PART II

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

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

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

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

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

(3) Articles of War for [3][the Indian] Army, [4][Navy or Air Force]:

[5](4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislatures 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 Courts in [6][India], and of all Courts out of [6][India], established by the authority of [7][the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by [8][the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [5][India]:

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* Changes in Pakistan, Burma and Ceylon introduced by adaptation &c have been given just below the section.

1. Substituted successively by AO 1937 and AO 1950.
2. Inserted by AO 1950.
3. Substituted for "Her Majesty's" by AO 1950.
4. Substituted by s 2 and Sch I, Repealing and Amending Act, 10 of 1927.
5. Cl (4) substituted successively by AO 1937, AO 1949 and AO 1950.
6. Substituted by Part B State (Laws) Act, 1951 for "the States" which had been substituted for "Provinces of India" by AO 1950.
7. Substituted by AO for "the G-G or any L-G in Council".
8. Substituted by AO 1950 for "any Act of Parliament or other".

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any [9][State], if the fact of their appointment to such office is notified in [10][any Official Gazette]:

(8) The existence, title and national flag of every State or Sovereign recognized by [11][the Government of India]:

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the [12][Official Gazette]:

(10) The territories under the dominion of [13][the Government of India]:

(11) The commencement, continuance and termination of hostilities between [13][the Government of India] and any other State or body of persons:

(12) The names of 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, attorney, proctors, vakils, pleaders and other persons authorized by law to appear or act before it:

(13) The rule of the road [14][on land or at sea].

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.

MODIFICATIONS IN PAKISTAN, BURMA AND CEYLON

PAKISTAN.—Cl (1) reads: "(1) All *Pakistan laws*". (AO 1949).

Cl (2): For the words "Parliament of the United Kingdom" the original word "Parliament" stands.

Cl (3) reads: "(3) Articles of War for the Armed Forces" (Ord 1 of 1961).

Cl (4) reads: "(4) The course of proceeding of Parliament and of the *Central Legislature and any Legislature* established under any laws for the time being in force in Pakistan:

Explanation.—The word Parliament in clauses (2) and (4) includes—(1) The Parliament of the United Kingdom of Great Britain and Ireland; (2) The Parliament

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9. Substituted successively by AO 1948 and AO 1950.
10. Substituted by AO 1937.
11. Substituted for "the British Crown" by AO 1950.
12. Substituted by AO 1937.
13. Substituted for "the British Crown" by AO 1950.
14. Inserted by s 5, IE (Am) Act, 18 of 1872.

of Great Britain; (3) The Parliament of England; (4) The Parliament of Scotland; and (5) The Parliament of Ireland." (AO 1949).

Cl (6): For "India" inside brackets marked 6 read "Pakistan"; for "crown" read "Government"; and for "Constitution or an Act of Parliament of the United Kingdom of an Act" substitute "any Act of Parliament of the United Kingdom or other Act". (AO 1949; Ord 21 of 1950 & Ord 1 of 1961).

Cl (7): For "any State" substitute "in Pakistan" (AO 1949 & Ord 21 of 1960).

Cl (8): For "the Government of India" substitute "the Central Government" (Ord 1 of 1961).

Cl (10): For "the Government of India" substitute "Pakistan" (Ord 1 of 1961).

Cl (11): For "the Government of India" substitute "Pakistan" (Ord 1 of 1961).

BURMA.—Cl (1) reads: "(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force in any part of the Union of Burma or India or Pakistan". (A.O. 1937; AO 1948).

Cl (2): For the original word "Parliament" substitute "Parliament of the United Kingdom of Great Britain and Ireland". (AO 1948).

Cl (3): For the words "the Indian" the original words "Her Majesty's" stand.

Cl (4) reads: "(4) The course of proceeding of Parliament of the United Kingdom of Great Britain and Ireland and of the Burma Legislature". (AO 1937; AO 1948).

Cl (6) reads: "(6) all seals of which English Courts take judicial notice; the seals of all the courts of the Union of Burma; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public; and all seals which any person is authorised to use by any Act of Parliament of the United Kingdom of Great Britain and Ireland or other enactment in force in the Union of Burma". (AO 1937; AO 1948).

Cl (7): For "in any State" substitute "in any part of the Union of Burma" and for "in any Official Gazette" substitute "in the Gazette". (AO 1937).

Cl (8): For "the Government of India" substitute "the President of the Union".

Cl (10): For "the Government of India" the original words "the British Crown" stand.

Cl (11) For "the Government of India" substitute "the Union of Burma". (AO 1948).

Cl (12): For "advocates, attorneys, proctors, vakils, pleaders" substitute "legal practitioners". (AO 1937).

CEYLON.—Sub-sec (1) reads: "(1) all laws, or rules having the force of law, now or heretofore in force or hereafter to be in force in any part of the Island:"

Sub-sec (2): For the words "Parliament of the United Kingdom" the original word "Parliament" stands.

Sub-sec (3): For the words "The Indian" the original words, "His Majesty's" stand.

Sub-sec (4) reads: "(4) the course of proceedings of Parliament and of the Legislature of the Island.

Explanation.—The word Parliament in sub-sections (2) and (4) includes—(*a*) the Parliament of the United Kingdom of Great Britain and Northern Ireland; (*b*) the Parliament of Great Britain; (*c*) the Parliament of England; (*d*) the Parliament of Scotland; and (*e*) the Parliament of Northern Ireland."

Sub-sec (5): For "Ireland" substitute "Northern Ireland".

Sub-sec (6) reads: "(6) all seals of which English courts take judicial notice; the seals of all the courts of the Island; the seals of Courts of Admiralty and maritime jurisdiction and of notaries public; and all seals which any person is authorised to use by any Act of Parliament or other law in force for the time being in the Island;"

Sub-sec (7): For "in any State" substitute "in any part of the Island" and for "any Official Gazette" substitute "the Government Gazette".

Sub-sec (8): For "the Government of India" substitute the original words "the British Crown".

Sub-sec (9) reads: "(9) the ordinary course of nature, natural and artificial division of time, the geographical divisions of the world, the meaning of English words, and public festivals, fasts, and holidays notified in the Government Gazette;"

Sub-sec (10): For "the Government of India" substitute the original words "the British Crown".

Sub-sec (11): For "the Government of India" substitute the original words "the British Crown".

Sub-sec (12): For "advocates, attorneys, proctors, vakils, pleaders" substitute "advocates, proctors".

Sub-sec (14) added: "(14) all other matters which it is directed by any enactment to notice".

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COMMENTARY

Principle and Scope. [Matters of Judicial Notice Need Not be Proved].—As soon as the points in issue in a case have been determined, the question that next presents itself, is—By what method can they be proved or established? The object of offering evidence is to prove the points in issue, or in other words to create a conviction in the mind of the judge as to the truth or otherwise of a fact in issue. It has been seen that the word "proved" has been defined in s 3 (*ante*). The definition attempts at describing the degree of certainty to be arrived at before a fact may be considered to be proved or disproved. All facts however need not be proved. The exceptions are in the case of (*1*) facts *admitted*; (*2*) facts of which the court takes *judicial* notice and (*3*) facts which the law *presumes* in favour of a party. S 58 refers to facts *admitted* by *parties* and s 57 deals with facts of which courts shall take judicial notice.

The purpose of the section is to provide that the court shall take judicial notice without formal proof of facts the existence of which is unquestionably within public knowledge [*Onkarnath v. Delhi Admn*, A 1977 SC 1108]. Some facts are so notorious in themselves or are of such public and universal character or are so well and authentically expressed in various treaties, that court is bound to recognise and to take notice of them. Such facts do not require proof. As for instance, the common laws of the realm, public statutes passed by the legislature, official seals and signatures, the meaning of ordinary words, divisions of time, weights, measures, facts regularly recurring in the ordinary course of nature of business etc. These facts are too numerous to mention and any exhaustive list is impossible. But courts will take judicial notice of them whenever necessary. That judicial notice is taken of a fact

merely dispenses with proof but it is not conclusive and a party is not prevented from disputing its correctness by offering evidence.

"Judicial notice takes the place of proof, and is of equal force. As a means of establishing facts it is therefore superior to evidence" [*Beardsley v. Irving*, 81 Conn 489; Thayer's Cases, p 4]. In taking judicial notice of all facts enumerated in cls. 1 to 13 and also on all matters of public history, literature, science or art, the court may resort for aid to appropriate books or documents of reference. The words "public history, literature, science or art" embrace a wide range of subjects. But obviously, it cannot be meant that the court is to take judicial notice of all facts mentioned in all books of public history, literature, etc. Only books of accepted or recognised authority may be resorted to and for obtaining information regarding only undisputed and notorious facts. While appreciating medical evidence the court can refer to articles, journals and books by authors [*Ramjee Pandey v. State of Bihar*, 1989 Cri LJ NOC 186 (Pat)(DB)]. In *Ambalam v. Barthe*, 36 M 418 : 13 IC 599 it was held that in matters of public history the court can dispense with proof of what may be regarded as *notorious facts* of public history. The use of such books is regulated by this section and s 60; [see *post*: "*On all Matters of Public History &c*" and s 60]. In *East L Rly Co v. Conservators &c*, 90 LT 347, reports of the distinguished engineer Brunel, which were commonly accepted by engineers as accurate were taken in evidence. Judicial notice being a dispensation of one party from producing evidence, it would seem that the party must, in point of form, make a request for it [Wig s 2568].

The doctrine of judicial notice applies not only to judges but also to juries, with respect of matters coming within the sphere of everyday knowledge and experience [*R v. Rosser*, 7 C&P 648]. In a trial by jury, the 'court' includes both the judge and the jury. Judicial notice may be taken at any stage, appellate or revisional [*Ramlagan v. S*, A 1960 P 243].

The section does not say whether judicial notice should be taken of matters appearing in the court's own proceedings. Such matters are the subject of judicial notice under the English system. There is no reason why the courts here should not also take judicial notice of matters appearing in their own proceedings. "The court is entitled to look at its own records and proceedings in any matter and take notice of their contents although they may not be formally brought before the court by the parties [*Craven v. Smith*, 1869 LR 4 Exch 146]. It also takes judicial notice of any illegality appearing in proceedings before it on the part of any party by reason of which it considers that its assistance should be refused to such party, although the illegality is not pleaded or relied upon by the opposite party" [Hals 3rd Ed Vol 15 para 609].

The meaning of the section will however be apparent, if we consider together with s 56 the last words of s 57. What these two provisions really come to, is this "With regard to the facts enumerated in s 57, if their existence comes to 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 will help him. Thus he may consult any book or obtain information from a bystander. [Markby p 49].

Generally matters directed by statute to be judicially noticed or which have been so noticed by the well-established practice or precedents of the courts *must* be recognised by the judges; but beyond this, they have a wide discretion and *may* notice much, which they cannot be required to notice. The matters noticeable may include facts which are in issue or relevant to the issue, as well as the contents of documents and their methods of proof; and the notice is in some cases *conclusive*, and in others (*eg* the genuineness of signatures) merely *prima facie* and rebuttable [Phip 11th p 23].

List in the Section Not Exhaustive.—The list of facts mentioned in s 57 of which the court can take judicial notice is not exhaustive [*Onkarnath v. Delhi Admn*, A 1977 SC 1108]. It is not possible to make such a complete list. Taylor has given a long list of facts of which the English courts take judicial notice, and there is no reason why the courts in India should not take judicial notice of them or of analogous facts with, of course, appropriate exceptions. The list is too lengthy to permit reproduction and enquirers should look to Taylor 11th Ed ss 4-21 pages 3-12[15] and also the list in Wig s 2571 footnote. It should be noted here, that s 57 only provides that, the courts shall take judicial notice of the facts enumerated in cls *1-13*, but it does not prohibit the courts from taking judicial notice of other facts not mentioned there. Moreover, the framer of the Act, Sir James Stephen himself, says in his Digest: "It may be doubted whether an absolutely complete list 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 superfluous to prove it" (Steph Dig notes to Art 58).

Whitley Stokes, in his edition of the Anglo-Indian Codes Vol II p 887 says that the list given in this section of the facts of which the courts should take judicial notice, is far from complete and observes that, courts should take judicial notice in the ordinary course of nature, of the meaning of English words, and all other matters which they are directed by any other Act to notice, such as in Bengal, lists of land-holders who have not made roadcess returns under s 19 of Act 9 of 1880 BC in Madras, bye-laws framed by the Commissioner of Police, (Madras Act 3 of 1862, s 5) in Oudh the list of talukdars and grantees published by the Chief Commissioners (Act 1 of 1869, s 10) [Field p 216]. Although the penultimate clause of s 57 does not absolve a party

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15. Some may be reproduced here: Recognition of each other's existence by all civilised nations; and general public and external relations; status and boundaries of foreign states; status of foreign sovereigns; statute law, common law, and all legal claims, demands, &c, existing by them; rules of equity: law of nations; law, custom, proceedings, privileges, &c, of Parliament; prerogatives of the Crown; maritime law, ecclesiastical law; articles of war; royal proclamations: general practice of conveyancers; customs of merchants judicially determined; general lien of innkeepers, bankers, &c; customs of a month's notice or a month's wages with regard to domestic servants; custom of law of the road, viz, that horses and carriages should keep on the near or left side; law of navigation with regard to the meeting of ships and steamboats; matters appearing in the court's own proceedings; particular customs tried, determined and recorded in such court; particular seals; facts known from the invariable course of nature, *eg*, a man is not the father of a child where non-access is already proved until within 6 months of delivery; course of time; heavenly bodies; public divisions of time such as public facts and festivals; commencement or ending of legal sittings; meaning of words in the vernacular language; legal weights and measures; positive value of the coin of the realm; matters of history affecting the public; political constitution or frame of their own government; its essential political agents or public officers sharing in its regular administration; heads of departments; journals of either house of parliament if they purport to be printed by the official printers, &c.

from proof of any fact which does not fall within the provisions of cls *1* to *13*, the facts of which the court may take judicial notice are not limited to this clause [*Englishman v. Lajpat Rai*, 37 C 376]. See also the remarks of MOOKERJI J, in *Krishna Kamini v. Nilmadhab*, A 1923 C 66: 73 IC 312. It should be kept in mind that modern scientific developments would tend to add to this list *eg* in the US judicial notice is taken of the fact that television can work profound changes in the behaviour of the people it focuses on [*Billie Sol Estate v. S*, 381 US 532].

It seems that s 114 under which the court may presume existence of certain facts was also intended to embrace a number of facts that have not been mentioned in s 57. This will appear if some of the illustrations to that section are referred to. The doctrine of judicial notice, as Thayer says—

> "is an instrument of great capacity in the hands of a competent judge, and is not nearly as much used, in the region of practice and evidence, as it should be......... The failure to exercise it tends daily to smother trials with technicality and monstrously lengthens them out" [Thayer Pr Treatise, 1898 p 309].

The scope of the doctrine of judicial notice is very wide. It has great possibilities if intelligently and boldly made use of by a judge. Numerous matters are so notorious or wellknown to all or they recur or happen so regularly in the ordinary course of nature or business that production of evidence in proof of them becomes unnecessary. In *Commonwealth &c v. Peninsular &c*, 1923 App Cas 191, 210, LORD SUMNER said:—

> "To require that a judge should affect a cloistered aloofness from facts that every other man in court is fully aware of, and should insist on having proof on oath of what as man of the world he knows already better than any witness can tell him, is a rule may easily become pedantic and futile."

[*Ref Taylor ss 4-21; Best ss 253-54; Powell 9th Ed pp 146-48; Phip 8th Ed pp 16-23; Roscoe N P Ev 18th Ed Vol 1 pp 79-84; Steph Dig Art 58; Jones ss 105-34; Greenleaf s 11; Wigmore ss 2565-83; Thayer 277-312; Hals 3rd Ed Vol 15 paras 606-617*].

CLAUSE (1): "All Laws in Force" or Rules Having the Force of Law.—Laws or rules having the force of law include statutory as well as unwritten law, whether of personal or local nature. The judges are bound to recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter: and, subject thereto, to recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom. The court takes notice of every branch of English law, including the principles of international law, ecclesiastical law, maritime law. The court will also take judicial notice of usages which are embodied in the law merchant, and of commercial or other usages which have been proved sufficiently often in the courts of law, [Hals 3rd Ed Vol 15 paras 606, 607, 608]. Courts cannot take judicial notice of foreign laws which have to be proved like any other fact (v ss 38, 45). In America, the States of the Union are in this respect considered foreign [*Hanley v. Donoghue*, 116 USR 1].

"Law" [in Art 13 (3) (*a*) of the Constitution] "includes any ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law" and cl (3)(*b*) of the same Art says that " 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the Commencement of this Constitution and not previously repealed notwithstanding that any such law or any part thereof may not be then in operation

either at all or in particular areas", (See also the definition of 'law in force' in Art 372 of Constn Expln 1).

In Art 366(10) [*Cf* s 331(2) Govt of India Act 1935] " 'existing law' means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such law, ordinance, order, by-law, rule or regulation". There is not any material difference between an 'existing law' as defined in art 366(10) and 'a law in force' in art 372. The words "law in force" are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. It must however be a legislative and not an executive order [*Edward Mills Ltd v. S*, A 1956 SC 25]. Municipal Bye-laws constitute 'law' [*Shamlal v. Munilal*, A 1972 P&H 199]. Before a law can be operative or a person can be penalised by law, it must be promulgated [*Harla v. S*, A 1951 SC 467: 1952 SCR 110].

"Indian law" is defined in s (29) of General Cl Act 10 of 1897 thus:—"'Indian law' shall mean any Act, Ordinance, Regulation, Rule, Order, Bye-law or other instrument which before the commencement of the Constitution has the force of law in any Province of India or part thereof, and thereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act." It would not be right to deduce the meaning of the term 'law' from this definition of 'Indian law' [*Mathura v. S*, A 1954 N 296]. As to definition of "Indian State" see s 3(30) *ibid* and also Art 366(15) of Constitution. As to "Pakistan law", see added definition in s 3(37*b*) General Cl Act 10 of 1897 (v Schedule to A E P L Order, 1947).

All statutory orders and notifications of Central and State Governments are legislative in nature and amount to law. The court can take judicial notice of them [*S v. Ramcharan*, A 1977 MP 68 FB (*S v. Gokulchand*, A 1957 MP 145; *S v. Gopal*, A 1956 MB 138 FB **apprd** and *Mathura v. S*, A 1954 N 296 **overruled**): In absence of authenticated copies of the Acts, Rules, Regulations and other statutory instruments being made available, it will be difficult for the courts to act upon the mandate of section 57 requiring the court to take judicial notice of certain facts such as laws in force in India. If ignorance of law is no excuse it presupposes that a citizen is able to know law [*Sanjeev M. Gorwadkar v. State of Maharashtra*, A 1997 Bom 303; *Mazhar v. Hakimuddin*, A 1965 P 489]. Judicial notice may be taken of a notification issued by the Govt or any competent authority in the exercise of delegated power of legislation, but not of a notification issued in the exercise of executive function [*S v. Gopal*, A 1956 MB 138 FB]. It has however been held in a case that a Govt notification published in Gazette is not included within "law" and cannot be taken judicial notice of. It is to be proved under s 78 by production of the Gazette [*Collr Cawnpore v. Jugal*, A 1928 A 355]. Court must take judicial notice of bye laws framed under an Act (In this case Punjab Municipal Act) [*Shamlal v. Munilal*, A 1972 P&H 199]. Order issued under Essential Supplies (Temporary Powers) Act 24 of 1946, are part of Indian law [*Pub Pro v. Thippayya*, A 1949 M 459]. Notifications issued under sec. 11-B and sec 123(2) of the Customs Act are legislative in character. [*S. Nagarajan v. Vasanth Kumar*, 1988 Cri LJ 1217, 1223: (1988) 1 Ker LT 92 (Ker) (DB)]. Judicial notice can be taken of the notification relating to acquisition of Intermediary's estate under S. 4 of the West Bengal Estates Acquisition Act (1 of 1954) [*Union of India v. Nihar Kanta Sen*, A 1987 SC 1713, 1717: (1987) 7 IJR 253]. The notification bringing the proviso to S. 34 C.P.C. into force was part of the law. [*State Bank of Travancore Tirupur Branch v. K Vinayachandran*, A 1989 Ker 302, 303]. Illegality if appearing on the face of a contract will be judicially noticed,

whether pleaded or not; *aliter* when it is merely deducible from surrounding circumstances [*North-Western Salt Co v. Electrolytic Co*, 1914 AC 461]. Rules of business made under Art 166(*3*) of the Constitution are Statutory rules. Judicial notice has to be taken of them and certified copies are admissible [*Advance Ins Co v. Gurudasmol*, A 1969 D 330].

The usual method of ascertaining the law among Hindus was by reference to authoritative text-books, to judicial decisions and to opinions of pundits [*Bhagwan v. B*, 26 IA 153: 21 A 412, 423: 3 CWN 454] but expert opinion of pundits is not now admissible [*Musjid Sahidganj v. Gurudwar*, 44 CWN 957: A 1940 PC 16 *ante*]. The court can take judicial notice of the general principles of Hindu law, but it cannot take judicial notice of what the Hindu law is with regard to Hindu customs, which must always be proved [*Juggut Mohini v. Dwarkanath* (*per* GARTH CJ, during arguments), 8 C 582, 587]. Sworn translations of Sanskrit works, little known, embodying Hindu Law, as to the customs in the different schools in respect to the law of adoption were admitted and referred to by the Privy Council [*Collr of Madras v. Muthu Ramalinga*, 12 MIA 397]. As to usage or custom of right of privacy, see *Gokal v. Radha*, 10 A 358, 372. When the existence of the custom, under which Hindus have the same right of pre-emption as the Mahomedans is generally known and judicially recognised, it is not necessary to prove it [*Jadu Lal v. Jankee*, 35 C 575; see *Nihat v. Bhagwan*, A 1935 A 1002].

A court is bound by s 57(*1*) to take judicial notice of the Mahomedan ecclesiastical law, and the parties are relieved of the necessity of proving that law by specific evidence [*R v. Ramzan*, 7 A 461 *per* MAHMOOD J]. As to the effect of s 3, Indian Law Reports Act, 18 of 1875 see notes to s 38 *ante*, and s 84 *post*.

Assuming that a rule of Aliyasantana law is a 'rule having the force of law', within s 57, there is one essential feature in the operation of customs which necessarily differentiates then 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 Parliament or of the Legislative Council. In the case of customs, the facts showing that they have 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 which courts are not required to take judicial notice of unless it has been so often proved in the courts as to make further proof unnecessary (*vide* last clause of section) [*Secy of S v. Santaraja*, 21 MLJ 411: 21 IC 432].

The court takes judicial notice of judgment containing expositions of the law, but it does not therefore follow that all the statements of facts in judgments become matters of judicial notice [*Tulsidas v. Fakir*, 93 IC 321: A 1926 S 161]. Government notification does not come under s 57. But the production of a Gazette would be sufficient proof of notification under s 78 [*Collr of Cawnpore v. Jugal*, 107 IC 578: A 1928 A 355].

CLAUSE (2): All Public Acts Passed by Parliament.—This clause follows the Interpretation Act, 1889 (52 & 53 Vic c 63) s 9 which is founded on Lord Brougham's Act of 1831 and under which courts are to take judicial notice of all Acts of Parliament since the year 1859, unless the contrary is expressly provided by the particular Act in question.

—Public and Private Acts.—Statutes are either public or private, general or special. The distinction between public and private Acts was first made in the reign of Richard III. A public or general Act is an universal rule applied to the whole community, which courts must notice judicially and *ex-officio*, although not formally set-forth by a party claiming an advantage under it. But special or private Acts are rather exceptions than rules and the courts are not bound to take notice of them, if they are not formally pleaded [Field pp 219-220]. In most local and personal Acts, it was customary prior to 1851 to insert a clause declaring that the Act should be deemed public and should be judicially noticed; and this dispensed with the necessity, not only of pleading the Act specially, but of producing an examined copy. But the legislature has enacted that every Act made after 1851 shall be deemed a public Act, and judicially noticed as such unless the contrary be expressly provided. Public statutes require no proof, being supposed to exist in the memories of all. Yet for certainty of recollection, reference may nevertheless, be had to a printed copy. [Tay s 1523; s 5]. Sedgwick defines public statutes as "those that relate to and bind all within the jurisdiction of the law-making power, limited as that power may be in its territorial operation or by constitutional restraints. [Sedg Stat Const Law J, p 30]. The importance of the question whether the Act is public or private consists in this that if it is the latter then though there be no saving clause, the rights of third parties will not be regarded as affected by necessary implication [*Debendra v. Jogendra*, A 1936 C 593]. The court can take judicial notice of Acts of Parliament and interpret the Schedule to the Act in the light of the English version [*Nityanand Sharma v. State of Bihar*, A 1996 SC 2306, 2311].

As to the proof of Acts, orders of notifications of the Central Government or State Government, Proclamation by His Majesty, or the Privy Council, or of the Acts of the Executive or the proceedings of the legislature of a foreign country, etc, etc, see s 78 *post*.

CLAUSE (3): Articles of War.—Provisions as to Articles of War are contained in the Army Act.

The judges will recognise without proof, the articles of war, whether in the naval, the maritime, or the land service, including those made for the government of the forces in India, as well as the auxiliary and reserve forces; the rules of procedure made in pursuance of s 70 of the Army Act. [Tay s 5]. The court takes judicial notice of emanations from the Crown pursuant to statute, such as the articles of war under the former Mutiny Act or in exercise of prerogative, but not of regulations for the government of the army [Hals 3rd Ed Vol 15 para 607].

CLAUSE (4): Course of Proceedings of Parliament and of the Legislatures Established Under any Laws for the time Being In Force.—Under this clause the court will take judicial notice of the course of proceedings of Parliament, and the course of proceedings of the Councils for the purpose of making Laws and Regulations under the Indian Councils Act—*per* WOODROFFE J, (**dissenting** from HARRINGTON J) that although the penultimate clause of s 57 does not absolve a party from proof of any fact which does not fall within the provisions of cls 1 to 13, the facts of which the courts may take judicial notice are not limited to those clauses. Thus the fact there were debates in Parliament in which plaintiff's deportation and conduct was discussed was a matter of public history and of such notoriety that it was reasonable to assume their existence without formal proof; and Hansard's Reports were properly referred to, to enable the court to take judicial notice of the facts relating to the debate: *per curiam*—the debates in Parliament were not covered by the expression "course of proceedings" in cl *(4)* [*The Englishman v. Lajpat Rai*,

14 CWN 713: 37 C 760. See *post*, notes to s 78]. Reports of debates in the Legislative Assembly can only be evidence of what was stated by the speakers in that Assembly, and are not evidence of any facts contained in the speeches [*Strichland v. Bonnici*, 153 IC 1: A 1935 PC 34]. Courts may take judicial notice of the course of proceedings in the Legislative Assembly [*R v. Chaudhury*, A 1943 L 298]. Court may take judicial notice of such matters as the reports of parliamentary committee, and of such other facts as must be assumed to have been within the contemplation of the legislature when the Acts in question were passed [*Addl CIT v. Surat Art Silk &c*, A 1980 SC 387]. Judicial notice can be taken of the matter described in the Government of India's White paper. [*Sukhdev Singh v. Union Territory Chandigarh*, A 1987 P&H 5, 12 (FB) : 1986 Cri LJ 1757].

The court takes judicial notice of the law and customs of Parliament, the existence and extent of the privileges of each House of Parliament and the order and course of the proceedings therein and the clearly established privileges of the Crown, *eg* the privileges with respect to the royal places (Hals 3rd Ed Vol 15 para 607]. The courts are bound to take judicial notice of prorogation and presume the regularity of these actions which must be interpreted as far as possible so that the thing done may be valid rather than invalid [*S v. Satyapal*, A 1969 SC 903]. As to the proof of the proceedings of the legislatures, of municipal bodies, etc, etc see s 78 *post*. The courts take judicial notice of the days fixed for general political elections, the date and place of the sittings of the legislature and all public matters which affect the government of the country. [Tay s 18]. Court can take judicial notice of historical facts leading to enactment of a statute—Andhra Pradesh (Andhra Area) Abolition and Conversion into Ryotwari Act (26 of 1948) [*Mandala Jaya Syamala Rao v. Sri Raghakanthe-swami Varu*, A 1984 NOC 180 : (1984) 1 An LJ 286].

CLAUSE (5): Accession and the Sign Manual of the Sovereign.—The courts will take judicial notice of the royal sign manual, and of matters stated under it; the accession and demise of the Sovereign of their country, the heads of departments, and the principal officers of State, whether past or present, etc [Tay ss 14-18].

In this clause the word "Ireland" should be altered to "Northern Ireland" by amendment, as Ireland (now known as Eire) has freed herself from allegiance to the British Crown.

CLAUSE (6): All Seals of Which English Courts Take Judicial Notice, etc.—As to the seals of which the English Courts take judicial notice, see Tay s 6 and Hals 3rd Ed Vol 15 para 616. Many courts, public offices and bodies are authorised by statute to use distinctive seals, and the courts will take judicial notice of them. In the case of *Jakir Ali v. Raj Ch*, 10 CLR 469 *post*, the court refused to take judicial notice of a seal of a *kazi* which was not distinctly legible, his appointment not being proved.

—Power of Attorney.—A declaration regarding the execution of power of attorney taken, before the chief magistrate of Glasgow and authenticated not only by the certificate of the said magistrate under the common seal of the city of Glasgow, but also by a certificate of a notary public, can be accepted in proof of the execution of the power [*In re Henderson*, 22 C 491]. When a power of attorney is given under the seal of a notary public, s. 57(*6*) applies [*Performing R Society Ltd v. I M P Restaurant*, 1939 Bom 295: A 1939 B 347]. "Notary Public' includes Notary Public of foreign countries also [*N&G Bank v. World Science News*, A 1976 D 263 (*Jugraj v. Jaswant*, A 1971 SC 761: 1971, 1 SCR 38 **folld**)]. A registered power of attorney was admitted under this section without proof, as the registering officer is a court within the meaning of s 3 [*Kristo Nath v. Brown*, 14 C 176]. This decision has been dissented from in *Salimatul Fatima v. Kaylashapati*, 17 C 903, where it has been held

that a mere registration of a document is not itself sufficient proof of its execution. See also 9 Bom LR 401]. Powers of attorney endorsed by the Notary Public of U.S.A are admissible in evidence. [*Rajesh Wadhwa v. Dr(Mrs) Sushma Govil*, A 1989 Delhi 144, 155].

As to presumption with regard to powers-of-attorney, see s 85 *post*.

CLAUSE (7): Accession to office, Names, Titles, Functions and Signatures of Persons Filling for the time Being any Public Office, etc.—The provisions of the clause which are far in advance of English law are in accordance with the rule acted upon in America [Field p 220]. In America the signature of the Chief of the Executive of the State is recognised without proof, and so in Louisiana are also the signatures of executive and judicial officers to all official acts. The English doctrine certainly does not extend this length, though is difficult of definition. On the one hand, judicial notice will be taken of the royal sign manual, and of matters stated under it, the signatures of the judges of Supreme Court of Judicature, and of the old superior equity and common law judges, of the judges and registrars of the Court of Bankruptcy. On the other hand it appears highly probable that the courts would probably not recognise the signatures of the Lords of the Treasury to their official letters [Tay s 14]; nor apparently, will those of the Attorney-General, or Public Prosecutor [*R v. Turner*, 1901, 1 KB 346 CCA]. The court will take judicial notice of the signatures of the principal Secretaries of State: those of the judges of the superior courts to any judicial or official document, of the judges and registrars in bankruptcy, and of the examiners; and, with respect to the winding up of companies, of any officer of the High Court or a county court in England, or of the Court of Session or a sheriff, court in Scotland, or of the High Court in Northern Ireland. Notice will also be taken of the signatures to affidavits and other documents, of various persons mentioned as authorised to administer oaths in places out of England, as well as those of a colonial notary, or of a foreign notary to a protest abroad of a foreign bill, though not, of the latter, to an affidavit [Hals 3rd Ed Vol 15 para 617].

In a case before the passing of the Act, it was held that the High Court was bound to take judicial notice of the fact that *R* was a Justice of the Peace for Bengal [*R v. Nawadwip*, 1 BLR Cr 15: 15 WR Cr 75]. The court took judicial notice of a jailor's signature under s 16 of the Prisoner's Testimony Act 15 of 1869 (Act 3 of 1900 and thereafter Act 32 of 1955) [*Tamor v. Kalidas*, 4 BLR (OC) 51]. The court can take judicial notice of the signature of the Chief Secretary of Government just as of his accession to office, name, title, &c [*Cholancheri v. R*, 44 MLJ 557: 72 IC 515], or of the posting, signature and name of a magistrate on the sanction to prosecute [*Sagar Mal v S*, A 1951 A 816; *Gurdeo v. S*, A 1956 Pepsu 11], or the signature of the Deputy Commissioner of Police [*Walvekar v. R*, 30 CWN 713: 53 C 718] or of the attestation and signature of a sub-registrar [*Radhamohun v. Nripendra*, 105 IC 422: 31 CWN 160n: A 1928 C 154. As to this see *post* s 68: "*Can the registering officer be regarded an attesting witness?*"].

Where the letters "DM" (District Magistrate) with a signature not decipherable are it, the power is presumed to exist [*Sudhakar v. S*, A 1957 A 267].

Where the letters "DM" (District Magistrate) with a signature not decipherable are found at the bottom of the endorsement, judicial notice can be taken of it [*Dhanpat v. S*, A 1960 A 40; *Gayadin v. S*, A 1958 A 39].

—Fact of Appointment to be Notified.—The clause requires that the fact of the appointment to office, of persons whose accession to office, names, &c are to be judicially noticed, should be notified in the Gazette of India or Pakistan or local

official Gazette. Otherwise the court will not recognise the fact of the appointment, of the official capacity, &c of the person. In *Jakir Ali v. Raj Ch*, 10 CLR 469 (*ante* p 568), the court refused to recognise the public official capacity of a *kazi*, or sudder ameen as his appointment was not proved, and observed: "There is no evidence that any person named *A* held such appointment in July 1820. We think we cannot take judicial notice of this fact under the seventh clause of s 57, for there is nothing to show that A was gazetted to the appointment of sudder ameen in or about that year."

CLAUSE (8): Existence, Title, and National Flag of Every State or Sovereign etc.—If, upon a civil war, one part of a nation separates from the other, and establishes an independent government, the newly founded nation cannot be recognised as such by the judicial tribunals of other nations unless it has been acknowledged by the sovereign power under which those tribunals are constituted [*City of Berne v. Bank of Eng*, 9 Ves 341]. The judges of such nation are bound, *ex-officio*, to know whether or not their government has recognised a nation as an independent State [*Taylor v. Barclay*, 2 Sim 213; Tay 11th Ed s 4].

Should any question arise as to the status of a foreign Sovereign or State or the boundaries of any State, the court usually enquires of a Secretary of State and acts upon the information received from him without judicial proof [*Mighell v. Sultan of Johore*, 1894, 1 QB 161; *Foster v. Globe Venture Syndicate*, 1900, 1 Ch 811; Powell 9th Ed p 147; Thayer p 15]. Upon a question whether the USSR was recognised by the British Government, a letter from the Under Secretary of State for Foreign Affairs in reply to a request for information was considered sufficient [*Aksionairnoye & Co v. J Sagar & Co*, 1921, 3 KB 532: 37 TLR 777]. So a letter from the Dy Secretary to the Govt of India stating that Kalat was an Indian State within the Govt of India Act was accepted [*Chimandas v. R*, A 1944 S 188]. in *Mighell v. Sultan of Johore, ibid*, KAY LJ, said: "The status of a foreign Sovereign is a matter, of which the courts of this country take judicial cognizance, that is to say, a matter which the court is either assumed to know or to have the means of discovering without a contentious enquiry, as to whether the persons cited is or not, in the position of an independent Sovereign. Of course, the court will take the best means of informing itself on the subject, if there is any kind of doubt, and the matter is not as notorious as the status of some great monarch such as the Emperor of Germany".

By s 84(2) of the C P Code, 1908, it is provided that the courts shall take judicial notice of the fact that a foreign State has or has not been recognised by the Central Government. [As to this clause, see *Lachmi Narain v. Protap*, 2 A 1, 17; *Mighell v. Sultan of Johore*, 1 QB 149; *Triccam Panachand v. Bombay Baroda Rly*, 9 B 244].

CLAUSE (9): Divisions of Time, the Geographical Divisions of the World, and Public Festivals, Fasts and Holidays, etc.—The divisions of time do not require proof, and the courts will take notice of them. The course of time or heavenly bodies, also need not be proved. In *Collier v. Nokes*, 2 C & Kir 1012 WIDE CJ, held that he could not take judicial notice at what hour the sun set in the month of November. In an American case where it became material to prove at what hour the moon rose on a particular night. Gruber's almanac was held admissible and it was observed that "no oral evidence or proof which we could gather as to the hours of the rising or setting of the sun or moon could be as certain or accurate as that which we may obtain from such a source" [*Munshower v. S*, 55 Mary 11; Thayer's Cases p 5].

Under this clause, the Bengali, Saka, Williati, Fasli, Sambat or Hindi, Hijri, and Jalus eras will be judicially noticed in those districts in which they are current, and references may be made to usual almanacs, when occasion requires [Field p 220]. Court can take judicial notice of corresponding dates of Indian and Gregorian

calendars [*Abdullah v. Md Yakub*, A 1938 L 558: 178 IC 436]. Under s 24 Limitation Act, all instruments should be deemed to be with reference to the Gregorian calendar. The almanac is recognised by the common law established by statute (Calendar Act, 1751, 25 Geo 2 c 30) and the court takes judicial notice of the succession of years, months, and days; of the years of each Sovereign's reign and the years in the calendar to which they correspond; and of the days of the week upon which the days in the calendar fall. [Hals 3rd Ed Vol 15 para 611].

An omission to state ground of exemption in respect of a suit filed on the reopening day after vacation (limitation having expired during vacation) does not justify a dismissal under Or 7 r 6 as courts are to take judicial notice of public holidays notified in the Gazette [*Tekchand v. Patte*, 56 IC 926; *Gyan v. Budha*, A 1932 A 668].

—Geographical Divisions.—Courts also recognise the principal geographical divisions. Thus they judicially notice the territorial extent of the jurisdiction and sovereignty exercised *de facto* by their own government; and the local divisions of their country, such as states, provinces, counties, counties of cities, cities, towns &c. But courts are not obliged to judicially notice mere local divisions, nor their precise limits. [Tay s 17]. The court takes judicial notice of the existence, extent, and geographical position of the British dominions and of the territory of foreign States. In *Cooke v. Kilson*, (1856) CB (NS) 153 CROWDER J, (at p 164) held that the court was bound to take notice of the existence of the colony of Victoria, and CRESWELL J, (at p 163) that it must recognise that the colony was out of England. Judicial notice is taken of the counties into which England and Wales are divided, and of those which are maritime counties, but not of the distance of one county from another, nor of the particular places situated within each county, unless such situation is recognised by statute, nor of the particular diocese within which a town is situated. In *Kearney v. King*, 1819, 2 B & Ald 301, however, the court declined to take judicial notice that a bill drawn in Dublin meant Dublin in Ireland. [Hals 3rd Ed Vol 15 para 614 and footnote]. Judicial notice can be taken of the fact that the areas which now constitute the state of Rajasthan prior to independence of India were independent States of different dimensions and the local conditions and needs of the people inhabiting those areas considerably varied [*Municipal Board of Abu Road v. Jaishiv*, A 1988 SC 388, 389 : (1987) 3 SCJ 639].

CLAUSE (10): Territories Under the Dominion of the Government.—When a question arises as to the existence or extent of any jurisdiction of the Crown in any place out of His Majesty's dominions, the court may apply to one of His Majesty's principal Secretaries of the State for information, and the information, supplied will be final: see s 4 Foreign Jurisdiction Act, 1890 (53 & 64 Vic s 57) (now s 4 Foreign Jurisdiction Act, 1947). For a decision when a request was made see *Masthan v. Chief Commr*, A 1963 SC 533 and for the judgment after reply A 1962 SC 797]., If it be true that the Indian courts might take Judicial notice of the territories of the Queen in India, then if there has been an accession of territory, they must take notice of that, and they must do so independently of the Gazette, which is no part of the cession but only evidence of it [*per* LORD SELBOURNE in *Damodar v. Deoram*, 1 B 367, 404 PC]. Court can take judicial notice of fact whether a particular territory is a part of India but the case of a foreign territory seized in course of a combat is different [*S R Bhansali v. Union*, A 1973 Raj 49].

CLAUSE (11): Commencement, Continuance or Termination of Hostilities Between the Government and any Other State or Body of Persons.—Judicial notice will be taken of the existence of a State of War between Great Britain and any

other, when such is the fact, even after the termination of hostilities. It has been held in *Dolder v. Huntingfield*, 1805, 11 Ves 283 that the court will not take judicial notice of wars between foreign States. In this case LORD ELDON said during argument: "You would be obliged upon an indictment for a libel to prove that France is now at war with Austria, not as to the war with this country, the courts taking judicial notice of that with reference to our own country." But, in Halsbury's Laws of England it has been stated that the court will also take judicial notice of the existence of a state of war between other countries, it seems, when that fact is officially recognised by the Government of Great Britain. The editor of that book states in the footnote that it being the duty of the court to take notice of such facts as affecting the government of the country, the law as stated in the book is correct (Hals 3rd Ed Vol 15 para 613 & footnote (*g*) at p 338].

Under this clause court will take judicial notice of the commencement, continuance, and termination of hostilities between the Government and any other State or body of persons. As to what is sufficient evidence of commencement of hostilities, see the remarks of the Judicial Committee in *The Teutonia*, LR 4 PC 171. [Cunn Ev p 142]. A printed letter from the Secretary to the Government of Punjab to the Government of India was judicially noticed, as proof of the commencement of hostilities between the British Crown and Mahomedan fanatics [*R v. Amiruddin*, 7 BLR 63]. A court of law may take judicial notice of the fact that a state of war exists between one country and another but it cannot do so as regards the date when particular operations began [*Con S R v P & O B S*, 1923 AC 191].

—Constitutional and Political Matters.—Judicial notice will be taken of the existence and titles of all other acknowledged Sovereign Power; but it is the settled practice in case of uncertainty to seek information from a Secretary of State and information so furnished is conclusive [*Duff Development Co v. Kelantan*, 1924 AC 797; *The Arantzazu Mendi*, 1939 AC 256; *Haile Selassie v. Cable & Wireless*, 1939 Ch 182]. It has been judicially noticed that certain districts in England had been attacked by aircraft [*Re A Petition of Right*, 1915, 3 KB 649, 658]; that German civilians in England were carrying on war by intrigues, spying and the use of wireless telegraph, light signalling and carrier pigeons and were communicating information to enemy submarines and zeppelins [*Fe Vine St Superintendent*, 1916, 1 KB 268, 274, 275]; that Swedish firms were extensively engaged in facilitating the entrance of contraband goods into Germany [*The Pacific*, 33 TLR 529]; that Germany having no convenient coaling stations, it was difficult for her ships to be coaled except by subterfuge [*The Alwina*, 32 TLR 494, 495; Phip 11th Ed p 52]. That the Government at the Centre is by one political party while the respective governments in two states are run by two different political parties [*Tamil Nadu Cavery Neerprasana v. Union of India*, A 1990 SC 1316, 1320].

CLAUSE (12): The Names of the Members and Officers of the Court and of Their Deputies, etc.—Under this clause the court will take judicial notice of the names of the members and officers of the courts, &c, &c and of all advocates, attorneys, proctors, vakils and pleaders. Under the Advocates Act (25 of 1961), the names of all legal practitioners are to be enrolled in the High Court before they are allowed to practice. The words "and other persons authorised by law to appear or act before it" in the concluding part of the clause will include persons referred to in Or 3 rr 1 and 2 C P Code, 1908 such as, recognised agents, muktears &c.

The Supreme Court of Judicature in England, being now one court, takes judicial notice of the jurisdiction of the several branches into which it is divided by the statute under which it is constituted, and of the rules thereunder, which govern its practice

and procedure, and have themselves the force of an enactment. The rules governing the practice and procedure of inferior courts, if made under statutory authority are judicially noticed by all courts..... If has also taken notice of the privileges and obligations of solicitors as officers of the court [Hals 3rd Ed Vol 15 para 609].

CLAUSE (13): Rule of the Road on Land or at Sea, etc, etc.—The words were inserted by Act 18 of 1872. The court will take judicial notice of the custom or law of the road, *viz* that horses and carriages should respectively keep on the near or left side; and the following rules with respect to navigtation,—first, that ships and steamboats, 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 steamboats should keep out of it's way of sailing ships; and next that every vessel overtaking another should keep out of its way. The regulations for preventing collisions at sea, containing the rules concerning lights, fog signals, steering and sailing are embodied in the Merchant Shipping Act 1894 [Tay s 5]. The custom or the law of the road that horses and carriages should respectively keep on the near or left side of the road is also followed in India.

"On all matters of Public History, Literature, Science or Art, the Court May Resort for its Aid to Appropriate Books or Documents of Reference."—Accredited public histories are receivable in evidence as being in the nature of public documents, or of general reputation, to prove ancient facts of a public. S 57 permits resort to appropriate books or documents of reference on all matters of public history, science or art. In order to prove ancient facts of a public nature, public histories of repute are receivable in evidence as public documents [*Swami Harbansa v. S*, A 1981 MP 82], but not of a private or local, nature; and standard authors may be referred to, as showing the opinions of eminent men upon particular subjects, but not to prove facts [Harls 3rd Ed Vol 15 para 722]. Under the English law the courts may refer to books of accredited history, science &c for information on matters which form the subject of judicial notice, but not for proof of any fact, or for other matters stated in those books. This section, however, places no such restriction. On points of science or art, opinion of experts is admissible under s 45 and s 60 makes provision for treating the opinion of experts expressed in books of persons who are dead as evidence in proper cases. Opinion of a competent person on public right or custom recorded in a book is also admissible under s 48 and s 32(*4*). S 57 however does not intend to make books or documents of reference themselves evidence. What is obviously meant is that the court may use the books of reference in appraising the evidence given and coming to a right understanding of the conclusion upon it (*ante "Principle & Scope"*). It has been held that the court can dispense with evidence only of what may be regarded as *notorious* facts of public history. Thus printed letters of the priests of the Jesuit Mission dated about 75 years ago were admitted as books of reference to prove notorious facts of history, *viz* the history of Christianity and especially of the Roman Catholic Mission, but they could not be relied on to prove when certain particular missionaries were living or when they died [*Ambalam v. Barthe*, 36 M 418].

The introduction of the words "and also in all matters of public history, science or art" into this section, remarks Markby, is very strange. It cannot be meant that the court is to take judicial notice of all such matters. If so, the special provisions as to evidence on points of science or art in s 45 and the further and the special provisions which we shall come to presently in s 60 as to the use of treatises would be unmeaning. What perhaps is meant is that though the parties must obey the law as laid down in ss 45 and 60, the judge may resort for his aid to appropriate books without any restriction. [Markby p 99]. The provision that the court may resort for its

aid to appropriate books, is in advance of English law, under which though an expert called as a witness, will be allowed to refresh his memory by referring to a professional treatise regarded by him as an authority (see s 159), yet the books themselves cannot be cited. [Field p 221].

No proof is required of those facts in science and arts which are so generally known as to be matters of common knowledge. Perhaps this principle has its most frequent application in patent cases in which the courts constantly take judicial notice of the character and mode of use of well-known articles. On the same principle the courts take judicial notice that certain well-known liquors like whisky, lager beer, wine, brandy, blackberry brandy and all are intoxicating drinks. [Jones, s 128]. [As to use of scientific and medical works by court, see notes to s 60 proviso 1, *post*].

Accredited books and chronicles of public and general histories are receivable in evidence as being in the nature of public documents, or of general reputation, to prove ancient facts of a public or general, but not of a private or local nature [*Read v. Lincoln*, 1892 AC 644: 67 LT 128 and the cases collected there. Thus "Speed's Chronicle" has been admitted to prove the date of decease of an English queen [*Brounker v. Atkyns*, 1862 Skin 14] and "Collier's Ecclesiastical History," Hooker's Police and other authoritative and historical and theological works to prove matters of Church doctrine and usage [*Read v. Lincoln, sup*; *Ridsdale v. Clifton*, 1877, 2 PD 276 PC], while the chronicles of Stowe and Dugdale have been rejected in proof of the creation of a peerage [*The Vaux Peerage*, 1937, 5 Cl & Fin 526 HLC]. Scientific books and records are also receivable on the same ground. Thus, the "Carlisle Tables" have been admitted to show average duration of life at a particular age, proof having been given that they were generally accepted as authoritative by insurance companies [*Rowley v. London & N W Rly Co*, 1873 LR 8 Exch 221]: the British Pharmacopoea, as evidence of the recognised standard for drugs [*Dickins v. Randerson*, 1901, 1 KB 437; Hals 3rd Ed Vol 15 paras 722, 723]. It has been held that for the determination of questions regarding temporal rights in Roman Catholic Churches, the authority of canon law may be invoked [*Ambalam v. Barthe, sup*]. It has been held in America that the polity of Roman Catholic Church is not a matter of common knowledge and courts cannot take judicial notice of laws governing Churches, or of the nature and powers of the civil rights or obligations of religious organisation [*Madij v. Holy Trinity*, 223 Mass 23; Thayer's Cases p 11]. Judicial notice can be taken that (a) Islam is an accepted religion of a large number of citizens of India and also of a large number of persons outside India (b) Koran is the basic religious text or scripture of Islam. (c) The followers of Islam believe that Koran is of divine origin being revelations made by God to Mohammad the Prophet of Islam (d) The Koran is considered to be a holy book by the followers of Islam. [*Chandmal Chopra v. State of W. B.*, 1988 Cri LJ 739, 745 (Cal.)]. Books written as late as when the dispute has already arisen, cannot be referred to even if s 57 is otherwise applicable [*Sant v. Rallia*, A 1930 L 744].

The Judge may consult work on collateral sciences or arts, touching the topic on trial. He may draw, for instances, on mythology, in order to determine the meaning of similies in an ambiguous writing; he may appeal to his own memory for the meaning of a word in the vernacular; he may as to the meaning of terms, refer to dictionaries of science of all classes. [Jones s 132].

The question of the title between the trustee of a mosque, though an old and historical institution, and a private person cannot be deemed "matter of public history." and historical works cannot be used to establish title to such property [*Farzand v. Zafar*, 46 IC 119]. Books dealing with the customs of a community

written by a public officer deputed to inquire and collect customs, are public documents and are admissible [*In re Shyam Lal*, 49 A 848: A 1925 A 648; *Somar v. Budhu*, A 1937 P 462]. Statement of facts made in public maps generally offered for public sale or in maps published under the authority of government are receivable under s 36. Before any judicial notice could be taken of any passages in books relating to the alleged tradition, something more than the mere existence of the passages have to be proved. It must be shown that the writer had some special knowledge of the alleged tradition or the tradition is the reputation of that given in history [*Achal v. Girdhari*, A 1937 L 529]. Economists' definitions may be used but they are not conclusive for legal purpose [*Central I S W & M Co. v. Munpl Com*, A 1950 N 169]. Reports and Gazetteers are not strictly evidence of the truth of all the statements contained in them although they may be read for what they are worth [*Garuradhwaja v. Saparanadhwaja*, 27 IA 238: 23 A 23, 49; *Kali Prasanna v. Nagendra*, 44 CWN 873]. Value of Thurston's Castes and Tribes in Southern India [*Subramanian v. Kumarappa*, A 1955 M 144]. Judicial notice cannot be taken of the facts stated in a news item being the nature of hearsay secondary evidence, unless proved by evidence aliunde. [*Laxmi Raj Shetty v. State of Tamil Nadu*, A 1988 SC 1274, 1290 : 1988 Cri LJ 1783].

—Appropriate Books etc.—In regard to books or learned treatises, the author must be shown to be properly qualified to make statement upon the subject and so only standard books acknowledged as authorities may be referred to. The court can certainly refer to journals and books of living authors acquainted with such affairs as mentioned in them [*Madho v. S*, A 1978 P 172 FB—case discussed]. In England living authors are not regarded as authorities for purpose of admissibility as he may be examined as to the source of his information.

—Dictionary etc.—Dictionary may properly be referred to 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 words is commonly put [*Coca-cola Co Ltd v. Pepsi-cola Co Ltd*, A 1942 PC 40]. Standard encyclopaedias are frequently resorted to by the courts for reliable information upon the subject in hand. Dictionaries are not however always safe authorities for foreign or technical terms on which expert evidence should usually be given (see s 98). "Dictionaries of good reputation, whether of a general or a technical character, are receivable in order to inform the mind of the court in ascertaining the ordinary meaning of words used in Acts of Parliament, wills, and other instruments, but the court is not bound by any definitions of illustrations to be found in dictionaries, nor is a dictionary authority on the meaning of a word peculiar to mercantile usage" [*Houghton v. Gilbert*, 1836, 7 C & P 701; Hals 3rd Ed Vol 15 para 724].

—Books Resorted to by Courts.—Below is a list of some books which were freely quoted and made use of by the courts in this country in matters of history, literature, science, art etc. Harrington's Analysis, Lord Cornwallis' Minute, Sir John Shore's Minute of June 1789, Despatch of Court of Directors 19th Sept 1792, Malthus' Definition of rent, Mill's Political Economy, Vol II Todd's Rajutana, Malcolm's Central India, Buchanan's Journey in Mysore, Elphinstone's History of India, Thompson's Directions for Revenue Officers in N W Provinces, Hallam's Middle Ages Vol III, Institutes of Civil Law and Wilson's Glossary [*Thakuranee Dassi v. Bisheshar*, 3 WR (Act X Rulings) 29 FB decided by fourteen judges of the Calcutta High Court]. Sir Thomas Munro's Minute of 15th March 1822, Aitchison's Treatises Grant Duff's History of the Maharattas, Elphinstone's History of India and Wilson's Glossary [*Skh Sultan v. Shk Ajmodin*, 17 B 431]. Mill's Political Economy, Minutes of Lord Cornwallis and Sir John Shore, Grant's Observations on the

Revenue of Bengal, Colebrook's Remarks on the Husbandry of Bengal; Maine's Ancient Law, A Memoir on the Land Revenue and Principles of Taxation in Bengal by a Bengal Civilian in 1832 [*Full Bench Case of Hills v. Ishore Ghosh*, WR Sp No 48]. Domar and Clerk's Treatise upon Roman Law [*Jotindra v. Gnanendra*, 18 WR 359, 364]. Lord Palmerston's Speech in the Debate on the Relinquishment by the British Crown of the Protectorate of the Ionian Islands, Hertselt's Commercial Treatise Vol. XII, Lord Thurlow's Speech in the House of Lords, on the Cession made in 1783 at the Peace of Versailles reported in the History of Parliament and Aitchison's Treatise [*Damodar Gordhan v. Deoram Kanji*, 1 B 367 : 3 IA 102]. Aitchison's Treatise, Hallam's Middle Ages, Smollet's History, Stephen's Blackstone Vol II, Kent's Commentaries, Boom's Commentaries, Treaty with the Nawab of Bhopal by the E I Co in 1818, and Forsyth's Constitutional Law [*Lachmi Narain v. Pratap*, 2 A 17]. Martin's edition of Buchanan Hamilton's Eastern Indian and Rajendra Lal Mitra's Buddha Gaya, [*Jaipol Gir v. Dharamapala*, 25 C 60]. Stephen's History of Criminal Law of England, Taylor's Medical Jurisprudence, Maudsley's Responsibility in Mental Disease, and Tuke's Psychological Medicine [*R v. Kader Nasye*, 23 C 604, 608]. Taylor's famous book on Medical Jurisprudence was also referred to in *Hatim v. R*, 12 CLR 86: *Hary Charan v. R*, 10 C 140; *R v. Dada Ana*, 15 B 452, 457 and in *Tikam Singh v. Dhan Kunwar*, 24 A 445. Lyon's Medical Jurisprudence, Medical Gazette and Playfair's Midwifery [*Tikam v. Dhan*, 24 A 445]. Wigram on Malabar Law and Custom, Logan's Treatise on Malabar [*Cherukuneth v. Vengunat*, 21 IA 128: 18 M 11; *Augustine v. Medlycott*, 15 M 241; *Ramasami v. Narendrayyan*, 19 M 31]. Fergusson's History of Architecture [*Secy of S v. Shunmugaraya*, 16 M 368: 20 IA 80]. Hunter's Imperial Gazetteer [*In re S S Drachenfel*, 27 C 860, 867]. Hunter's Statistical Account of Bengal, and Stirling's Geographical, Statistical and Historical Accounts of Orissa [*Shamanande v. Ramakant*, 32 C 6]. Dubois Hindu Manners, Customs and Ceremonies [*Ramasami v. Vengidusami*, 22 M 113, 115]. Balfour's Cyclopaedia of India, Thomas' Report on Chank and Peral Fisheries, Thurston's Notes on Peral Fisheries and Marine Fauna of the Gulf of Manaar, Emerson Tennant's "Ceylon" and Encyclopaedia Britannica [*Annakumaru v. Muthupayal*, 27 M 551: 14 MLJ 248]. Oxford New Dictionary and dictionaries generally [*Dadabhai v. Jamshedji*, 24 B 293]. McCulloch's Commercial Dictionary and Adam Smith's Wealth of Nations [*Harmasji v. Pedder*, 12 BHC 199, 206]. Shakespeare's Dictionary [*Gajraj Puri v. Achaibar*, 16 A 191: 2 IA 17]. Borrodaile's Caste Rules [*Verabhai v. Bai Hirabai*, 7 CWN 716: 27 B 492: 30 IA 234]. Princep's Tables [*Forrester v. Secy of S*, 18 WR 349, 354]. Morley's Glossary and Wilson's Glossary [*Jivandas v. Framji*, 7 BHC 45]. Todd's Rajasthan [*Maharana v. Vadi Lal*, 20 B 61]. Adam Smith's Mercantile Law [*In re Dhanpat*, 20 C 772]. The Duncan Records, Wyngard's Settlement Report 1843 [*Bejoi Bahadur v. Bhupendra*, 17 A 456: 22 IA 139]. Sifton's Settlement Report [*Somar v. Buddhu*, A 1937 P 463]. Simcox's Primitive Civilization [*Ramasami v. Narendrayyar*, 19 M 31: 5 MLJ 237]. Wilke's History of Mysore [*Fakir v. Tirumalchariar*, 1 M 205 FB]. Atkinson's Gazetteer and Settlement Reports of Alighur [*Garuradhwaja v. Saparnadhwaja*, 27 IA 238: 23 A 37: 5 CWN 33]. Hough's History of Christianity in India 1839 [*Augustine v. Medylcott*, 15 M 241]. Proceedings of the Board of Revenue, 5th January 1818 [*Venkatanarasimha v. Dhandamundi*, 20 M 299: 7 MLJ 241]. In *Lachmi Narayan v. Rajo Pratab*, 2 A 21 it was held that histories, treaties, firmans and replies from Foreign Office could be referred to, Bengal Dist Gazetteer [*Lalu Dome v. Bijoy*, 43 C 227: 20 CWN 404]. Opinion of Capt Hirst in his "Notes on the old revenue survey" [*Krishnakalyani v. Braunfield*, 20 CWN 1028]. Hunter's Statistical Account of Bengal, Vol VIII [*Secy of S v. Wajid*, 34 CLJ 141]. John Jardine's Buddhist Law [*Mi Me v. Mi Shwe Ma*, 39 IA 57: 39 C 492: 16 CWN 529].

Risley's Tribes and Castes of Bengal, Vol I and Hunter's Statistical Account of Bengal, Vol X [*Santala v. Badeswari*, 27 CWN 669]. Ibbetson's Census Report [*Ghulam v. Secy of S*, 6 L 269]. Thurston's Castes and Tribes of Southern India [*Koduri v. Simhadri*, A 1944 M 362]. Russell's Castes and Tribes, Census Report [*Nathulal v. Rangoba*, A 1932 N 133; *Mahadeo v. Vyankammabai*, A 1948 N 287].

Courts are bound to take judicial notice of s 24 of Paper Currency Act (3 of 1905) [*Mirza Hidayat v. Nga Kyaing*, 24 IC 721].

—Reference to Books in Questions of Testamentary Capacity, Local Custom, Common Knowledge, etc.—In the case of *Sajid Ali v. Ibad Ali*, 23 C 1: 22 IA 171 the Privy Council observed: "In questions relating to the testamentary capacity of a person, it is always dangerous to base the judgment on the speculative theory derived from medical books and judicial dicta, instead of depending upon the facts established by the evidence in the case." Again in *Vallabha v. Madhusudan*, 12 M 495, the High Court observed: "For the purpose of proof of local customs, the courts should not rely on books of history (not forming exhibits in the case) without first calling the attention of the parties to them and bearing them as to whether the procedure prescribed therein is an incident of the usage as it obtained in their locality. This case has been referred to in *Durga Pd v. Ram Dayal*, 38 C 153. In *Dorab Ally v. Abdul Aziz*, 5 IA 116: 3 C 806: 2 CLR 529, the Privy Council held that the fact that the province of Oudh was not, when first annexed to British India, or at the date of the execution, annexed to the Presidency of Fort William, was, if not one of those historical facts of which the courts in India are bound under the Evidence Act to take judicial notice, at least an issue to be tried in the case. In *R v. Bholu*, 23 A 124, the court judicially noticed the fact that at a certain particular period the district of Agra was notorious as the scene of frequent and recent dacoities.

In *Ishi Pd v. Lalli Jas*, 22 A 294, the High Court observed: "It is common knowledge, of which courts are entitled to take notice that the original records of the Agra division were destroyed during the Mutiny of 1857 and therefore under s 56(c), the copy was admissible as secondary evidence of the original". Evidence of the sources of common knowledge, if not of its extent, may perhaps be obtained by reference to a Cyclopaedia [*U S Shipping Board v. "St Albans"*, A 1931 PC 189]. In order to determine the meaning of names and terms used in a particular religion, the court is entitled to refer to authoritative works dealing with the history and beliefs of that religion [*Dayasing v. Tulsidas*, A 1945 S 177: 1945 Kar 224]. Reference to works of history at the appellate stage is irregular and should be avoided [*Vallabha v. Madhusudan, sup*; *Tuni v. Leda*, 1 PLJ 225; *Manu v. Abraham*, A 1941 P 146]. Book of living author in support of custom was held inadmissible as no reason was given for not calling him [*Manu v. Abraham, sup*].

—Books Not Judicially Noticed.—"Bhutala Pandia's Allyasantana Kattu-kattilagulu" is not a book, the genuineness of or authority of which the courts are bound to take judicial notice [*Secy of S v. Santaraja*, 21 IC 432]. Land Revenue Reports cannot be judicially noticed and accepted in evidence unless proved [*Boodhan v. Msst Saira*, 20 CLJ 516; see however *Somar v. Budhu*, A 1927 P 462]. Books which did not receive recognition as historical works of value relating to matters of public or general interest were not received [*Md Asad v. Sadiq*, A 1943 O 91].

"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".— The last paragraph is based upon Taylor, s 21. In some instances, says he, the judge has refused to take cognizance of a fact, unless the party calling upon him to do so could

produce at the trial some document by which his memory might be refreshed. Thus, LORD ELLENBOROUGH, once declined to take judicial notice of the King's Proclamation, the Counsel not being prepared with a copy of the Gazette in which it was published [*Van Omeron v. Dowick*, 2 Camp 44]. In many other cases, the courts have themselves made the necessary inquiries and that, too without strictly confining their researches to the time of the trial. The judges also, frequently on occasions inquire from the masters, taxing masters and other officers of the Supreme Court with reference to questions of procedure not specifically dealt with by the rules. [Tay s 21]. The last paragraph gives the court discretion to refuse to take judicial notice of a fact if accessible books or documents are not produced in support of the fact. Failure to produce order under Essential Supplies (Temporary Powers) Act, 24 of 1946 justified refusal to take notice [*Pub Pro v. Thippayya*, A 1949 M 469] or failure to produce a Govt notification [*Mathura v. S*, A 1954 N 296]. It is open to the court to hold that the relevant notification was published in Bihar Gazette [*Jamshedpur &c v. Mohton*, A 1965 P 176]. It is only after being called upon to produce gazette notification of appointment, the person concerned fails to produce the gazette issue that the court can refuse to take judicial notice. Not having done so it was not open to the court after close of trial not to take judicial notice [*S v. V P Enadeen*, A 1971 K 193 FB].

It will be observed that though the court may refuse, it is not imperative that it should refuse. The Gazettes are usually supplied to, filed, bound and preserved in the office of all courts in India; and when any matter may be placed beyond doubt by the mere production of the Gazette, the court might properly have it produced from its own record room. Advocates and pleaders, should however make a request to this effect in sufficient time to prevent delay at the hearing. [Field, p 222]. With regard to rules of law, the judge stands in a somewhat different position to that in which he stands in regard to what, as opposed to law, are called the facts of the case. The responsibility of ascertaining the law rests wholly with the judge. It is not necessary for the parties to call his attention to it; and the last paragraph of the section is not applicable to it. [Markby, p 50].

Cases in Which Courts Have Themselves Made the Necessary Inquiries.— Taking judicial notice means that the court is itself duty-bound to hunt up the fact and apply it even though the parties or their counsel fail to produce it [*Shamlal v. Munilal*, A 1972 P&H 199 (*Mazhar v. Hakimuddin*, A 1965 P 489 **folld**)]. To ascertain what has been the practice of the Calcutta and Madras High Courts, in insolvency proceedings in certain cases, the court directed its prothonotary to enquiry by writing letters, from the officers of both these courts requesting them to give the required information [*In re Bhagwandas*, 8 B 511]. In an application to furnish security for costs of the suit (Or 25, r 1), the Bombay High Court directed the prothonotary to communicate with the Secretariat as to whether the Cantonments of Wadhwan and Secunderabad were within British India [*Triccum Panachand v. B B Rly*, 9 B 244]. The High Court of Calcutta directed the registrar to write to the Foreign Office to ascertain the circumstances under which it came into existence as a British Cantonment (Secunderabad) and the real character of its connection with the British Government [*Hossain Ali v. Abid Ali*, 21 C 177, 178]. In *Mighell v. Sultan of Johore (ante)*, a reference was made to the Secretary of State regarding the status of an Indian potentate. In *Hutchison v. Manntngton*, 6 Ves 823, enquiries were made at the India Office as to whether a certain person was a magistrate. The practice of the Court of Chancery was proved by oral evidence as in *Dicas v. Brougham, Ltd*, 1 M and Rob 309, where Lord Eldon was called as a witness to prove that practice. In *Place v. Potts*, 8 Ex 705, the court informed itself by private inquiry as to the

jurisdiction of, and proceedings in, the Court of Admiralty, which is the same thing as taking judicial notice of it [Ros N P Ev p 82].

Where Memory of Judge is at Fault.—Where matters are to be judicially noticed, but the memory of the judge is at fault, he resorts to such means of reference as may be at hand, and as he may deem worthy of confidence. Thus, if the point be a date, he may refer to an almanac, if it be the meaning of a word, to a dictionary, if it be the construction of a statute, to the printed copy, or in case that appears to be incorrect, to the Parliament roll. [Tay s 21].

Matters of Common and General Knowledge.—"The matter of which a court will take judicial notice must be a subject of common and general knowledge. In other words, judicial knowledge of facts is measured by general knowledge of the same facts. A fact is said to be generally recognized or known when its existence or operation is accepted by the public without qualification or contention. The test is whether sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof. The fact that a belief is not universal, however, is not controlling, for there is scarcely any belief that is accepted by everyone. Those matters familiarly known to the majority of mankind or to those persons familiar with the particular matter in question are properly within the concept of judicial notice. Judicial knowledge is continually extended to keep pace with the advent of art, science and general knowledge" [American Jurisprudence, Vol 20, art 18]. It is well established that the court is entitled to take judicial notice of facts which are of general knowledge, *eg*, (i) that land values differ very materially in different towns in which municipalities are established; (ii) that different types of mills and factories require different types of buildings, and that their relative values do not vary according to their floor area and (iii) that the buildings of mills and factories are of different age, and the value of a building decreases with its age [*Lokmanya Mills v. Barsi Municipality*, A 1968 B 229]. The court took judicial notice of the fact that prices of real estate started escalating in 1965 and remained soaring for the succeeding two decades. *Modi Spg. & Wvg. Mills v. Virendra,* 1998 (6) JT 623 : (1998) 5 SCC 718.

Offensive weapons.—A flick knife is an offensive weapon *per se* for the purpose of s 1(1) of the [English] Prevention of Crime Act 1953, since it is an article made for use for causing injury to a person within the meaning of s 1(4) of that Act. A judge may take judicial notice of the fact that it is an offensive weapon.

Notorious and Other Facts.—Judicial notice is taken of various facts which are familiar to any judicial tribunal by their universal notoriety or regular recurrence in the ordinary course of nature or business. As judges must bring to the consideration of questions they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of an action to give formal evidence of matters with which men of ordinary intelligence are acquainted, whether in general or in relation to natural phenomena, and whether in peace or war. The court takes notice of the usual period of gestation ....; the ordinary nature of young children, their tendency to do mischievous acts, and their propensity to meddle with anything which comes in their way, have on several occasions formed the subject of judicial notice. With regard to matters of business, the judges will take notice of the usual hours during which the business of banking is carried on, of the nature and incidents of the employment of a broker on the Stock Exchange, London, and of the peculiar risks inherent in the nature of particular trades. In questions relating to the publication of a libel, the court takes notice of the ordinary course of the business of the post office and of the stamps of the post office upon letters, and recognises that the contents of a telegram are necessarily communicated to all the clerks through whose hands it passes, and that a postcard is an unclosed document capable of being read by the servants, both of the post office and of the place at which it is delivered. [Hals, 3rd Ed, Vol. 15, para

615]. No court insists on formal proof by evidence of notorious facts of history, past or present. As a means of establishing notorious and widely known facts judicial notice is superior to formal proof [*Onkarnath v. Delhi Admn*, A 1977 SC 1808]. Facts which happen in the common course of business have also been dealt with in the Act under 'presumptions'. See s 14 *illus (f)*.

Judicial notice ought to be taken of such matters as the reports of Parliamentary Commission, and of such other facts as must be assumed to have been within the contemplation of the Legislature when the legislation was passed [*Govindan Sellappaah v. Punchi Banda*, 1955, 2 All ER 833, 837]. Court will take judicial notice of proclamation of emergency [*Swadeshi &c v. Sale-tax Officer*, A 1965 A 86]. The court is required to take judicial notice of the proceedings of the two houses of Parliament approving emergency and that the two Proclamations of Emergency were in force by virtue of the resolutions passed by the Houses of Parliament until they were duly revoked by the two Proclamations which were issued by the Vice-President acting as President of India in the year 1977. [*Baburao v. Union of India*, A 1988 SC 440, 452 : (1988) 1 SCJ 122]. For the purpose of determination of market value of land the court can take judicial notice of overall upward trend in prices of land and continuous rising inflation [*Gulabi v. State of H.P.*, A 1998 HP 9].

A court is entitled to take judicial notice that a registered letter takes 24 hours longer than an ordinary letter to reach destination [*Chaturbhuj v. Secy of S*, A 1927 A 215 : 99 IC 622]: that there has been a green and a white revolution in Haryana and this State is also in the process of an industrial revolution. [*Alam Prakash v. State of Haryana*, A 1986 SC 859, 867 : (1986) 2 SCC 249]: that "the present political movement" is a movement prejudicial to the public safety to peace [*Probodh v. R*, 60 C 351 : 36 CWN 1158]; of disturbance in August 1942 [*Saliq v. R*, A 1943 A 26, 30 : 1942 ALJ 686; *Jubba v. R*, A 1944 P 58; *Kedar v. R*, A 1944 A 94]: of communal disturbance in August and September, 1947 after partition of India [*Shiv Nath v. Union*, A 1965 SC 1666]; of partition of India in 1947, insecurity of life and property of Hindus in Pakistan and mass migration of Hindus to India [*Gopal v. P N Bank*, A 1976 D 115]; of the explosive ferment or mounting hatred on both sides of the Radcliffe line, more specially in August, 1947 [*Ghaki Mal v. G A Insurance*, A 1960 Pu 523]; of the riots and disturbances that took place in Andhra on the fast and death of Potti Sriramulu before the formation of the Province [*Union v. Natabarlal*, A 1963 Or 66]; that by 19-12-61 Goa, Daman and Diu were completely liberated from colonial rule [*Cipriano v. Union*, A 1969 Goa 76]; that people indulging in certain activities are acting prejudicially to the continuance of law and order [*KJ v. KW*, A 1952 N 395 FB]: that the working up of communal frenzy invariably results in violence [*Md Ishaq v. S*, A 1957 A 782]; of prosecutions for political crimes or the general trend of evidence adduced for the prosecution and defence in such cases. The judge is also entitled to take judicial notice of proceedings in the Assembly, not of the truth of the facts asserted in the speeches, but of the fact that such speeches were made [*Bhagwati v. Govt of C P*, A 1947 N 1 SB]: of executive business of the Governor [*Kamlakant v. R*, A 1944 P 354 : 23 P 252]: of worldwide economic depression [*Ram Tarak v. Salgram*, A 1944 C 153]; of prevalence of economic depression [*Ramalakshmi v. Seeniya*, A 1977 M 34]; that the rupee has lost its value to a considerable extent. [Bharat Petroleum (Erstwhile Burmah Shell) *Management Staff Pensioners v. Bharat Petroleum Corporation Ltd.*, A 1988 SC 1407, 1409]; of the enormous multifold increase of rents throughout the country, particularly in urban area. [*Rattan Arya v. State of Tamil Nadu*, A 1986 SC 1444, 1448 : 1986 All LJ 1168].

Judicial notice can be taken of the fact that rental has escalated everywhere. [*D.C. Oswal v. V.K. Subbiah*, A 1992 SC 184, 185]; of a national strike of coal miners

[*Girdhardas v. Kerawala*, 93 IC 622 : A 1926 B 253]; of the fact that many of the industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them [*Keshoram C Mills Ld v. Gangadhar & Ors*, A 1964 SC 708]; that a Railway strike was imminent on a particular date and that a strike paralysing the civil life of the Nation was undertaken on another particular date [*Onkarnath v. Delhi Admn*, A 1977 SC 1108]; of facts transpiring, *eg*, that a document was lost from court's custody [*Chattra Kumari v. Mohan*, A 1931 P 114]; that the Court of Wards is much concerned with the welfare of its wards [*Bhagwati v. Parameshwari*, A 1942 A 267]; that it is the practice of banks to charge interest on overdrawn account [*U P U Bank v. Dinanath*, A 1953 A 637]; that a district is a surplus district and there has been extensive smuggling from it [*Sheonath v. S*, A 1953 Or 53]; that there is a flourishing colony of satsangis at Agra and most of the big cities in the UP [*Commr of I-T v. Radhaswami*, A 1954 A 291]; that the Central Government is located in New Delhi [*P N Films v. Union*, A 1955 B 381]; that since the partition of India entry is regulated by permits and visas [*Hari Singh v. Dewani*, A 1960 J&K 91]; that in 1966-67 there had been for the district of 24 Parganas in West Bengal a Public Prosecutor appointed generally by the State Government [*Rajkishore v. S*, A 1969 C 321]; that the Cancer ward attached to the Kamala Nehru Maternity Hospital is a separate hospital under the same management [*S v. Sham Sundar*, A 1961 A 418]; that clubs usually collect from members extra charges for playing cards and late fees for using the club premises beyond the scheduled time [*S v. Satyanarayana*, A 1968 SC 825], that Harijans are socially, educationally and economically backward [*Bishnu v. W&T Dept*, A 1974 Or 115]; of general appreciation of land value recognised by court decisions [*S v. Dunda*, A 1978 Or 74 (*Tribeni v. Collr*, A 1972 SC 1417; *Khuduna v. S*, 1968 Cut LT 1043 **rel** on)]; that rise in prices of lands nearabout the developing towns is almost a continuous and unending phenomenon and the courts [*Puran v. State of Haryana*, A 1986 Punj & Har 305, 306 : (1986) 89 Punj LR 59]; that the prices of the land have risen considerably, manifold, from the dates of the agreement till the date of judgment, but the court cannot take judicial notice of the exact rate of the increase [*Shanta Bai v. Mank Chand*, A 1988 Bom 82, 90 : 1988 Mah LR 732]; of the different ages of retirement prevailing in the several services in India [*Life Insurance Corporation of India v. S S Srivastava*, A 1987 SC 1527, 1543 : 1987 Lab IC 1039]; of the enhancement in the pay scale and pension granted by the Government [*Bimal Kumar Das v. Parijata Bevva*, A 1987 Orissa 146, 148 : (1987) 63 Cut LT 508]; of date of poll or passing away of a man of eminence and events that have rocked the nation [*Onkarnath v. Delhi Admn*, A 1977 SC 1108]. Drought in the western part of Orissa for the last 3 to 4 years is notable event [*Golaprai v. Gouranga*, A 1969 Or 266].

Judicial notice can be taken that at Delhi at 7.00 A.M. in the month of April, it was not dark [*Balwan v. State*, 1989 Cri LJ 2475, 2479 (Delhi) (DB)]. The Court may dispense with the evidence of notorious facts of public history [*Swami Harbansa v. S*, A 1981 MP 82]. Judicial notice can be taken of the fact that rental has escalated every where [*D.C. Swal v. V.K. Subbiah*, A 1992 SC 184, 185]. A judicial notice can be taken of the fact that the law and order situation in the country has not only not improved since 1967 but has deteriorated over the years and is fast worsening today [*Shashi Nayar v. Union of India*, A 1992 SC 395, 397]. The court can take judicial notice of the fact that if there is congestion of traffic on the road it naturally creates a very tense situation which may at any moment result in causing accidents and thereby causing damage to the life and property of public. [*Let Col Aloysius v. State*, A 1992 Kant 241, 245]. Those matters formally known to the majority of the mankind or to those persons familiar with the particular matter in question, are properly within the concept of judicial notice. The judicial notice is extended to keep

pace with advent of Art, Science and General Knowledge [*Tejmal Punamchand Burad v. State of Maharashtra*, 1992 Cri LJ 379, 385 (Bom)].

The court can take judicial notice of the fact that in middle class tradition bound Hindu families, no house wife would like to figure as witness unless circumstances compel her to do so especially when she is not an educated woman [*Vandavasi-karthikeya v. S. Kamalamma*, A 1994 AP 102, 111]. The claim Tribunal can take judicial notice of the fact that if an aged mother states that she is dependent on the son, in the absence of any material to the contrary this averment could be acted on to some limited extent [*Gowramma v. Nagappa*, 1998 AIHC 1693, 1695 (Kant)].

Reference in any text books of academic interest cannot be construed as documents of title [*Karnataka Wakf Board v. State of Karnataka*, A 1996 Kant 55, 60]. The court cannot take judicial notice of the prevalent practice of under valuation for evading stamp duty [*Tata Chemicals Ltd., Bombay v. Sadhu Singh*, A 1994 All 66, 76]. Where public interest is involved and it is found that there is violation of the provisions of the Act, Rules, Regulations, bye-laws made by the Municipal Corporation or Developmental Authorities, it is permissible for the court to take notice of the same and give effect to them. When an illegality is brought to the notice of the court, particularly relating to public interest, the court should take notice of it and apply to the case [see *Mahmoud and Ispahunai*, (1921) 2 KB 716; 3 ACES, *Hyderabad v. Municipal Corpn. of Hyderabad*, A 1995 AP 17, 32]. The ordinary rule is that a custom, general or otherwise, has to be proved under section 57. However, nothing need to be proved of which the courts can take judicial notice. When a custom has been judicially recognised by the court then it passes into the law of the land as proof of it becomes unnecessary under section 57(1) [*Uzagar Singh v. Mst. Jeo*, A 1959 SC 1041; This has been **relied** on in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, A 1988 SC 644]. Court can take judicial notice of the fact that certain area is terrorist-striken [*Abdul Malik v. State of U.P.*, A 1994 All 376, 380].

Judicial notice can be taken by court of the fact that the court accommodation for District and Sessions Judges in certain district head quarters are situated at some distance than the location of the court rooms meant for subordinate Judges and that therefore, the members of the Bar as well as litigaints have to run from one place to other causing inconvenience, wastage of time and money which can be avoided if judicial complexes are constructed at all the districts headquarters [*District Bar Association, Kurukshetra v. State of Haryana*, A 1997 P&H 231, 237]. Judicial notice can be taken of the fact that many a time prescribed registers are not available, and so they are kept in non prescribed way. Many a time even a case diary is not maintained by police in prescribed form [*State of M.P. v. Dhirendra Kumar*, A 1997 SC 318, 322]. The court can take judicial notice of the fact that the system of education in the state has virtually crumbled and serious allegations are made frequently about the manner in which the system is being worked [*Managing Committee of Rajo Sidheshwar High School*, A 1996 Pat 19, 22]. Court can take judicial notice of the fact that many blind persons have made a name for themselves. Many blind persons have acquired great academic distinctions [*Jai Shankar Prasad v. State of Bihar*, A 1993 Pat 22, 28].

Failure of prosecution to produce notifications by which sections were brought into force does not entitle the court to acquit the accused. The court should take judicial notice [*S v. Sitaram*, A 1964 P 477].

Judicial notice has been taken that the streets of London are crowded, and dangerous [*Dennis v. White*, 1916, 2 KB 1, 6]; that it is impossible to have an

alternative accommodation at a reasonable rent by a tenant particularly when he has been residing in a house in North Calcutta for the last 40 years. [*Bamandas Mukherjee v. State of West Bengal*, A 1985 Cal 159, 160 : 1984-2 Cal LJ 53]; that whether in a given circumstance alternative accommodation is available or not [*Bhagwan Das v. Smt. Jiley Kaur*, A 1991 SC 266, 268]; that the description of the academic year in University Statutes is followed more in its breach; Schedule for University examination are very often changed, inordinately long time is taken for declaration of results and there is a good bit of uncertainty about commencement and close of the academic session in the universities [*Dr Basanta Kumar Behera v. State of Orissa*, A 1988 Orissa 124, 127 (FB) : (1988) 65 Cut LT 113]; that cats are ordinarily kept for domestic purposes [*Nye v. Niblett*, 1918, 1 KB 23]; that beans are a species of pulse [*R v. Woodward*, 1 Moo, CC 323]; of the impossibility of predicting fortunes by reference to the stars [*Penny v. Hanson*, 19 QBD 478]; of the existence of the Universities of Oxford and Cambridge and that they are national institutions for the advancement of learning and religion [*Re Oxford Poor Rate*, 8 E & B 184]; of the position of an undergraduate at college, rendering it, *prima facie*, not unreasonable that he should require a watch [*Peters v. Fleming*, 6 M & W 42]; of the normal period of human gestation, though that period has from time to time been differently stated [*Preston-Jones v. P-J*, 1951, 1 All ER 124, 127 HL : see notes to s 112].

Where a libel charged that the friends of the plaintiff had "realised the fable of the frozen snake", the court takes judicial notice that the knowledge of that fable existed generally in society [*Hoare v. Silverlock*, 12 QB 624, 633]. The circumstances that a fact has been proved in a case does not enable the court to take judicial notice of it in other cases [*Lazard v. Midland Bank*, 1939 AC 298, 299 : 49 TLR 94]. It would be unfair to take judicial notice of thefts on railways from reported cases [*Secy of S v. Ghanaya*, A 1928 L 387; *Baldeo v. B B C I R*, A 1926 A 641]. Judicial notice cannot be taken of clearing house rules [*Brahmo v. Chartered Bank*, A 1958 C 399]. *In re Alliance Bank Ltd*, 40 CLJ 223 : A 1925 C 54, judicial notice was taken of such rules as they appeared from the affidavits filed. Whether condition in UP in Feby, 1950 so far as communal disturbances were fully settled cannot be taken judicial notice of [*Abida Khatoon v. S*, A 1963 A 260].

The court may take judicial notice of the fact that venereal disease may be dormant for long and indefinite period [*per* LORD MERRIMAN in *Glenister v. G*, 1945, 1 All ER 513, 517].

Judicial Notice of Custom.—All customs, general or otherwise, have to be proved. But when a custom has been repeatedly recognised by the courts, it passes into the law of the land and courts can take judicial notice of it [*Gangadhara v. Surya Rao*, 45 IA 148 : 41 M 778 : 23 CWN 173; *Ujagar v. Jeo*, A 1959 SC 104 : 1959 Supp 2 SCR 781; see notes to s 13, *ante* p 133]. In the Punjab "general custom" has really been used in the sense that by repeated recognition it becomes entitled to judicial notice [*Ujagar v. Jeo, sup*; *Bawa v. Taro*, A 1951 Pu 239; *Sukhwant v. Balwant*, A 1951 Pu 242]. According to para 22 of the Rattingan's Digest there is a custom in Punjab to the effect that in default of male lineal descendants and of a widow the mother of the deceased succeeds to a life interest, provided she has not remarried. But it has not been shown that the Courts have recognised the custom recorded in para 22 of the Rattingan's Digest. [*Harchand Singh v. Mohinder Kaur*, A 1987 P&H 138, 140, 141 : 1987 Rev LR 35].

The general custom under which the sister's sons of the deceased are entitled to succeed to his agricultural lands in preference to his collaterals is so widely

recognized all over Punjab and courts are entitled to take judicial notice of the same without independent proof in each and every case. [*Jiwan Singh Des Rai*, A 1982 NOC 306 (Punj)]. If the courts have recognised the custom in a particular matter for a long time, that is considered to be law and it is not necessary to prove it. The courts can take judicial notice of such a custom. [*Amar Singh v. Tejram*, A 1982 Punj 282, 285]. The court will also take judicial notice of usages which are embodied in the law merchant, and of commercial and other usages which have been proved sufficiently often in the courts of law [Hals, 3rd Ed, Vol 15, para 608]. Court can take judicial notice of a custom which is very general [*Baijnath v. Bahadur*, 91 IC 583 : 2 OWN 872]. There is a customary right of privacy in the UP, and Oudh [*Gokul v. Radho*, (1887) 10 A 358; '*Nihal v. Bhagwan*, 58 A 370 : A 1935 A 1002; *Baqridi v. Rahim*, 93 IC 332 : A 1926 O 352] in Rajasthan; [*Syed Habib v. Kamal*, A 1969 Raj 31—case laws ref] and courts are bound to take judicial notice of it without proof; see also *Abdul Rahman v. Emile*, 16 A 69; *Jamiluddin v. Abdul Majeed*, 13 ALJ 361; *Fazal v. Fazal*, 26 ALJ 49; *Tikaram v. Ramlal*, A 1935 A 432].

Personal Knowledge of Judge and Judicial Notice of Notorious Facts.—The judge's personal knowledge as a private person is quite different from matters of which judicial notice is taken as a judge. The decision in a case must rest on legal evidence and a judge cannot import knowledge of facts which has come to him from other sources. A judgment based on materials admitted on the personal knowledge of the judge is not in accordance with law [*Durga Pd v. Ram Dayal*, 38 C 153]. To use personal knowledge of facts in judging the truth is a travesty of justice [*Sesha Reddy v. China*, A 1958 AP 595]. But he may use his general knowledge and experience of determining the credibility of evidence and applying it to the decision of the specific facts in dispute [*per* SUNDARA IYER, J, in *Mulpura v. Sri Rajah*, 36 M 168 : 23 MLJ 624]. In assessing the value to be attached to oral evidence he is found to call into aid his experience of life [*Chaturbhuj v. Collr, Raigarh*, A 1969 SC 255]. A judge must be allowed to use even his knowledge of concrete private facts, provided he mentions his knowledge to the parties and they do not object to his deciding the case, and he must be allowed of course to use his knowledge of general or public facts, historical, scientific, political or otherwise in coming to his conclusion. The only restriction that should be imposed upon the judge is that he should not import knowledge obtained by mere rumour or hearsay of concrete facts with the particular case before him for arriving at a conclusion [*per* SADASIVA IYER, J, in *ibid*].

"It is plainly accepted that the judge is not to use from the bench, under the guise of judicial knowledge, that which he knows *only as an individual* observer outside of Court. The former is in truth 'known' to him merely in the fictional sense that it is known and notorious to all men, and the dilemma is only the result of using the term 'knowledge' in two senses. Where to draw the line between knowledge by notoriety and knowledge by personal observation may sometimes be difficult, but the principle is plain" [Wig s 2569]. Apart from matters which may be judicially noticed, a tribunal is not entitled to act on its own knowledge or on information not available to the parties [*R v. Bodmin*, 1947 KB 321; *Hughes v. Lancaster &c*, 1947, 2 All ER 556]. A court is entitled to take judicial notice of matters with which men of ordinary intelligence are acquainted and to act upon his general knowledge of local affairs [*Madho v. S*, A 1978 P 172 FB]. A judge is entitled to use his own knowledge of general or public facts, historical, scientific, political or otherwise. He is entitled to take judicial notice of matters which have reached the courts, *eg*, prosecutions for political crimes &c [*Bhagwati v. Govt of C P*, A 1947 N 1 SB *ante* (Wig s 2569 quoted above refd to)], or change of political conditions of a country [*In re*

Pachiappan, A 1950 M 364]; or Govt propaganda calling upon people to help in finding out corruption [*Pub Pro v. Audinarayana*, A 1953 M 481].

A judge may act upon his personal knowledge of the facts proved in a previous action, which has been tried before him [*Pease v. Moosmin*, (Town), 5 Terr LR 207; *The King v. Bonnevie*, 38 NSR 560 (Canadian); Best, 11th Ed, p 286]. It has been held that a claims commissioner appointed in connection with a train accident who tried one case and come to know about certain facts, could not use such knowledge while trying another case when in the later case specific facts were not proved by the evidence [*Smt Sudh Srivastava v. Claims Commr Allahabad*, A 1985 All 52, 57 (DB)]. In practice the judges, no doubt, make use of their own private knowledge and experience of many matters of which, if in issue in an action they would not take judicial notice. Thus in speaking of the evidence given to support an alleged custom governing dealings between brewers and distillers, in the course of which Messrs Meux & Co were referred to, JAMES, VC, is reported to have said that he might take judicial notice that they were very large brewers in London [*Dawn v. City of London Brewery Co*, 1869 LR 8 Eq 155, 164]. Although, however judges may, in arriving at decisions use their *general* information and that knowledge of the common affairs of life which men of ordinary intelligence possess [*Peart v. Bolckow &c*, 1925, 1 KB 399; *Byrne v. Londonderry Co*, 1902 2 IR 480; **approved** in *Hennessy v. Keating*, 1908, 1 IR 43, 83], they may not act on their own *private knowledge or belief* regarding the case, but if they have material facts to impart, should be sworn as witnesses [Phip 11th Ed, p 23; see also Tay s 1319; best, ss 38, 88, 254]. In *Peart v. Bolckow &c*, 1925, 1 KB 399 (workman's compensation amount) the judge allowed to consider "my knowledge of the life in miner's families in Durham and York derived from many hundreds".

A judge cannot, without giving evidence as a witness import into a case his own knowledge of particular facts [*Har Pd v. Sheo Dayal*, 1876, 3 IA 259 : 26 WR 55; *R v. Antrim C Justices*, 1895, 2 IR 603, 649; *Reynolds v. LA Tinplate Co Ltd*, 1948, 1 All ER 140 CA]. If the judge, as a man and an observer, has any personal knowledge, he may (and sometimes morally must) utilise it by taking the stand as a witness and telling in that capacity what he knows [Wig s 2569]. A judge cannot rely on information gained from other cases heard by him [*Fazal v. Hakim*, A 1941 L 22]. [As to a judge being a witness in a case tried by himself see notes under s 121, *post*. The judge's knowledge about the character of parties and their witness being different, it is relevant (see notes s 167 *post*)].

Judicial Notice Not Conclusive.—That a matter is judicially noticed means merely that it is taken as true without the offering of evidence by the party who should ordinarily have done so. But the *opponent is not prevented from disputing* the matter by evidence, if he believes it disputable [Wig s 2567].

S. 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, require the facts admitted to be proved otherwise than by such admissions.

SYNOPSIS

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COMMENTARY

Principle and Scope.—Admissions by parties, oral or documentary, to any person before suit, *ie*, out of court, have been dealt with in s 17 *et seq*. Such admissions are tendered as evidence, while admissions for purposes of trial dispense with proof of particular facts. This section deals with admissions during trial, *ie*, *at or before the hearing*. Proof of such facts is dispensed with for the simple reason that the facts admitted require no proof. They are known as *judicial admissions* or stipulations dispensing with proof. It is a substitute for evidence and admission in this sense is a formal act, done in the course of judicial proceedings, which waives or dispenses with the production of evidence, by conceding for the purposes of litigation that the proposition of fact alleged by the opponent is true. [Wig s 1058]. Admissions for purposes of trial are not generally receivable in other proceedings, but the preponderance of opinion appears to be that a judicial admission continues to have effect for a subsequent part of the same proceeding including a new trial [*Langley v. Oxford*, 1 M&M 508; Wig s 2593]. Admission in pleadings of judicial admissions, admissible under s 58, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the parties that make them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence are by themselves not conclusive. They can be shown to be wrong [*Nagindas v. Dalpatram*, A 1974 SC 471]. Extra-judicial admissions are dealt with in s 17 *et seq*.

Admissions for the purpose of trial may be considered as being made : (*1*) On the record which are (*a*) actual, *ie*, either on the pleadings (Or 8, r 5 C P Code, 1908), or in answer to interrogatories (Or 11, r 22); (*b*) implied, from the pleadings (Or 8, rr 3, 4, 5); (2) between the parties—(*a*) by agreement in writing before the hearing, (*b*) by notice (Or 12, rr 1, 2, 4); (3) at the hearing by party or his lawyer. All notices must be in writing (s 142 C P Code). As to the court's power to pass judgment on admissions of facts on the pleadings or otherwise, see Or 12, r 6. This section lays down that proof need not be given of facts which the parties or their agents, which of course include solicitors, pleaders, etc, agree to *admit at the hearing* or which they agree to admit *before the hearing by writing* under their hands or which by any rule of pleading (*ie*, the rules in the C P Code referred to above) are deemed to have *admitted by their pleadings*.

The *proviso* gives power to the court to require a fact to be proved otherwise, even though admitted. There might be feigned and collusive case or an admission might be fictitious or colourless. So the court cannot be compelled to accept an admission and it may require any fact to be proved by evidence in the ordinary way as laid in the *proviso*. If an admission is made subject to a condition, it must be accepted subject to that condition or not accepted at all [see *Motabhoy v. Mulji*, 42 IA 103, *ante* under s 17].

Where the plaintiff himself accepts the execution a will, but chooses to contest only on legal aspects touching upon the validity of the bequeathment of certain properties, section 58 would be applicable and not section 68 [*Valluri v. Kopparthi*, A 1994 AP 284, 289]. Where execution of agreement of tenancy was admitted at initial stage of eviction proceedings by the tenant, subsequent plea of the tenant that the tenancy agreement was obtained by fraud is not sustainable [*Narendra Kumar v. Vishnu Kr. Nayyar*, A 1994 Del 209, 212].

"The vital feature of a judicial admission is universally conceded to be its conclusiveness upon the party making it, *ie*, the prohibition of any further dispute of the fact by him, and of any use of evidence to disprove or contradict it. In view, however, of the commendable purpose which leads or (ought to lead) to the voluntary making of admissions, it is always and properly said that the trial court may in discretion relieve from this consequence" (Wig s 2590). "A colourless admission by the opponent may sometimes have the effect of depriving the party of the legitimate moral force of his evidence; furthermore, a judicial admission may be clearly made with grudging limitation or evasions or insinuations (especially in criminal cases), so as to be technically but not practically a waiver of proof. Hence, there should be no absolute rule on the subject: and the trial court's discretion should determine whether a particular admission is so plenary as to render the first party's evidence wholly needless under the circumstances". (Wig s 2591).

As to whether the section applies equally to civil and criminal cases, see *post*.

S. 58 normally relates to agreed statements of facts made between both parties to save time and expense at a trial. But where there is no agreement to admit facts, and no pleading has been put in by a party, it cannot be said that any such admission has been made in his pleading [*Over v. O*, 49 B 368: A 1925 B 231].

[*Ref Tay s 724 et seq; Phip 8th Ed pp 15-16; Steph Dig Art 60; Roscoe N P, p 73 et seq; Wig ss 2588-97; Powell, 9th Ed, pp 420-30; Annual Practice, Or 32; C P Code; 1908, Or 8, rr 3, 4, 5; Or 11, r 22; Or 12, rr 1, 2, 4*].

"At the Hearing" or "Before the Hearing".—With regard to the facts admitted prior to the hearing, it is quite correct to say that they need not be proved, in the sense that no evidence need be given of them. Not only this need not be done, but it would not be allowed to be done. With regard to facts admitted at the hearing, the expression "at the hearing" is ambiguous. If it means before the evidence has begun to be taken, then what I have said already applies to it. If it means after the evidence has begun to be taken, then, in a civil case, no doubt the party or his pleader may at any time relieve his adversary from the necessity of proof (Markby, p 51). "At the hearing means where there are more hearing than one, the final hearing" (Whitley Stokes, Vol II, p 889).

Admissions by Agreement Between Parties.—An agreement made before the hearing to admit facts must be in writing and should be made with reference to the particular litigation. Admission of other facts would under s 21 be evidence of the facts admitted but they would not be conclusive. In the C P Code of 1908 provision

has been made for admission of facts by the parties or their pleaders before the hearing (see Or 12, rr 1-9). With regard to admissions at the hearing, they may be made by a party or his pleader either at the first hearing of the suit (Or 10 C P Code, 1908), or at any time after the commencement and before the conclusion of the hearing, and thereby relieving the adversary from the necessity of proof. Under Or, 3, r 1 any appearance, application or act required to be made by a party may be made by the party in person, his recognised agent or pleader. As to who are recognized agents, see Or 3, r 2.

Admissions by agreement are those which for the sake of saving expense or preventing delay, the parties or their solicitors agree upon between themselves. They ought, in general, to be in writing, and signed either by the parties or their solicitors. They should be clear and distinct; and a party intending to rely upon such admissions should be careful not to leave any fact to be merely inferred from them, for if he does, he will not, on appeal, be allowed to adduce evidence as to such fact [*Sanders v. S*, 19 CD 373; Annual Practice, 1917 p 549]. A variation in the description of the instrument if not of a nature to mislead, would not release the party from the obligation to admit. Thus a variance in the date of a promissory note, otherwise accurately described, has been held sufficient [*Field v. Fleming*, 5 Dowl 450]. As to agreements to admit without a saving of all "just exceptions," see *Chaplin v. Levy*, 23 LJ Ex 117; *Sharples v. Rickard*, 26 LJ Ex 302; *Hawk v. Freund*, 1 F&F 295. An agreement for discharge or satisfaction of a registered bond cannot be said to be inadmissible if admitted in the pleadings. No question of proof arises as it is dispensed with by s 58 [*Ram Ch v. Kailash*, A 1951 C 667: 58 C 532].

Admissions Made at Hearing, How Recorded.—An admission at hearing may be made by a party while under examination or at any other time by himself or by his lawyer. With regard to the latter, it is usual for the court to make a note of it in the ordersheet or in any other appropriate place. The court may also take notes of facts stated by the lawyers of both sides when opening their respective cases before the beginning of the trial. Facts admitted during such preliminary address or during argument may also be taken as admissions. Admissions by pleaders during argument may also be gathered from the court's judgment in the suit.

The statement or notes of the presiding judge at a trial, whether it be in a criminal or civil case, are conclusive as to what has taken place at a trial. Neither the affidavits of bystanders, nor of jurors, nor the notes of the counsel, or of a shorthand writers, are admissible to controvert the notes or the statement of the judge [*R v. Pestonji*, 10 Bom HCR 75; see *Madhusudan v. Chandrabati*, 21 CWN 897: A 1917 PC 30; *Nagabhusanam v. Jagannaikalu*, 49 MLJ 671; *Venkatesayya v. Md Ghouse*, 1944, 1 MLJ 396: A 1944 M 450]. A judgment deliberately recording the admission of a pleader, must be taken as correct, unless it is contradicted by any affidavit, or the judge's own admission that the record he made was wrong [*Hardayal v. Heera Lall*, 16 WR 107]. See *ante* s 18: "*Statement of Admission in Judgments*", and s 35: "*Statements in Judgments &c*".

It is sometimes declared, in statute, court-rule, or decision that all agreements between attorneys or counsel, including presumably judicial admissions, *must be in writing*, in order to obtain enforcement from the courts; and no doubt, for admissions made out of court, or at least prior to trial and out of court, the rigid policy of the law should look only at written admissions, even though professional honor could not suffer such a distinction. But that policy need not apply to admissions made in court, where the memory of the judge and the presence of other members of the bar could be trusted for verification in case of misunderstanding and the oral habit of the

proceedings is inconsistent with such an exception. Judicial admissions are usually made by the party's *attorney or counsel.* It is settled that the general authority to conduct the trial implies the authority to make such admissions [Wig s 2594].

Effect of Admission Before Hearing.—Where it is clear from the facts admitted in the pleadings that the defendant infringed the claim it is unnecessary for the plaintiff to lead evidence to prove it [*F H & B Corporation v. Unichem Laboratories*, A 1969 B 255]. Where defendant in a suit for specific performance of an agreement admitted in his written statement the terms of the agreement and its execution, the plaintiff was not called upon to prove the execution of the document or put it in evidence [*Burjorji v. Muncherji*, 5 B 143]. When the fact of execution of a document is admitted, it need not be proved even though the document is not admissible under the Stamp Act [*Alimana v. Subbaravudu*, A 1932 M 730; *Ponnuswami v. Kailasam*, A 1947 M 422; *Vishram v. Irukulla*, A 1957 AP 784 (Cases discussed); see however *Achutaramanna v. Jagannadhan*, A 1933 M 117]. When a defendant files counterpart of a document and admits it, it is admissible and production of the original by the plaintiff is unnecessary even though it is inadmissible for want of sufficient stamp [*Vishram v. Shankariah*, A 1957 AP 784]. But the object of s 58 is only to use the admission pertaining to the execution of a document as an alternative to its formal proof and not to use such an admission as a lever to circumvent other provisions of law restricting or prohibiting the use of such document. When the document is not duly stamped under s 35 of Stamp Act a court is not competent to admit it in evidence and give relief on its basis merely on the ground that its execution has been admitted by the party against which relief is sought [*Dewan Chand v. Jay Pee &c*, A 1977 J & K 61; *Mg Po v. Chettyur Firm*, A 1935 R 282].

A sale of immovable property of the value of Rs. 100 or upwards effected by an unregistered instrument having been admitted in the pleading, no further proof is required under s 58 and s 91 does not come into play [*Ganda v. Bhan*, 73 IC 758; A 1923 L 310]. As admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact [*Amrit v. Rajani*, 15 BLR 10 PC: 23 WR 215. Similar provision is to be found in the proviso to r 4 of Or 12 of the C P Code, 1908]. Where no objection was raised and both parties by their conduct and silence treated the market value to be of the amount sufficient to give jurisdiction, they dispensed with proof and s 58 came into operation [*Baretto v. Rodriques*, 35 B 24]. When defendants admit a mortgage by them in their written statement, the production of the deed is unnecessary under s 58 and its validity cannot be questioned even if it is attested by only one witness [*Mg Kan v. Mg Mat*, 11 IC 850]. Such admission of mortgage renders unnecessary the tender of formal evidence either to prove loss of the deed or to prove the contents of the certified copy [*Bahadur v. Mulk*, A 1934 L 898]. Proof is unnecessary in the case of an unregistered mortgage of more than Rs. 100, if admitted [*Ma Shwe v. Mg Shein*, 20 IC 660: 6 Bur LT 131]. So also in the case of an unregistered lease [*Banarasi v. Bulchand*, 3 LLJ 253: A 1921 L 64]. [As to admission of attested document, see s 70, *post*]. Where a tenant accepting receipt of notice determining his tenancy challenges it to be bad in law he has to file the original notice received to substantiate his point [*Manikant v. Baburam*, A 1978 A 144].

While s 58 can be invoked where the documentary evidence about the admitted facts is shut out of the provisions of purely revenue laws, it cannot be invoked to overrule the provisions of non-revenue enactments, nor can it be used to bind a party, who has made an admission of the genuineness of a document when such admission is accompanied by the plea that the contract and the other facts mentioned in that

document could not be relied upon by the opposite party owing to the provision of the statutory law relating to registration and attestation [*Kotam Reddi v. Vennalakanta*, 31 MLJ 240: 35 IC 18]. Where it is pleaded that under a subsequent oral agreement a mortgagee agreed to take less than is due under a mortgage, proof of it is dispensed with under s 58 if the parties have admitted such an oral agreement in their pleadings [*Malappa v. Naga Chetty*, 42 M 41 : 48 IC 158].

Effect of Admission at the Hearing.—Although a plaintiff where defendant denies his claim, is bound to prove his case by the document on which he relies, still if the defendant admits any sum to be due, that admission is sufficient to warrant a decree for the admitted amount [*Issur v. Nobodeep*, 6 WR 132]. An admission made not in the pleadings but in a deposition, is merely secondary evidence and cannot supply the place of the document [*Sk Ibrahim v. Parvata*, 8 Bom HCR 163].

Documents are either proved by witnesses or marked on admission. When it is marked on admission without reservation, the contents are not only evidence but are taken as admitted, and cannot be challenged by cross-examination or otherwise. In case of documents marked on admission dispensing with formal proof, the contents are evidence, although the party admitting does not thereby accept the truth of the contents which can be challenged by cross-examination or otherwise [*Lionel Edwards Ltd v. S*, A 1967 C 191].

Where documents were produced and not disputed, the Privy Council held that they should be received without proof [*Takai v. Beglar*, 6 MIA 521; *Nanda Kishore v. Ram Kalpa*, 6 BLR Ap 49]. With regard to these rulings Field says: It would appear, however, that their Lordships spoke with special reference to the state of things antecedent to the operation of the C P Code. Certainly it would be difficult to reconcile any such general rule with other observations which are to be found in more recent judgments, and which strongly impress the necessity of parties proving by competent evidence the case which they must in order to succeed. Under the existing procedure there can be no doubt that documents, if not expressly admitted, must be proved (s 67) [Field, p 223].

There is a distinction between evidentiary admissions and admissions by the pleadings. S 58 governs admissions by the pleadings. Although an unregistered sale-deed is inadmissible, an admission by the (vendor) defendant, in his preliminary examination, of an agreement alleged in the plaint, that he would make good any loss the plaintiff (purchaser) might incur in respect of the property sold, is not excluded by s 91 and renders proof of the agreement unnecessary [*Sadhu v. Nagasigye*, UBR (1907) Ev 1; see also *Sambayya v. Gangayya*, 13 M 408]. An admission made by a party when examined as a witness comes within s 58. Where purchasers of certain lands admitted previous knowledge of a mortgage, it was necessary to prove the mortgage in a suit for possession by the purchaser against the mortgage and the fact that a mortgage for Rs. 105 was unregistered was immaterial [*Nga Tun v. Nga Shwe*, 29 IC 698: 8 Bur LT 18]. One of the defendants having admitted in his evidence that the signature in the mortgage deed was his father's, his admission would under s 58 relieve the plaintiff from proving the document as against him [*Lakhi Chand v. Lal Chand*, 42 B 352: 45 IC 555].

An express or implied admission made in the compromise agreement comes within s 58 and if the court is satisfied therefrom about the existence of statutory ground for eviction the court may pass a decree for eviction on that basis [*Nagindas v. Dalpatram*, A 1974 SC 471]. Even if the factum of mortgage and its terms are admitted by the parties in pleadings or otherwise, a suit for redemption will not lie if the mortgage was not created by a written and registered instrument [*Bishnu Kala v.*

Bishnu Maya, A 1980 Sikkim 1 (*Govindan v. K Ammed*, A 1927 M 92; *Munshi Ram v. Baisakhi*, A 1947 L 335 not good law in view of *Ariff v. Jadunath*. A 1931 PC 79)]. To constitute admission, the statement should be unambiguous and clear. It is only when it is true and clear that it shall stand as a proof of the facts admitted. [*Mst Sita Kueri v. Basisth Narain Tiwary*, A 1985 Pat 158, 161: 1985 Pat LJR 199].

Admissions in Divorce Cases.—S 58 has in general no application to divorce cases, although admissions of parties may be proved under ss 17, 18, 21 [*Over v. O*, 49 B 368: 91 IC 20: A 1925 B 231]. *Cf Proviso* to s 50.

Effect of Admissions by Pleader or Counsel.—[See *ante* ss 17, 18]. When a counsel of a party admits a fact, it need not be proved under s 58 [*Gur Pd v. Manni Lal*, 1942 OWN 180].

Admissions or Waiver in Criminal Cases.—One author remarks that this section applies to civil suits only and it must be supposed that under it any admission (confession) which prisoner may have made, and which is not receivable under the Cr P Code, will be admitted at the trial. (*Nort* p 238). Another says that this section is not restricted to civil cases, and therefore, must be taken to allow the making of admission by the accused in a criminal case. (Cunn p 144). Again, it has been said that as to admissions before hearing, it is certain that in a criminal case, they can only be used as evidence, and for this purpose it does not signify whether they are in writing or not. (Markby, p 51).

It may be observed that the language of the section is general and there is nothing in it to restrict the application of the section to civil cases only. Except where there is a plea of guilty, admissions dispensing with proof are not generally allowed in criminal cases. A plea of guilty only admits the offence charged and not the truth of the depositions [*R v. Riley*, 18 Cox 285]. But the trial of a criminal case may be shortened by admissions of many formal facts *eg* the execution of a document tendered in evidence or the admission of a certified copy of registered document by dispensing with the production and proof of the original or the admission of some fact not inconsistent with the defence. It would seem that admissions like these may be made at or before the hearing of a criminal case. Waiver or formal proof of documents was not regarded as violation of rules of evidence in an inquiry under the Public Servant Enquiries Act, 1950 [*Bankim v. S*, A 1956 P 384].

If by admission is meant *confession* of guilt, such confession may be made before trial subject to the law relating to the making and admissibility of confessions. In any case, the *proviso* empowers the court to require proof of facts admitted in a case, whether civil or criminal, and the salutary practice usually observed in criminal cases is not to accept admissions so as to dispense with proof. The occasions for making admissions are fewer in criminal cases where there are no pleadings similar to those in civil cases. The accused may plead 'guilty' or 'not guilty' and the onus is always on the prosecution to prove all ingredients essential to the establishment of the offence. That admissions (other than that of guilt) in criminal case waiving proof may be accepted, is also the law in America. In *S v. Marx*, 1905, 78 Conn 18, HAMMERSLEY J, said:—

> "It is true that in the trial of capital offences the court will and should exercise care and discretion in respect to admissions made by the accused or by his counsel in open court, and that every conviction should be supported by some evidence produced in court, and so even a plea of guilty will not ordinarily be accepted. But it is not true that an accused cannot either by himself or his counsel, in his own interest, admit some facts which though

necessary for the State to establish, may be consistent with his innocence and the defence he maintains. Subject to the reasonable discretion of the court in the protection of the accused against improvidence or mistake, admissions during the trial by the accused or his counsel as to the genuineness of a document; admissions as to the testimony a witness not produced would give if present, or the fact his testimony would establish, voluntarily made for the purpose of preventing a postponement of the trial; and admission in the interest of the accused limiting the issue to the material facts upon which alone his successful defence depends, have long been permitted under our practice, and we think their lawfulness and propriety rest upon sound reason" (Cited in Wig s 2592).

In England, the rule is that in criminal proceedings no admissions preliminary to the trial can ordinarily be made by the defendant or his advisers so as to dispense with oral evidence and strict proof of facts necessary to be proved. When the plea is not guilty, in cases of misdemeanour the defendant or his counsel may at the trial make other admissions of fact; but in cases of felony no such admissions can be made [Hals 3rd Ed Vol 10 paras 834-45]. Now, however, in England all distinctions between felony and misdemeanour have been abolished and in all matters in which there was a distinction the law and practice applicable would be that applicable at the commencement of the Act in relation to misdemeanour (S 1 Criminal Law Act 1967). The Act makes a distinction between *arrestable offence* and other offences (s 2).

Same.—Lawyers should be very careful when making admissions on behalf of accused in criminal cases as the responsibility for such admissions is enormous. In *R v. Kazim*, 17 WR Cr 49 it was held that admissions made by a prisoner's vakil cannot be used against the prisoner, but a contrary view was taken in *R v. Gagalao*, 12 WR Cr 50. In *R v. Surroop*, 12 WR Cr 76, it was said that "so far as prisoners can assent to any thing, that arrangement was assented to by vakils of each party". These cases were decided before the passing of the Act. Admissions by parties, of facts, before judge for reference under [1]s 438 Cr P Code ought to be accepted [*Shk Garib v. Muchiram*, 30 CWN 359]. In *Bansi Lal v. R*, 52 B 686: A 1928 B 241: 30 Bom LR 646, FAWCETT, J, drew a distinction between an admission by a pleader at the trial and an admission in appeal and held that the court could act upon an admission in appeal. It is doubtful how far such distinction is possible. In *R v. Sangaya*, 2 Bom LR 751, the court drew a distinction between a pleader appointed by the court to defend a person accused of murder and a pleader authorized by the accused and held that the admissions by the former are not binding on him. This distinction also is not very intelligible. In a criminal case the lawyer has no implied authority to make admissions against his client. The accused is entitled to the benefit of the plea set up by the lawyer but it cannot be said that the plea of defence put forward must bind the accused [*Trikam v. S*, A 1969 G 69; *Nga Ba Sein v. R*, A 1936 R 1].

S 58 makes no exception of criminal trials, but under the *proviso*, the practice is to insist of proof of all really essential fact [*Bhulan v. R*, A 1926 O 245: 91 IC 233]. Where the Govt seeks to rely on an admission made by the accused in his written statement to fill up a blank in their evidence which if unfulfilled must result in an acquittal, they must take the alleged admission in toto [*Upendra v. R*, 40 CWN 313]. A disputed thumb-impression was compared with an impression of an alleged executant and it was contended that the accused did not take any objection that it was not the signature of the alleged executant. It was held that the rules of pleading in civil do not apply to criminal proceedings [*Tufail v. R*, 101 IC 187: A 1927 P 408].

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1. S 438 has been omitted in Cr P Code, 1973.

In a case of murder it is better not to take admissions from the counsel for the defence at all. Every fact ought to be strictly proved on the record [KNOX & WALSH JJ; *Sheo Narain v. R*, 58 IC 457: 21 Cri LJ 777]. It is not the usual practice to accept a plea of guilty and to convict a man where the natural consequence would be a sentence of death [*Hasaruddin v. R*, A 1928 C 775; see also *R v. Chinia*, 8 Bom CR 240; *Laxmaya v. R*, 19 Bom LR 356: 40 IC 699; *R v. Bhadu*, 19 A 110]. In *R v. Thornhill*, 1839, 8 C & P 575, where in a prosecution for misdemeanour (perjury) counsel on both sides had agreed before the trial to dispense with formal proofs and to admit part of the prosecution case, LORD ABINGER, C B, said: "In a criminal case on the Crown side of the assizes I cannot allow any admission to be made on the part of the defendant, unless it is made at the trial by the defendant or his counsel". An accused in a criminal case can admit the truth of the charge, but it seems still to be the law that if he pleads "Not guilty" he cannot lighten the task of the prosecution by admitting any incidental fact which is a stage in the proof of his guilt (Powell 9th Ed p 420).

In a case it has been emphasised that it is an elementary rule, that except by a plea of guilty, admissions dispensing with proof, as distinguished from admissions which are evidential, are not permitted in a criminal trial. Therefore no consent or admission by the prisoner's advocate to dispense with medical witness (by admitting the *post mortem* report) can relieve the prosecution of proving by evidence the nature of the injuries received by the deceased and that the injuries were the cause of the death of the person for whose murder the prisoner is charged [*In re Rangappa*, 59 M 349; see *Mitter v. S*, A 1950 C 435].

As pointed out by the Privy Council in *R v. Bertrand* [4 Moore PC 460: 10 Cox C C 618], "a prisoner can consent to nothing." Where in a criminal trial the magistrate is succeeded by another who tries the case *de novo* and by consent of the accused exhibits the deposition in the previous trial to "save cross-examination," such irregularity cannot be cured by consent. Nor has s 167 any application to such a case [*In re Kottammal*, 46 M 117: 60 IC 636; see also *Allu v. R*, 4 L 376]. As to waiver in criminal cases, see *ante* s 5].

Admission under s 21 should be distinguished from an admission contemplated by this section. An admission by the accused may be proved in a criminal case just as much as an admission by the defendant in a civil suit under s 21. But admission under that section is one made by the party against whom it is tendered before the proceedings in which it is sought to be given in evidence. In a libel case, a statement in the accused's written statement that "what was published was a substantially true report without any malicious intention," is no admission that he published the libel [*Jeremiah v. Vas*, 36 M 457]. Admission of publication by accused is not enough. Publication must be proved [*Devi Dayal v. R*, 4 L 55, 57].

An admission by the accused in answer to questions put by the court under s 342 (now 313) Cr P Code cannot be utilised to fill up a gap in the evidence for the prosecution [*Mohideen v. R*, 27 M 238; see also *Basanta v. R*, 26 C 49; *Jeremiah v. Vas*, 36 M 457, 461; *Hardevi v. S*, A 1969 A 423]. In a prosecution, no evidence was given on behalf of crown or defence and the court was asked to give a finding in law on certain admissions alleged to have been made by counsel on both sides. This amounted to a travesty of jusitce. An accused person cannot be asked to make admissions to enable the Crown to procure legal decision [*R v. Jaswant*, 5 L 404]. Where a magistrate tries a warrant case as a summons case, a conviction on accused's own admission, without taking evidence and framing charge, will be set aside [*R v. Chinna payan*, 29 M 372].

"Or By Any Rule of Pleading in Force etc." [Admission by Non-traverse].—According to English law where any material averment by a party in a pleading is passed over without a specific denial, it is taken to be admitted. [As to non-traverse, see notes to s 31]. Before the passing of the C P Code, 1908, there was no rule of pleading according to which the parties were deemed by their pleading to have admitted any fact. But in the present Code some rules relating to pleadings based upon the system of pleading introduced by the Judicature Acts in England, have been added [Or 6 rr 1-13]. According to r 5(*1*) of Or 8 of the Code, whenever a *material* averment, properly put forward by one party is passed over by the adverse party without denial, it is taken to be admitted. But the legislature has, however, endeavoured to modify the rigour of the rule by adding a *proviso* to the Rule which exactly corresponds with the proviso to this section.

According to r 5(2) of Or 8 as added by 1976 C P Code (Am) Act on failure by defendant to file written statement the allegations in the plaint may be taken as admitted by the court and judgment may be pronounced on the basis of this allegation. The Legislature has, however, added here also similar proviso that the court may in its discretion require any such fact to be proved.

The rule of admission by non-traverse, though not specially embodied in the earlier codes was acted upon in suitable cases [see *Yeknath v. Gulab*, 1 Bom H C 85; *Ahmedhee v. Dabu*, 18 WR 287; *Apaji Patir v. Apa*, 26 B 735]. But on account of the looseness generally found in pleadings in Indian courts, it was held that the strict rule that averments not traversed must be taken to be admitted was not applicable in all cases to pleadings in India [see *Anund Chowdhrani v. Sheeb Ch*, 9 MLA 287, 301; *Deo Nundun v. Meghu*, 11 CWN 225; *Mulji v. Anupram*, 7 Bom HC 136; *Hameedoollah v. Gendee*, 17 WR 171; *Natha Singh v. Jodha Singh*, 6 A 406; *Bhoobun v. Ramdoyal*, 14 WR 55; *Sadhu v. Ramanoograha*, 9 WR 83; *Azimanilla v. Kayinari*, 1914 MWN 883]. In spite of the new rules of pleading in the C P Code of 1908 many imperfections and omissions are to be frequently found in the pleadings drawn up by lawyers, and the strict rule should therefore even now be applied with caution [; see *Manmatha v. Rakhal*, A 1933 C 215; *Mahindra v. Surajmal*, 45 CWN 17].

The new rules in the C P Code of 1908 are in force for more than four decades and looseness in pleadings will, it is considered, not be tolerated for all time. In a case, MEARS CJ, had occasion to comment adversely on the manner in which cases are conducted in mofussil. He observed: "Every one who practices in this court will agree that throughout the last two years there has never been one week in which counsel on one side or the other, has not admitted himself to be in difficulty, by reason of the way in which the case was launched or conducted in the court below, and the complaint is always based, not upon some mere technicality but upon a matter of real importance and substance, such as some grave defect of pleading failure to obtain essential particulars under Or 6, rr 4, 5, the omission to call the plaintiff or defendant or some necessary witness or the deliberate withholding of documents or books of account" [*Shibdayal v. Jagannath*, 68 IC 812: 20 ALJ 674 FB].

The doctrine of implied admission in s 58 can only be invoked when a party on whom the burden lies, fails to allege facts in support of it or when the facts specifically alleged by a party in support of its plea are not denied by the other party [*Manmohan v. Bahauddin*, A 1957 A 575]. The assertions made in certain paragraphs of the plaint were specifically described in the written statement as 'entirely false' made with ulterior motive. In such a situation, it could not be said that the allegation of facts as made in those paragraphs of the plaint were not denied specifically or by necessary implication, or not stated to be not admitted in the

pleadings of the defendants. [*Hirdaya Singh v. Panchanand Sharma*, A 1985 NOC 32 (Pat)]. In the absence of any denial in the written statement, the genuineness and the validity of the will set up by the plaintiff must be deemed to have been admitted by the law of pleadings. [*Thayullathil Kunhikannan v. Thayullathil Kalyani*, A 1990 Ker 226, 233]. The admission of signature in a letter addressed to the Income Tax Officer, wherein the fact of execution of a will by the deceased was mentioned, cannot be extended to show that the execution of the will has been admitted. [*Purna Bai v. Ranchooddas*, A 1992 AP 270, 279].

The general rule with regard to admissions is, that where a person uses the admission of another as evidence, the whole statement must be put in. He cannot put in half and exclude the other half. The judges, however, are not bound to believe the whole statement [v *ante* s 17. See ss 17-18 *ante*, where the subject has been fully discussed].

Difference Between Admission in Pleadings and Judicial Admission.—A pleading may by confessing a fact place it beyond the range either of needing evidence or of permitting dispute; and an omission to plead in denial may have the same consequence. The distinction between a pleading and a judicial admission seems to consist in the circumstances that the latter may be made after issues joined or trial begun, and may thus counteract or diminish the effect of a pleading; that it is not a part of the required statements defining the parties' issues; and that it is therefore not subject to the rules of time, form, amendment and the like, which govern the allegations of pleading [Wig s 2589]. As to admissions in pleadings, An admission in pleading can also be used on any subsequent occasion. [*S. Waryam Singh Dngal v. Smt. Savithri Devi*, A 1984 NOC 188 (Delhi)]. Defendant admitting in written statement that his father married a widow according to "Henga" custom of marriage cannot be allowed to contend that [*Rasamani v. Patrabala*, A 1981 Gau 42] See *ante* s 17.

Proviso.—It exactly corresponds to the *proviso* to r 5 of Or 8 C P Code, 1908. The *proviso* gives full discretion to the court, to require the facts admitted to be proved otherwise than by such admissions. Where the court is satisfied that an admission has been obtained by fraud, or that there is other good and sufficient cause, it will in the exercise of the discretion given by this *proviso* require the fact to be proved otherwise than by such admission [*Oriental Life A Co v. Narasinha*, 25 M 183, 205: 11 MLJ 379].

A failure by the defendant to deny an allegation in the plaint, is not conclusive, for under the proviso, the court may still call upon the plaintiff to prove his allegations [*Satyesh v. Monmohini*, 19 CLJ 518]. In the matter of a petition for divorce by the husband on the ground of adultery of the wife, this *proviso* will enable the court to insist on proof even when adultery is admitted. [*Wenmanard Marak v. Smit Pirby Momin*, A 1988 Gauhati 50, 52 (SB): (1988) 2 Hindu LR 93]. An admission by a pleader for the purpose of dispensing with further proof of disputed facts is binding on the party, unless circumstances are shown which would justify the court in requiring proof under the proviso [*Seth Vishindas v. Municipality of Hyderabad*, 34 IC 494: 9 SLR 220]. In spite of the law of non-traverse, in view of the *proviso* to Or 8, r 5 CPC and to s 58, the court may in its discretion require any fact so admitted to be proved (In this case it was held to be duty of the court to determine the matter) [*Biswanath v. Debiprosad*, A 1978 C 533 (*Satyes v. Monmohini*, A 1914 C 842 **folld**)]. Both under s 58 and Or 8 r 5, the court has a discretion to require proof of due attestation of a mortgage-bond notwithstanding an admission of execution by the defendant in his written statement [*Muniappa v. Vellaichami*, 1918 MWN 853].