the prosecution case on general grounds.[4]

In another case the Supreme Court observed: "The mere fact that the witness had not told the truth in regard to a peripheral matter could not justify a wholesale rejection of his evidence .... in this country it is rare to come across the testimony of a witness which does not have a fringe or an embroidery of untruth although his evidence may be true in the main. It is the function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is only where the testimony of a witness is tainted to the core, the falsehood and the truth being inextricably intertwined, that the court should discard his evidence in toto.[5]

Appreciation of oral evidence – Oral, evidence should be approached with caution.[6] "I suppose it will not be denied that the three following are among the most important points to be ascertained in deciding on the credibility of witnesses: firstly, whether they have the means of gaining correct information; secondly, whether they have any interest in concealing truth; and thirdly, whether they agree in their testimony. The two first of these tests are applicable to the witnesses individually; the third to the whole of the testimony taken together, to which a further and scarcely less important test also applies, namely, is the evidence consistent with the usual and known principles of human action and with the common experience of mankind?"[7]

The credibility of a witness is primarily to be decided by referring to his evidence

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1 See *Abdul Gani* v. *State of M.P.*, 1954 SC 31; *Kanbi Manji Virji* v. *State of Gujarat*, 1970 (3) SCC 103; 1970 SC 219; and *Dharam Das* v. *State of U.P.*, 1973 (2) SCC 216: 1973 SC 2195; *Molu* v. *State of Haryana*, 1976 SC 2499: 1976 Cr LJ 1895.

2 *Maqsoodhan* v. *State of U.P.*, AIR 1983 SC 126: 1982 ALJ 1524 (Para 6).

3 *Nisar Ali* v. *State of Uttar Pradesh*, 1957 All. LJ 447: *Anant B. Kamble* v. *State of Maharashtra*, 1995 Cr LJ 2583, followed AIR 1984 SC 1622: 1984 Cr LJ 1738 (SC).

4 *Bhe Ram* v. *State of Haryana*, AIR 1980 SC 957 (Para 2).

5 *State of U.P.* v. *Shanker*, AIR 1981 SC 897 (Para 32).

6 *Sardar Bibi* v. *Muhammad Bakhsh*, PLD 1954 L 480.

7 Quoting from Archbishop Whately's Historic Doubts relative to Napoleon Bonaparte, 6th Ed., 14.

and finding out as to how the witness was found in the cross-examination and what impression is created by his evidence taken in context of the other facts of the case.[1]

"....minor contradictions are bound to appear when ignorant and illiterate women are giving evidence. Even in case of trained and educated persons memory sometimes plays false and this would be much more so in case of ignorant and rustic women. It must also be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both were present at the scene of occurrence.[2]

The evidence of a prosecution witness, who was once convicted in a criminal case, cannot be rejected merely on the ground of that one previous conviction, if nothing is brought out in his cross-examination to show when he was convicted and for what offence, for, a man who has erred once may still speak the truth.[3]

According to the Supreme Court overmuch importance cannot be attached to minor discrepancies in the testimony of witnesses for the following reasons:

"(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tap is replayed on the mental screen.

"(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attended to absorb the details.

"(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on the person's mind, whereas it might go unnoticed on the part of another.

"(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heared by them. They can recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

"(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time or interrogation. And one cannot expect people to make very reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

"(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

"(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of

1. *Charan Lal* v. *State of J.& K.*, 1976 Cr. LJ 1310, (Para 31).
2. *Boya Ganganna* v.*State of Andhra Pradesh*, 1976 SC 1541 .(Para 5);1976 Cr. LJ 1158.
3. *Varghese Thomas* v. *State of Kerala*, 1977 SC 701, (Para 4).

the occurrence witnessed by him-perhaps it is a sort of psychological defence mechanism activated on the spur of the moment."

Therefore, "discrepancies which do not go to the root of the matter and shake the basic version of the witness' cannot be given *too much* importance.[1]

Where some of the prosecution witnesses contradicted their earlier statements under Section 164 Cr. P.C. and the contradictions suggest that the defence version might be true, and these other contradictions as well on material points in the evidence of some of the prosecution witnesses, a legitimate doubt was cast on the truth of the 'prosecution story'.[2]

Where the story narrated by the witness in his evidence before the court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence.[3]

The Supreme Court have observed: "It is elementary that the evidence of an infirm witness does not became reliable merely because it has been corroborated by a number of witnesses of the same brand; for evidence is to be weighted not counted."[4]

In *State of Bihar* v.*Radha Krishna Singh*,[5] the Supreme Court observed: "in considering the oral evidence regarding a pedigree a purely mathematical approach cannot be made because where a long line of descent has to be proved spreading over a century, it is obvious that the witnesses who are examined to depose to the genealogy would have to depend on their special means of knowledge which may have come to them through their ancestors but, at the same time, there is a great risk and a serious danger involved in relying solely on the evidence of witnesses given from pure memory because the witnesses who are interested normally have a tendency to draw more from their imagination or turn and twist the facts which they may have heard from their ancestors in order to help the parties for whom they are deposing. The court must, therefore, safeguard that the evidence of such witnesses may not be accepted as is based purely on imagination or an imaginary or illusory source of information rather than special means of knowledge as required by law. The oral testimony of the witnesses on this matter is bound to be hearsay and their evidence is admissible as an exception to the general rule".

The following are the principles that were enunciated by the Supreme Court in the same case:[6]

(1) The relationship or the connection however close it may be, which the witness bears to the persons whose pedigree is sought to be deposed by him.
(2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.
(3) The interested nature of the witness concerned.
(4) The precaution which must be taken to rule out any false statement made by the witness *post litem motam* or one which is derived not by means of special

1. *Bhogibhai Hirjibhai* v. *State of Gujarat*, 1983 SC 753, (Para 5) : 1983 Cr. LJ 1096.
2. *Bhajan Singh* v. *State of Punjab*, 1977 SC 674.
3. *N D Dhayagude* v. *State of Maharashtra*, 1977 SC 381 (Para 2).
4. *Muluwa* v. *State of M.P.*, 1976 SC 989 (Para 18) : 1976 Cr. LJ 717.
5. 1983 SC 684, (Paras 192, 193).
6. *State of Bihar* v. *Radha Krishna Singh*, 1983 SC 684, (Paras 192, 193).

knowledge but purely from his imagination, and

(5) The evidence of the witness must be substantially corroborated as the time and memory admit."[1]

"While appreciating the evidence of a witness, the approach must be whether the evidence..read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach the due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic (witness) and refined lawyer,"[2]

The rule is and it is nothing more than a rule of practice "that when there is conflict or oral evidence of the parties on any matter in issue, and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial judge on a question of fact....The duty of the appellate court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial court arrived at or whether there is an element of improbability arising from proved circumstances which in the opinion of the court outweigh such finding."[3]

Where the trial court and the High Court had concurrently believed the evidence of the eye-witnesses in a trial for murder and convicted the accused, the Supreme Court observed: "We do not suggest that the mere circumstances that two or more courts have taken the same view of facts shuts out all further inquiry into the correctness of that view. For example, concurrence is not an insurance against the charge of perversity though a strong case has to be made out in order to support the charge that findings of

1. *Supra*, Para 193 : Also *see* other cases referred to in Paras 194, to 204 ; *Debi Pershad Chowdhry* v. *Rani Radha Chowdhry* (1904) 31 IA 160; *Abdul Ghafur* v. *Hussain Bibi*, (1931) 58 IA 188 : 1931 PC 45 : *Mewa Singh* v. *Basant Singh*, 1918 PC 49 ; *Bhojraj* v. *Sita Ram*, 1936 PC 60 ; Taylor's Tretaise on Evidence, Para 648, Page 414; *Lovat Peerage case*, (1884-85) 10 AC 763.
2. *State of U.P.* v. *M.K. Anthony*, 1985 SC 48, (Para 10).
3. *Madhusudan Das* v. *Narayani Bai*, 1983 SC 114 (Para 8) ; *Sarju Prasad* v. *Jwaleshwari*, 1951 SC 120 ; *Radha Prasad Singh* v. *Gajadhar Singh*, 1960 SC 115 : 1960 (1) SCR 663. also see *Asiatic Steam Navigation Co. Ltd.*, v. *Arbind Chakravarty*, 1959 SC 597 : (1959) Supple. 1. SCR 979.

fact recorded by more than one court are perverse, that is to say, they are such that no reasonable tribunal could have recorded them. The merit of the normal rule that concurrent findings ought not to be reviewed by this court consists in the assumption that it is not likely that two or more tribunals would come to the same conclusion unless it is a just and fair conclusion to come to. In the instant case, the view of the evidence taken by the sessions court and the High Court is, at least, a reasonable view to take and that is why we are not disposed, so to say, to re-open the whole case on evidence."[1]

On the criminal side when dealing with an order of aquittal the appellate court should bear in mind that the trial court has had the opportunity of watching the demeanour of the witnesses in the box, and the presumption of innocence is not weakened by an order of acquittal, therefore, if two reasonable conclusions can be reached on the evidence on the record, the appellate court should not disturb the finding of the trial court.[2]

Where the High Court found that the assessment of the evidence made by the sessions judge was 'altogether unreasonable', and examined the entire evidence closely and thoroughly and 'answered satisfactorily every point of criticism, and the Supreme Court saw no reason to take a different view, it held that the interference by the High Court with the order of acquittal was justified, and the conviction of the appellants for murder upheld.[3]

In riot cases, where it is common to implicate all the male members of a family when only one or other of them may have been concerned in the offence, it is but a matter of prudence not to accept the oral testimony of interested witnesses as sufficient to convict an accused unless that oral testimony is corroborated by other reliable oral evidence or by incriminating circumstances[4] as, for instance, the presence of injuries on the person of the accused.[5] The real tests for accepting or rejecting evidence are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case.[6] If a Court disbelieves a witness, it cannot use his evidence to corroborate another witness.[7] When once witnesses are held to be unreliable from start to finish, their evidence cannot be utilised to any extent, however small it may be. The statement of a false witness, if rejected, is to be rejected *in toto*, and consequently it cannot form a valid basis for the conviction of any person introduced in that statement.[8] The procedure of rejecting the evidence of certain witnesses so far as certain accused are concerned and accepting it so far as others are concerned cannot be upheld. A witness whose evidence has to be rejected so far as certain accused are concerned cannot safely be accepted or acted upon in the case of the other accused.[9] Though a "chance witness" is not necessarily a false witness, it is proverbially rash to rely upon such evidence.[10] It is open to an appellate

1. *Dudh Nath Pandey* v. *State of U.P.* 1981 SC 911. (Para 11).
2. *G.B. Patel* v. *State of Maharashtra*, 1979 SC 135, (Para 13) : *Varghese Thomas* v. *State of Kerala*, 1977 SC 701, (Para 3).
3. *Aher Pitha Vajshi* v. *State of Gujarat*, 1983 SC 599, (Para5).
4. *Janu Khair Mohamed* v. *E.*, ILR (1943) Kar 148.
5. *Mohan Singh Bath* v. *E.*, 1940 L 217.
6. *Jamadar Singh* v. *E.*, 21 P 854 : 1943 P 131.
7. *Banangi Kui* v. *E.*, 1942 P 321.
8. *Sudagar Singh* v. *E.*, 1944 L 377 : 49 PLR 135 ; See also *Shukul* v. *E.*, 55 A 379 : 1933 A 314.
9. *Shanbagaperumal Naicker*, In re., 1940 M 279 ; *Mohideen Pichai Rowther*, In re. 1940 M 43 ; *E.* v. *Gaya Prasad*, 1941 O 487.
10. *Ismail Ahmad* v. *Momin Bibi*, 1941 PC 11 : 1936 IC 209.

Court to differ from the Court which heard the evidence, where it is manifest that the evidence accepted by the Court of first instance is contradictory or is so improbable as to be unbelievable or is for other sufficient reasons unworthy of acceptance.[1] The appellate Court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness as the trial judge alone knows the demeanour of the witness : he alone can appreciate the manner in which the questions are answered, whether with honest candour or with doubtful plausibility, and whether after careful thought or with reckless glibness; and he alone can form a reliable opinion as to whether the witness has emerged with credit from cross-examination.[2] Credibility in the witness box is more valuable in assessing evidential values than "standing".[3] A finding that a witness is telling the truth is of great value when it is made by a judge who saw all the witnesses or at least the important witnesses on each side.[4] Where the matter is one of inference from evidence, and the evidence is not well balanced, the appellate Court will set aside the finding of the trial Court if it is against the weight of evidence.[5]

60. Oral evidence must be direct.—Oral evidence must, in all cases whatever, be direct; that is to say.—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says heard it;

if it refers to a face which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise if the author 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 :

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

COMMENTARY

Meaning of "direct evidence' in English law and under the Indian Evidence

1. *Bhojraj* v. *Sita Ram*, 1936 PC 60 : 160 IC 45.
2. *Valarshak Seth Apcar* v. *Standard Coal Co. Ltd.*, 1943 PC 159.
3. *Radha Krishan* v. *Sri Krishan*, 1945 PC 79.
4. *Pearey Lal* v. *Nanak Chand*, 1948 PC 108 : 1948 ALJ 231 : 61 MLW 437 : 52 CWN 785 : 50 BLR 643.
5. *Sris Chandra Nandy* v. *Rakhalananda*, 1941 PC 16 : 193 IC 220.

Act.—In English law the expression "direct evidence' is used to signify evidence relating to the fact in issue (factum probandum), whereas the terms "circumstantial evidence', "presumptive evidence' and "indirect evidence' are used to signify evidence which relates only to relevant facts *(facta probantia)*[1], In section 60 of the Evidence Act, however, the expression "direct evidence' has an altogether different meaning; it is used in the sense of "original" evidence as distinguished from "hearsay" evidence and it is not used in contradiction to "circumstantial' or "presumptive evidence'. Thus under the Act all evidence, whether direct or circumstantial in the English sense, must, in the sense of the Act, be "direct", i.e., the fact to be deposed to, whether it is fact in issue or a relevant fact, must be deposed to by a person who has seen it if it is one which could be seen, by a person who has heard it if it is a fact which could be heard, and by a person who perceived it by any other sense if it is a fact which could be perceived by any other sense; and if the fact to be deposed to is an opinion, it must be deposed to by the person who holds that opinion. It is not intended by this section to exclude circumstantial evidence of things which could be seen, heard or felt, though the wording of the section is undoubtedly ambiguous and, at first sight, might appear to have that meaning.[2]

Circumstantial evidence.—It was settled law that any circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt,[3] then the accused is entitled to the benefit of doubt. But in applying the principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In order to make the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of the basic or primary facts,there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether it proves a particular fact or not. When it is held that a certain fact is proved the question arises whether the fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt applies, and the inference of guilt can be drawn only, if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.[4]

Circumstantial evidence has its own limitations. Before acting on the evidence, the Court must first see whether the circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring home satisfactorily the guilt to the accused. The established circumstances must not only be consistent with the guilt of the accused, but at the same time they must be inconsistent with his innocence. While appreciating circumstantial evidence, the Court should not view in isolation the various circumstance. It must take an overall view of the matter, but without substituting conjectures for legal inferences.[5] The circumstantial evidence, however, should be scrutinised

1. See Phipson, Ev., 7th Ed., 3.
2. *Neel Kanto Pandit* v. *Juggobundhoo Ghose*, 12 BLR APP 18 ; see *Karali Prosad Dutta* v. *E.I Ry. Co.*, 111 IC 792 : 1928 C 498.
3. *State of U.P.* v. *Ashok Kumar Srivastava*, JT 1992 (1) SC 340 ; AIR 1992 SC 840 : 1992 (2) SCC 86.
4. *M.G. Agarwal* v. *State of Maharashtra*, (1963) 2 SCR 405 : 64 Bom. LR 773.
5. *Jai Singh* v. *The State*, AIR 1967 Delhi 4.

properly and must be sufficient to prove the prosecution case beyond reasonable doubt and the facts so proved must be incompatible with the innocence of the accused.[1]

In *Andhra Pradesh* v. *I.B.S. Prasad Rao*,[2] the Supreme Court has gone a step ahead and laid down that further, it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused or point conclusively to his guilt. It may be that a particular fact relied upon by the prosecution may not be decisive in itself, and yet if that fact, along with other facts which have been proved, tends to strengthen the conclusion of the guilt, it is relevant and has to be considered. In other words, when deciding the question of sufficiency, what the Court has to consider is the total cumulative effect of all the proved facts each one of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that any one or more of those facts by itself is not decisive.[3]

Meaning of "hearsay"; exception to the rule against "hearsay".—This section enacts the general English rule that "hearsay" is no evidence; The term "hearsay", being used in more than one sense is misleading and has not, for this reason, being used in this section. In its more generally accepted sense, the term "hearsay" is used to indicate that evidence which does not derive its value from the credit given to the witness himself, but which rests also in part on the veracity and competence of some other person.[4] Evidence of those who personally know a person and his reputation is no "hearsay" but the evidence of those who do not know the person but have only heard of his reputation is "hearsay".[5] Oral or written statements made by persons not called as witnesses are inadmissible to prove the truth of the matters stated, except when such statements become relevant under some section of the Act as exceptions to the rule against hearsay.[6] Thus, a statement of an officer of the Motor Vehicles Department contained in a letter in reply to an inquiry is mere hearsay and not evidence, unless the officer himself appears in Court to depose to the contents of the letter.[7] Similarly an inspection report is not admissible in evidence unless the person making the report appears in witness box to make a statement on oath and subject himself to cross-examination.[8] Statements made by person not produced or examined as witnesses, which become relevant as admission under section 17-39, are in sense, exceptions to the general rule stated in the present section.

Statements made by persons not examined as witnesses may in some cases amount to "original' as distinguished from hearsay" or "derivative" evidence.—Statements made by person not examined as witnesses may in some cases amount "to original' as distinguished from "hearsay" or "derivative' evidence e.g. statements which are part of the *res gestate*,[9] whether actually constituting a fact in issue, as a libel or a contract, or and explaining accompanying a fact in issue, as the cry

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1. *Razak Khizar* v. *State*, AIR 1967 J & K. 22.
2. 1970 Cr. LJ 733.
3. *A.P.* v. *I.B.S.Prasad Rao*, 1970 Cr. LJ 733.
4. See Taylor, § 570.
5. *Baso Rai* v. *E.*, 1948 P 48 : 229 IC 474 : 42 Cr. LJ 409.
6. See Phipson, Ev., 7th Ed. 212.
7. *Baij Nath Shaw* v. *Corporation of Calcutta*, 141 IC 248 : 1933 C 178.
8. *Shib Singh* v. *Sridhar*, 1952 ALJ 19.
9. Section 6.

of the mob during a riot : statements expressing knowledge, intent, or mental or bodily feeling,[1] statements amounting to acts of ownership, as leases, licenses, and grants;[2] complaints in cases of rape; statements constituting motive.[3] Verbal statements made by the deceased in respect of the circumstances of the transaction which resulted in his death can be proved by the oral evidence of persons who heard them, in other words, by persons to whom they were made.[4] The admissions of a person whose position in relation to the property in suit it is necessary for one party to prove against another under section 19 are in the nature of original evidence and not hearsay, though such person is alive and has not been cited as a witness.[5] Similarly, a statement may be relevant as showing his state of mind; but where that statement is a repetition of what somebody else said to him, the latter statement is mere hearsay and thus inadmissible unless proved by evidence of a person who heard it.[6]

Reasons for the exclusion of hearsay.—The rejection of hearsay is based on its relative untrustworthiness for judicial purposes owing to(i) the irresponsibility of the original declarant, whose statements were made neither on oath, nor subject to cross-examination; (ii) the depreciation of truth in the process of repetition : and (iii) the opportunities for fraud its admission would open; to which are sometimes added (iv) the tendency of such evidence to protect legal inquiries, and (v)to encourage the substitution of weaker for stronger proofs.[7]

Hearsay evidence-Reasons for rejection.—The reasons that hearsay evidence is treated as untrustworthy are that the original declarant of the statement which is offered in a second hand manner is not put on oath, nor is he subject to cross-examination, and the accused, against whom, such evidence is offered, loses his opportunity of examining into the means of knowledge of the original maker of the statement, the truth of the original statement is diminished in course of repetition of that statement, that admissibility of hearsay evidence would open up opportunities of weaker for stronger proof regarding proof of a fact in issue or a relevant fact.[8]

Fact to be proved by direct evidence must be shown to be a fact in issue or relevant.—This section should not be taken to mean as making direct evidence of every fact which could be seen, heard or perceived admissible irrespective of its relevancy. This fact to be proved by direct evidence must be shown to be admissible in evidence either as a fact in issue or as a relevant fact under the second Chapter of the Act. The section merely deals with the mode of proof of certain facts and presuppose their admissibility under those sections of the Act which deal with the admissibility of facts.

Hearsay evidence held inadmissible.—A statement by a witness that some one not produced as a witness had informed him as to the disposal of the dead body by the accused is hearsay and therefore inadmissible.[9] The evidence of an investigating officer that one of the accused is also known by a different name is hearsay if his information

1. Section 14.
2. Section 13.
3. Section 8.
4. *Dr. Jai Nand* v. *Rex*, 1949 A 291 : 1949 ALJ 60 : 50 Cr. LJ 498.
5. *Ali Moidin Rovuthan* v. *Elavachanidathil Kornbi Achen*, 5 M 239.
6. *Kakar Singh* v. *E.*, 81 IC 717 : 1924 L 733 : 25 Cr LJ 1005.
7. Taylor, § 570 ; Best, 492-5 : Phipson Ev., 7th Ed., 215.
8. *Herbetus Oram* v. *State*, (1971) 37 CLT 477.
9. *Diwan* v. *E.*, 138 IC 528 : 33 Cr. LJ 637.

is derived from others.[1] Evidence given by a police officer that he received information from a source that the accused were going alleged to commit offence at a certain place is admissible.[2]

In a case where the informant was not examined the statement of a Police Officer that he was informed that certain accused persons could be coming behind the truck (carrying prohibited liquour) in a taxi was held to be inadmissible.[3] Similarly the evidence of a witness, to the effect that the person who was (according to him) the owner of the truck had told him, that a certain accused was the manager of that truck was also held to be inadmissible because the owner of the truck, was not examined.[3]

A statement made by person who is not examined as a witness, that the accused was not in his house on the night on which the offence is alleged to have been committed, is not admissible in evidence.[4] The statement by a witness that the brother of the accused said that the suitcase belonged to the accused, is not admissible, when the brother of the accused is not called as a witness.[5] Evidence of identification proceedings is, in substance, evidence of statements made by the witnesses in the course of investigation. Such statements are no more than hearsay and are not substantive evidence. They can be used merely to corroborate or contradict the evidence given by the witness at the trial.[6] A statement contained in a newspapers is merely hearsay and consequently not admissible in evidence.[7] unless the person who is responsible for such statement is examined as a witness and swears to the truth of the statement. A report of the doctor as to the illness of the deceased insured person and his answer to the insurance company's questions are not admissible, unless the doctor is examined.[8] In a prosecution under Section 498, I.P.Code, the fact of marriage must be proved strictly and in accordance with the provisions of Section 60; mere statements of witness that the complainant and his wife lived as husband and wife are insufficient.[9] Evidence of what the complainant stated to the witnesses as having been done by the accused is inadmissible hearsay if the complainant is not called[10] or goes back upon the story told by him to the witnesses.[11] A statement made by an accused person immediately after the commission of the offence is relevant as showing his state of mind; but where the statement is a repetition of what somebody else said to the accused, the latter statement is a repetition of what somebody else said to the accused, the latter statement must, under Section 60 of the Evidence Act, be proved by the direct oral evidence of a person who heard it.[12]

Section 60.—Maps and plans made for the purpose of the suit are *post litem motam* and lack trustworthiness.[13] The presumption of genuineness as to a newspaper cannot be

1. *Danna* v. *E.*, 108 IC 689 : 29 Cr. LJ 449.
2. *Channu* v. *E.*, 1948 C 125 : 231 IC 39 : 48 LJ 663.
3. *Bhugdomal Gangaram* v. *State of Gujarat*, 1983 SC 906, (Para 13)
4. *Keramat Mandal* v. *E.*, 92 IC 439 : 1026 C 320 : 27 Cr. LJ 263.
5. *Channu* v. *E.*, 1948 C 125.
6. *Nagina* v. *E.*, 95 IC 477 : 1921 A 215 : 27 Cr LJ 813 ; See also notes to Section 9.
7. *Sarup Singh* v. *E.*, 88 IC 22 : 19 L 299 : 26 Cr. LJ 1078.
8. *R M Y R M. Palpanniappa Chettar* v. *Bombay Life Assurance Co. Ltd.*, 1948 M 298 : 1947 2 MLJ 535 : 1947 MWN 753 : 60 MLW 803, See also *Sris Chandra Nandy* v. *Annapurna Roy*, 1950 C 173.
9. *R.* v. *Arshed*, 13 CLR 125.
10. *Kashi Nath Panday* v. *E.*, 1942 C 214 : ILR (1941) 2 C 180 : 199 IC 311.
11. *E.* v. *Nga Hlaing*, 6 R 481 : 112 IC 466 : 1928 R 295 : 29 Cr. LJ 1042.
12. *Kakar Singh* v. *E.*, 81 IC 717 : 1924 P 733 : 25 Cr. LJ 1005.
13. *Damodaran* v. *K. Plantations Co. Ltd.*, 1959 Ker. LJ. 372.

treated as proof of the fact reported therein, as a statement of a fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement deposing to have perceived the fact reported.[1] Appearance or rather description as regards the age of a person and estimate of age, or reliance on memory regarding past events as to the time they took place, is hardly a reliable basis to come to a definite finding about the age of any person.[2]

Section 60.—The Court ought not to rely upon the report of the doctor which is not before it. It ought to be summoned. If this is not done, the Court cannot reach the conclusion without any direct evidence in support of it.[3] A report submitted by a commissioner deputed to make a local investigation is not *per se* evidence in the case. It is only when it is verified by him by a statement on oath that becomes evidence.[4] Similar is the case as regards facts stated in the balance-sheets.[5] Where the offered item of evidence under Section 50 of this Act is conduct, then such conduct or outward behavior must be proved in the manner laid down in this section; if the conduct relates to something which can be seen, it must be proved by the person who saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The portion of this section which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of Section 50 of the Act in the sense that opinion expressed by conduct must be proved only by the person whose conduct expressed the opinion. Conduct may be proved either by the testimony of the person himself whose opinion is evidence under Section 50 or by some other person acquainted with the facts which express such opinion.[6]

Fabricating Evidence.—When rumours are afloat, connecting a man with a grave and brutal murder, a quite innocent man may behave very foolishly quite like a guilty one and attempt to fabricate evidence in order to see that he is not made to undergo the torture and suspense of a trial for murder.[7]

Section 60.—Evidence of a witness as to what was said to him by another person is not admissible, unless that person himself deposes to that fact as a witness, because oral evidence must always be direct and hearsay is no evidence. When the prosecution case is that one prosecution witness A, at the time of the occurrence made a statement to B, another witness for the prosecution regarding any material fact and, if A is not questioned while deposing whether he made such a statement to B or not, then any reference to such a statement by B in his evidence is inadmissible A may be recalled subsequently as to the statement attributed to him and asked to explain why he did not speak about it. In absence of such recall and explanation by A,B's evidence to that extent is admissible.[8]

Section 60.—Oral evidence.—Part of the statement which is hearsay not admissible.—It appears that something happened between May 25, 1955 and July 12, 1955. According to the respondent, what happened was that the principal contractor approached the Superintending Engineer and the Superintending Engineer ordered that

1. *Harbhajan Singh* v. *State of Punjab*, 63 PLR 794.
2. *Paryanibai* v. *Bajirao*, ILR 1961 B 963.
3. *Mohammad Ikram Hussain* v. *State of U.P.*, 1964 SCD 328.
4. *Shib Singh* v. *Sridhar*, 54 Cr. LJ 794.
5. *Petlad* v. *Dyes*, 1960 SCJ 696 : (1960) 2 SCR 906.
6. *Falkalia* v. *Nath Ram*, AIR 1969 Pat. 480.
7. In Re *Marudal*, 1960 Cr. LJ 1102.
8. *Awadh Behari Sharma* v. *M.P.*,1956 AIR 738 SC.

he would continue to be the contractor as before and no contract would be given to any firm. The respondent stated this in his evidence as R.W. 32. This is hearsay and this part of the statement is not admissible and would be omitted from consideration.[1]

At the present time, it is recognized that the only rule that can be said to be an application of the best evidence formula is the one that excludes secondary evidence of documents, if the originals are available. That it has no connection with the exclusion of hearsay is well demonstrated, apart from the historical factor, by the fact that hearsay evidence not coming within any of the exceptions is not receivable.[2]

Secondary evidence of the contents of a document by a person who has seen, but not himself read, the document is inadmissible.—Under section 63 of the Evidence Act, oral evidence of the contents of a document must be given by some person who has seen those contents, that is to say, one who has read the document. Evidence that the witness saw the document and heard it read out by someone else is only hearsay so far as the contents are concerned, and does not fulfill the requirements of section 60 of the Act.[3] If a person by merely seeing a document, possibly a document in a language which he is unable to read, being illiterate, deposes to the contents of the document merely from what other people have told him about it, he is giving hearsay evidence. The man who reads out the documents to him would certainly be entitled to give evidence of its contents. But another person who repeats what is read out to him is giving hearsay evidence of what would be legitimate secondary evidence, were it before the Court.[4]

Evidence as to the signature of a person by one who did not see the executant sign.—In order to prove the signature of a person it is not absolutely necessary that someone in whose presence the signature was made should appear as a witness. Proof of an admission by the executant of a document that he had signed it is a legal mode of proof of the execution of the document,[5] as admissions are exceptions to the rule against hearsay.

Admissibility of F.I.R.—The principle underlying the reception of this kind of evidence rests on the primary distinction between factum and the truth of a statement. Evidence of a statement made to a witness by a person who is not himself called as a witness, will be hearsay and inadmissible, when the object of the evidence is to establish what is contained in the statement. It is not hearsay, and is admissible, when it is proposed to establish by the evidence, not the truth of the statement but the fact that it had been made. Hence, where an informant of the first information report had died before he could be examined as a witness, the evidence of the witness who recorded the report is inadmissible to prove that a certain person who in fact present at the time of the occurrence; but the statement is admissible to prove that the information had mentioned his name to him.[6]

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1. *Laliteshwar Prasad Sahi* v. *Bateshwar Prasad*, AIR 1966 SC 580.
2. *Ibid.*
3. *Ma Mi* v. *Kallander Ammal*, 5 R 18 : 54 IA 61 : 1927 PC 15 : *Kalender Ammal* v. *Ma Mi*, 2 R 400 : 84 IC 175 : 1924 R 363.
4. *Kalenther Ammal* v. *Ma Mi*, 2 R 400 : 84 IC 175 : 1924 R 363.
5. *Karali Prosad Dutta* v. *E. I Rly C.*, 111 IC 792 : 1928 C 498 ; *Neel Kanto Pandit* v. *Juggobundhoo Ghose*, 12 BLR App 18.
6. *Umrao Singh* v. *State of M.P.* 1961 (1) Cr. LJ 270.

Reports, certificates, letters, telegrams, newspapers, maps etc., are inadmissible unless the writer is examined.–A certificate from a Club Secretary stating that the defendant was in the service of the Club on a certain date[1] or a certificate granted by a professor in a Medical college[2] is not admissible unless the writer of the certificate is examined. Similarly, the report of a Public Analyst,[3] of an expert in handwriting,[4] or of a finger print expert[5] is inadmissible, unless the person whose opinion is embodied in the report appears as a witness. A statement contained in a newspaper is merely hearsay and consequently not admissible in evidence.[6] Heresay in nature inadmissible unless maker of statement is examined, Judicial Notice of facts stated in newspaper cannot also be taken.[6a] As map is nothing but a pictorial representation of hearsay evidence. It is, therefore, inadmissible unless it is relevant under some section of the Act dealing with the relevancy of facts or unless its maker has been examined to depose to its contents.[7] Neither a telegram nor a letter is evidence of the correctness of its contents unless the person whose statement the telegram or the letter represents gives evidence in Court, in which case the statement contained in such document may, subject to the provisions of sections 157 and 145, become admissible in corroboration or contradiction of such evidence.[8] See notes to section 45.

Section 60.—A history sheet maintained in the Police Station is not admissible in evidence as proof of a man's character, because it might have been based on information that the Police received from time to time. It would be nothing more than herarsay.[9]

Section 60.–The post-mortem report if relates to dead body.–Evidence of doctor as to identification if admissible.–The object of identification of dead body to the doctor is to relate the *post mortem* report to the dead body over which *post-mortem* examination has been held and *post mortem* report has been made and to rule out all chances of confusion. It is, therefore essential for the prosecution in this case to establish by positive legal and admissible evidence that the *post-mortem* report relates to the dead body of the deceased. The evidence of such identification as offered by the doctor is obviously hearsay, because the doctor himself had no personal acquaintance with the deceased.[10]

Catalogues, admissibility of.–A catalogue is not hearsay. It is a statement put out by the sellers regarding the price at which they are prepared to sell. Any person who receives the catalogue can prove it and thus prove the statement made by the sellers regarding the prices acceptable to them.[11]

Hearsay evidence as to the loss of a document, when admissible to found a case for the reception of secondary evidence.–Under the Evidence Act, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but does not necessarily

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1. *Piter* v. *Mahomed Idoo Miah*, 22 IC 654 : 19 CWN 1148.
2. *Ahila Manaji* v. *E.*, 47 B 74 : 84 IC 643 : 1923 B 183 : 26 Cr. LJ 339.
3. *Raghunath Mody* v. *The Kurseong Municipality*, 76 IC 394 : 1923 C 561 : 25 Cr. LJ 170.
4. *Peary Lal* v. *E.*, 75 IC 148 : 1923 A 601 : 24 Cr. LJ 900.
5. *Pitain* v. *Baboosingh*, 79 IC 641 : 1924 N 183.
6. *Sarup Singh* v. *E.*, 88 IC 22 : 1925 L 299 : 26 Cr. LJ 1078.

6a. *Laxmi Raj Shetty* v. *State of Tamil Nadu*, AIR 1988 SC. 1274. (Para 25).

7. *Dwijen Chandra Roy* v. *Naresh Chandra Gupta*, 49 CWN 791.
8. *Judah* v. *Isolyne Shrojbashini*, 1945 OWN 287 (PC).
9. *Kamal Kanto* v. *State*, 1959 Cr. LJ 694.
10. *Herbetus Oram* v. *State*, (1971) 37 CLT 477.
11. *Hasanali* v. *Dara Shah*, 1949 N 282 : ILR 1948 N 922 : 1949 NLJ 279 wherein *Cliquot* v. *United States*, 3 Wall, 114 ; *Fenerstein* v. *United States*, 3 Wall 145 ref.

preclude evidence as to a statement having been made upon which certain action was taken and certain result followed. A statement by a witness in a suit that a third person had told him that a document was lost during a fire, though mere hearsay evidence as to the loss, may be treated as offering a reasonable time so as to render secondary evidence of the document admissible in evidence.[1] But it has been held in another case that where direct evidence of the loss of a document it available, hearsay evidence of its being lost is inadmissible.[2]

Doings and sayings of an unlawful assembly or a mob.—Only what a witness saw and heard as to what a mob was doing and saying is admissible to prove the nature of the assembly; his opinion, and impressions that the assembly appeared to be unlalwful are not admissible.[3]

Hearsay evidence of general repute in proceedings under Section 110, Cr. P. Code, admissible.—Evidence of general repute, though hearsay, is admissible in security proceedings under Section 110, Cr.P. Code[4] but hearsay evidence of particular facts is not admissible. Thus, the statement of a witness that he heard from certain persons, not examined as witnesses,that articles stolen in certain dacoities were made over to the accused is inadmissible. The evidence of an investigating officer that a certain person, not produced as a witness, stated something to him is not substantive evidence of what was stated.[5]

Opinion as to the existence of a family custom is relevant even if the opinion is based on hearsay.—Under Section 48, it is admissible for a witness to state his opinion, as to the existence of a family custom and to state, as the ground of that opinion, information derived from deceased persons : but it must be the expression of independent opinion, though based on hearsay, and not mere repetition of hearsay.[6]

Section 50 and 60.—The evidence of a person who as a member of the family or otherwise, has special means of knowledge of the relationship that is in dispute is admissible under Sections 50 and 60.[7]

Family tradition.—Evidence of family tradition founded upon information derived from deceased persons is not in the same category as hearsay evidence and is admissible when supported by the documentary evidence of great value.[8] Where the evidence given by some of the plaintiffs supported a family tradition from generation to generation and which evidence was founded upon information derived from deceased persons and such tradition was also supported by documentary evidence, held that no part of the evidence in support of the plaintiffs' case could be held to be inadmissible.[9] But the evidence of witness speaking of a tradition in their family that a deity was established

1. *Telikacherla Kandalai Venkata Ramamujacharyulu* v *Telikacherla Kandalai Appalacacharyulu*, 97 M 785 : 1926 M 1003.
2. *Telikcherla Kandalai Appalucharjulu Venkatacharyulu* v. *Telikacherla Kandalai Vencata Ramaniacharyuly*, 85 IC 524 : 1925 M 345.
3. *Jogi Raut* v. *E.*, 105 IC 234 : 1928 P 98 : 28 Cr. LJ 906.
4. *E.* v. *Kumera*, 51 A 275 : 125 IC 19 : 1929 A 650 : 31 Cr LJ 755 ; *E.*,v.*Rooji Fulchand*, 6 Bom LR 34; see also *Baso Rai* v.*E.*, 1948 P 84 : 229 IC 474 : 48 Cr LJ 409.
5. *Ashutosh Das* v.*E.*, 66 IC 513 : 1923 R 15 : 23 Cr LJ 289.
6. *Garurdhawaja Prasad* v.*Superundhwaja Prasad*, 23 A 37 : 27 IA 238 (PC) ; **Protap Chandra Deo Dhabal Deb* v. *Jagdish Chandra Deo Dhabal Deb*, 82 IC 886 : 1925 C 116 : 8 OC 94.
7. *Toval Mahton* v.*Chandeshwar Mahton*, 1971 BLJR 418.
8. *Srish Chandra* v.*Rakhal Ananda*, 65 CLJ 520 : 41 CWN 1103.
9. *Srish Chandra* v.*Rakhal Ananda*, 65 CLJ 520 : 41 CWN 1103.

by a certain person who granted the *britti* and made it a charge on the estate is inadmissible as hearsay.[1]

Hearsay in affidavits.—Hearsay is not permissible in affidavits, except in affidavits in interlocutory applications, where statements of belief are permissible.[2]

Consent or omission to object hearsay evidence does not make it admissible : hearsay evidence in cross-examination.—Hearsay evidence which ought to have been rejected as irrelevant does not become admissible as against a party merely because his counsel erroneously failed to take objection when the evidence was being given.[3] There is no rule of law which renders hearsay more admissible in cross-examination that in examination-in-chief[4] and hearsay evidence should not be recorded, even on part of the accused.[5]

It is not open to a Court to exercise a dispensing power and to admit hearsay evidence, because it appears to it that such evidence would throw light on the issue.[6]

Section 60-Domestic tribunal and proof.—When a fact is sought to be proved, even before a Domestic Tribunal, it must be supported by statements made in the presence of the persons against whom an enquiry is held and if that statement is made behind the back of the person charged it ought not to be treated as substantive evidence; this is one of the basic principles which cannot be ignored on the mere ground that Domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act.[7]

Proviso I : Opinions of experts expressed in treatises may be proved by the production of treatises.—This Proviso enacts differently from the English law according to which scientific treatises are inadmissible whether the author be producible as a witness or not.[8] Under this Proviso, the opinion of an expert expressed in any treatise commonly offered for sale may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an unreasonable amount of delay or expense. Therefore, it is perfectly open to a Court to consider and act upon the opinion of an expert contained in a treatise commonly offered for public sale, if its author is not producible for any of the reasons mentioned in the Proviso.[9] But it is not advisable for a Court untrained in technical matters to base a finding purely on an opinion contained in any such treatise.[10] The book may, however, be referred to in order to comprehend and

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1. *Srish Chandra Nandy* v.*Rakhalananda Thakur*, 1941 PC 16: 193 IC 220 : 68 IA 34.
2. O. 19, r.3 C.P. Code ; *Habib Bux* v.*Samuel Fitz & Co.*, 89 IC 22 : 1926 A 161.
3. *Lim Yam Hong* v.*Lam Choon & Co.*, 107 IC 457 : 1928 PC 127; *Lachhu* v.*Mela Ram*, 119 IC 734 : 1929 L 583.
4. *Ganouri Lal Das* v.*Q.E.*, 16 C 206, 211.
5. In re *Bhatori Mushabaini*, HC Cal Cr App No. 337 of 1882, cited in *Ganouri Lal Das* v.*Q.E.*, 16 C 206,211 see *Supt. & Remembrancer of Legal Affairs*; *Bengal* v.*Lalit Mohan Singha Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr LJ 562.
6. *Mahani Dasi* v.*Pareshnath*, 1954 Orissa, 198.
7. *Management of Municipal Corporation of Delhi* v.*The Presiding Officer, Labour Court*, 1973 Lab IC 771.
8. *Collier* v.*Simpson*, (183) 5 C & P 73.
9. *Howe* v.*Howe*, 38 M 466 : 21 IC 645 : see the judgment of Smither, J., in *Grande Venkata Ratnam* v.*Corporation of Calcutta*, 46 IC 593 : 19 Cr LJ 753 : 22 CWN 745
10. *E.v.Purna Chandra Ghose*, 83 IC 631 : 1924 C 611 : 26 Cr LJ 71 : 28 CWN 579. See the judgments of Chitty & Woodroffe, JJ., in *Grande Venkata Ratnam* v.*Corporation of Calcutta*, 46 IC 593 : 19 Cr LJ 753 : 22 CWN 745.

appraise correctly the evidence of the expert who has been examined in Court on oath.[1] If it is intended to contradict an expert who has been examined as a witness in the case by any opinion expressed in any technical work, his attention must be drawn in cross-examination to those passages in the work by which it is intended to contradict him.[2] A work of history and social customs by a living author cannot be referred to in support of a custom if the author has not been called.[3] For further notes on the subject, see notes to Section 57 under the leading "reference to works of science or art; Section 57 and Section 60.

Section 49 & 60-Opinion of living expert in a treatise.–Opinion expressed by a living authority, in a treatise, as to usages and tenets of any body of men or family as of a person having special means of knowledge, is not admissible in evidence because of the provisions of Section 60 of the Indian Evidence Act, unless that he cannot be found or has become incapble of giving evidence.[4] The affidavit cannot be filed unless permitted by law or order of court.[5]

Proviso II.–Compare this Proviso with Section 165 of the Evidence Act and O.XVIII,18 Cr. P.Code.

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1. *Grande Venkata Ratnam* v.*Corporation of Calcutta*, 46 IC 593 : 19 Cr LJ 753 ; per Chitty, J.
2. *Grande Venkata Ratnam* v.*Corporation of Calcutta*, 46 IC 593 : 19 Cr LJ 753 ; See also *Rawat Sheo Bahadur Singh* v.*Beni Bahadur Singh*, 51 IC 419.
3. *Manu Uraon* v*Abraham Uraon*, 1941 P 146.
4. *Kandan Soren* v. *Jitan Hembrom*, AIR 1973 Pat. 206.
5. *Munir Ahmad* v.*State of Rajasthan*, AIR 1989 SC 705.