

CHAPTER 21
EVIDENCE

Ordinances: AN ORDINANCE TO CONSOLIDATE, DEFINE, AND AMEND THE LAW OF EVIDENCE.

Nos. 14 of 1895,
15 of 1904,
16 of 1925,
25 of 1927,
18 of 1928,
1 of 1946.

[1st January, 1896.]

Act
Nos. 3 of 1961.

PART I
RELEVANCY OF FACTS
CHAPTER 1
PRELIMINARY

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Ordinance relating to the relevancy of facts. Relevant.

Short title. **1.** This Ordinance may be cited as the Evidence Ordinance.

" Facts in issue " means and includes- Facts in issue.

Extent. **2.** (1) This Ordinance shall apply to all judicial proceedings in or before any court other than courts-martial, but not to proceedings before an arbitrator.

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Repeal. (2) All rules of evidence not contained in any written law so far as such rules are inconsistent with any of the provisions of this Ordinance, are hereby repealed.

Explanation. -Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any court records an issue of fact, the fact to be asserted or denied, in the answer to such issue, is a fact in issue,

Interpretation. **3.** In this Ordinance the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

Illustrations

A is accused of the murder of B. At his trial the following facts may be in issue:-

" court " includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

That A caused B's death.

That A intended to cause B's death.

That A had received grave and sudden provocation from B.

" fact " means and includes
(a) any thing, state of things, or relation of things capable of being perceived by the senses;

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

(b) any mental condition of which any person is conscious.

" Document " means any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. Document.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

Illustrations

A writing is a document.

Words printed, lithographed, or photographed are documents.

A map or plan is a document.

An inscription on a metal plate or stone is a document.

A caricature is a document.

Evidence. " Evidence " means and includes-

(a) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry ; such statements are called oral evidence ;

(b) all documents produced for the inspection of the court ; such documents are called documentary evidence.

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

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

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

May presume. 4. (1) Whenever it is provided by this Ordinance that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

Shall presume. (2) Whenever it is directed by this Ordinance that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

Conclusive proof. (3) When one fact is declared by this Ordinance to be conclusive proof of another, the court shall on proof of the one fact regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II

OF THE RELEVANCY OF FACTS

Evidence may be given of facts in issue and relevant facts. 5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant and of no others.

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

Illustrations

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

At A's trial the following facts are in issue :-

- A's beating B with the club ;
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(b) A, a party to a suit, does not comply with a notice given by B, the other party, to produce for B's inspection a document referred to in A's pleadings. This section does not enable A to put such document in evidence on his behalf in such suit. otherwise than in accordance with the conditions prescribed by section 104 of the Civil Procedure Code.

6. Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

(b) A is accused of waging war against the Republic by taking part in an armed insurrection in which property is destroyed, troops are attacked, and jails are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

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

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

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

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

Illustrations

- (a) The question is, whether A robbed B.
The facts that shortly before the robbery B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.
- (b) The question is, whether A murdered B.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.
- (c) The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive or preparation.

8. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Previous or subsequent conduct.

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.-The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Ordinance.

Explanation 2. -When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant

Illustrations

- (a) A is tried for the murder of B.
The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.
- (b) A sues B upon an instrument for the payment of money. B denies the making of the instrument.
The fact that at the time when the instrument was alleged to be made B required money for a particular purpose, is relevant.
- (c) A is tried for the murder of B by poison.
The fact that before the death of B, A procured poison similar to that which was administered to B, is relevant.
- (d) The question is, whether a certain document is the will of A.

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

(e) A is accused of a crime.

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

(f) The question is, whether A robbed B.

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

(g) The question is, whether A owes B Rs. 10,000.

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

(h) The question is whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

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

(j) The question is, whether A was ravished.

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

The fact that, without making a complaint, she said that she had been ravished, is not relevant under this section, though it may be relevant as a dying declaration under section 32, subsection (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

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

The fact that he said he had been robbed without making any complaint, is not relevant under this section though it may be relevant under section 32, subsection (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts.

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

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime. The fact that soon after the commission of the crime A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

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

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

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, " I am leaving you because B has made me a better offer ". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, " A says you are to hide this ". B's statement is relevant, as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of such person's in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Things said or done by conspirator in reference to common intention.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Republic.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Colombo for a like object, D persuaded persons to join the conspiracy in Kandy, E published writings advocating the object in view at Galle, and F transmitted from Kalutara to G at Negombo the money which C had collected at Colombo, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy and to prove A's complicity in it, although he may have been ignorant of all of them. and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. Facts not otherwise relevant are relevant-

When facts not otherwise relevant are relevant.

(a) if they are inconsistent with any fact in issue or relevant fact;

(b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is, whether A committed a crime at Colombo on a certain day.

The fact that on that day A was at Galle is relevant. The fact that near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

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

In suits for damages facts tending to enable court to determine amount are relevant.

Facts relevant when right or custom is in question.

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

13. Where the question is as to the existence of any right or custom the following facts are relevant :-

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence ;
- (b) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration

The question is, whether A has a right to a fishery. A deed conferring the Fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the Fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

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

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

Explanation 1.-A. fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2. -But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

- (a) A n accuaed of receiving stolen goods knowing them to be stolen. It is proved that he was in poMettion of a particular itolco/article. Toe fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that be knew each and all of the articles of which he was in powaion to be stolen.
- (6) A is accused of fraudulently delivering to another penoo a counterfeit coin which, at the time when he delivered it, be knew to be counterfeit

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

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant

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

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

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

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

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

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

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

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

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

(g) A is sued by B for the price of work done by B upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C.

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

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when be appropriated it, he believed in good faith that the real owner could not be found. The fact that public notice of the locs of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and

wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B—Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

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

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

(l) The question is, whether A's death was caused by poison.

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

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

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

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant—

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant

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

Illustrations

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

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

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

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

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

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

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

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

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

Existence of course of business, when relevant.

Illustrations

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

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

(b) The question is, whether a particular letter reached A.

The facts that it was posted in due course and was not returned through the dead letter office are relevant.

ADMISSIONS AND CONFESSIONS

17. (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

Admissions defined.

(2) A confession is an admission made at any time by a person accused of an offence stating or suggesting the inference that he committed that offence.

Confession defined.

18. (1) Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission by party to proceeding, or his agent;

Facts bearing on question whether act was accidental or intentional.

by suitor in representative character;

(2) Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

(3) Statements made by-

by party interested in subject matter;

(a) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested; or

by person from whom interest derived.

(b) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations

- A undertakes to collect rents for B.
- B sues A for not collecting rent due from C to B.
- A denies that rent was due from C to B,
- A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute, are admissions.

Illustration

- The question is, whether a horse sold by A to B is sound.
- A says to B, " Go and ask C; C knows all about it".
- C's statement is an admission.

Proof of admissions against the person who makes them or his representative in interest.

21. Admissions are relevant and may be proved as against the person who makes them. or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :-

(a) an admission may be proved by or on behalf of the person making it when

it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32 ;

(b) an admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable;

(c) an admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties if he were dead, under section 32, subsection (2).

(c) A is accused of a crime committed by him at Colombo.

He produces a letter written by himself and dated at Jaffna on that day, and bearing the Jaffna postmark of that day.

The statement in the date of the letter is admissible, because if A were dead it would be admissible under section 32, subsection (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin, which he knew to be counterfeit.

He often to prove that he asked a skilful person to examine the coin, — be doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such documents under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Explanation-Nothing in this section shall be taken to exempt any attorney-at-law from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat, or promise irrelevant.

24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat, or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession made to a police officer not to be proved against an accused person.

25. (1) No confession made to a police officer shall be proved as against a person accused of any offence.

Confession made to a forest officer or an excise officer not to be proved against person making confession.

(2) No confession made to a forest officer with respect to an act made punishable under the Forest Ordinance, or to an excise officer with respect to an act made punishable under the Excise Ordinance, shall be proved as against any person making such confession.

26. (1) No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession made by any person while in custody of a police officer not to be proved against him.

(2) No confession made by any person in respect of an act made punishable under the Forest Ordinance, or the Excise Ordinance, whilst such person is in the custody of a forest officer or an excise officer, respectively, shall be proved as against such person, unless such confession is made in the immediate presence of a Magistrate.

Confession made by any person while in the custody of a forest officer or an excise officer not to be proved against him.

27. (1) Provided that, when any fact is deposited to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

How much of information received from accused may be proved.

(2) Subsection (1) shall also apply *mutatis mutandis*, in the case of information received from a person accused of any act made punishable under the Forest Ordinance, or the Excise Ordinance, when such person is in the custody of a forest officer or an excise officer, respectively.

27A. In sections 25, 26, and 27, the terms "forest officer" and "excise officer" shall have the same meanings as are respectively assigned to those terms in the Forest Ordinance, and the Excise Ordinance.

Meaning of terms "forest officer" and "excise officer".

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the court, been fully removed, it is relevant.

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

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

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

Confession made by one of several persons tried jointly for the same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court shall not take into consideration such confession as against such other person.

Explanation.—"Offence" as used in this section includes the abetment of or attempt to commit the offence.

Illustration

A and B are jointly tried for the murder of C. It is proved that A said, "B and I murdered C". The court shall not consider the effect of this confession as against B.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases :-

When it relates to cause of death;

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

or is made in course of business:

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money,

goods, securities, or property of any kind ; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or against interest of maker;

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

or gives opinion as to public right or custom or matters of general interest;

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

or relates to existence of relationship;

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

or is made in will or deed relating to family affairs;

(7) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13 (a);

or in document relating to transaction mentioned in section 13 (a);

or is made by several persons, and expresses feelings relevant to matter in question.

- (8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

- (a) The question is, whether A was murdered by B, or whether A died of injuries received in a transaction in the course of which she was ravished.

The question is, whether she was ravished by B ; or

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

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

- (b) The question is as to the date of A's birth.

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

- (c) The question is, whether A was in Colombo on a given day.

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

- (d) The question is, whether a ship sailed from Galle harbour on a given day.

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

- (e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to B saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

- (f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

- (g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

- (h) The question is, what was the cause of the wreck of a ship.

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

- (i) The question is, whether a given road is a public way.

A statement by A, a deceased grama seva niladnan, that the road was public, is a relevant fact.

- (j) The question is, what was the price of grain on a certain day in a particular market

A statement of the price made by a deceased broker in the ordinary course of business is a relevant fact.

- (k) The question to, whether A, who u dead, was the father of B.

A statement by A that B wqs his son is a relevant fact

- (l) The question is. what was the date of the birth of A.

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

- (m) The question is, whether, and when, A and B were married.

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

- (n) A sues B for a libel expressed in a printed caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character.

The remarks of a crowd of spectators on these point! may be proved.

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

Evidence in a former judicial proceeding, when relevant

Provided-

- (a) that the proceeding was between the same parties or their representatives in interest;

- (b) that the adverse party in the first proceeding had the right and opportunity to cross-examine;

- (c) that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.-A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

HOW MUCH OF A STATEMENT IS TO BE PROVED

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant, whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for Rs. 1,000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

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

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

Maps, charts, and plans, when relevant.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

Statement as to fact of public nature contained in any enactment or notification, when relevant.

37. When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it made in a recital contained in any enactment of Sri Lanka or in the legislation of any foreign country or in any proclamation or notification of the Government of Sri Lanka, appearing in any Gazette of Sri Lanka, or in any proclamation or notification of the Government of any foreign country, appearing in any official publication of the Government of such foreign country, is a relevant fact.

Statements in law books, when relevant.

38. When the court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the courts of such country contained in a book purporting to be a report of such rulings, is relevant.

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

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

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

40. The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is, whether such court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. (1) A final judgment, order, or decree of a competent court, in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant, when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of judgements in probate, &c., jurisdiction.

(2) Such judgment, or order, or decree is conclusive proof-

(a) that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation ;

(b) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order, or decree declares it to have accrued to that person ;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree declares that it had been or should be his property.

(e) A is tried for the murder of B. The fact that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8, as showing the motive for the fact in issue.

When judgments, &c., other than those mentioned in section 41 are relevant.

42. Judgments, orders, or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgments, orders, or decrees are not conclusive proof of that which they state,

44. Any party to a suit or other proceeding may show that any judgment, order, or decree which is relevant under sections 40, 41, or 42 and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

Fraud, collusion, Or incompetency of court may be proved.

Illustration

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

The existence of a decree in favour of the defendant in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

OPINIONS OF THIRD PERSONS WHEN RELEVANT

45. When the court has to form an opinion as to foreign law, or of science, or art, or as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, the opinions upon that point of persons specially skilled in such foreign law, science, or art, or in questions as to identity or genuineness of handwriting or finger impressions, palm impressions or foot impressions, are relevant facts,

Opinions of experts.

Such persons are called experts.

When judgments, &c., other than those mentioned in sections 40, 41, and 42, are relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree is a fact in issue, or is relevant under some other provision of this Ordinance.

Illustrations

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

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

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

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

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

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

Illustrations

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

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

(b) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C the judgment against B is irrelevant.

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

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

(d) A is charged with theft and with having been previously convicted of theft.

The previous conviction is relevant as a fact in issue.

46. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Facts bearing upon opinions of experts.

Illustrations

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

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

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

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

Opinion as to handwriting.

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

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

Illustration

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

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

The opinion of B, C, and D on the question, whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write,

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

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

Explanation. -The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustrations

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

49. When the court has to form an Opinion as to- Opinion as to usages, tenets &c., when relevant.

(a) the usages and tenets of any body of men or family;

(b) the constitution and government of any religious or charitable foundation; or

(c) the meaning of words or terms used in particular districts or by particular classes of people ;

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

50. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Opinion on relationship, when relevant.

Provided that such opinion shall not be sufficient to prove a marriage in proceedings for divorce, or in prosecutions under sections 362B, 362c, and 362D of the Penal Code.

Illustrations

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

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

(b) The question is, whether A was the legitimate son of B.

The fact that A was always treated as such by members of the family is relevant.

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

Illustration

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

CHARACTER WHEN RELEVANT

In civil cases character to prove conduct imputed, irrelevant.

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

In criminal cases previous good character relevant.

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

Previous bad character irrelevant, except when evidence of good character is given.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.-This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation.-A previous conviction is relevant as evidence of bad character in such case.

Character as affecting damages.

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

Explanation.-In sections 52, 53, 54, and 55 the word "character" includes both reputation and disposition ; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

No proof required of fact judicially noticed.

56. No fact of which the court with take judicial notice need be proved.

Facts of which court must take judicial notice.

57. The court shall take judicial notice of the following facts:-

- (1) all laws, or rules having the force of law, now or heretofore in force or hereafter to be in force in any part of Sri Lanka ;
- (2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed ;

- (3) articles of war for the Sri Lanka Army, Navy or Air Force ;
- (4) the course of proceedings of the Legislature of Sri Lanka ;
- (5) the Public Seal of the Republic of Sri Lanka ;
- (6) the seals of all the courts of Sri Lanka and of notaries public ; and all seals which any person is authorized to use by any enactment for the time being in force of the Legislature of Sri Lanka or of the Legislature of any foreign country ;
- (7) the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of Sri Lanka, if the fact of their appointment to such office is notified in the Gazette ;
- (8) the existence, title, and national flag of every State or Sovereign recognized by the Republic of Sri Lanka ;
- (9) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world, the meaning of Sinhala, Tamil or English words, and public festivals, fasts, and holidays notified in the Gazette ;
- (10) the territorial limits of the Democratic Socialist Republic of Sri Lanka and of its divisions ;
- (11) the commencement, continuance, and termination of hostilities between the Republic of Sri Lanka and any foreign State or body of persons ;
- (12) the names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all attorneys-at-law, and other persons authorized by law to appear or act before it ;

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- (13) the rule of the road on land or at sea;
- (14) all other matters of which it is directed by any enactment to take notice.

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

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

Facts admitted need not be proved.

58. 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.

CHAPTER IV

OF ORAL EVIDENCE

Facts may be proved by oral evidence.

9. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct

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

- (1) if it refers to a fact which could be seen it must be the evidence of a witness who says he saw that fact;
- (2) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;

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

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

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable :

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

CHAPTER V

OF DOCUMENTARY EVIDENCE

61. The contents of documents may be proved either by primary or by secondary evidence.

Proof of contents of documents.

62. Primary evidence means the document itself produced for the inspection of the court.

Primary evidence.

Explanation 1.-Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.-Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but where they are all copies of a common original, they are not primary evidence of the contents of the original-

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :-

Cases in which secondary evidence relating to documents may be given.

(1) When the original is shown or appears to be in the possession or power-

(i) of the person against whom the document is sought to be proved, or

(ii) of any person out of reach of, or not subject to, the process of the court, or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(2) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is sought to be proved, or by his representative in interest;

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

(4) when the original is of such a nature as not to be easily movable ;

(5) when the original is a public document within the meaning of section 74 ;

(6) when the original is a document of which a certified copy is permitted by this Ordinance or by any other law in force in Sri Lanka to be given in evidence ;

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

Secondary evidence.

63. Secondary evidence means and includes-

(1) certified copies given under the provisions hereinafter contained ;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence,

64. Documents must be proved by primary evidence, except in the cases hereinafter mentioned.

In cases (1), (3), and (4), any secondary evidence of the contents of the document is admissible.

In case (2), the written admission is admissible.

In case (5) or (6), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (7), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, subsection (1), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney-at-law, such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it :-

- (1) when the document to be proved is itself a notice;
- (2) when from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or by force;
- (4) when the adverse party or his agent has the original in court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the court.

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

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

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

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

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

Proof where no attesting witness found.

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

Admission of execution by party to attested document.

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

Proof when attesting witness denies the execution.

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

Proof of document not required by law to be attested.

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

Comparison of handwriting.

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

(3) This section applies also, with any necessary modification, to finger impressions, palm impressions and foot impressions.

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

PUBLIC DOCUMENTS

74. The following documents are public documents :-

- (a) documents forming the acts, or records of the acts-
 - (i) of the Sovereign authority ;
 - (ii) of official bodies and tribunals; and
 - (iii) of public officers, legislative, judicial, and executive, whether of Sri Lanka or of a foreign country ;
- (b) public records, kept in Sri Lanka, of private documents ;
- (c) plans, surveys, or maps purporting to be signed by the Surveyor-General or officer acting on his behalf.

75. All other documents are private.

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

Explanation.-Any officer who, by the ordinary course of official duty, is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

78. The following public documents may be proved as follows :- Proof of other documents.

- (1) acts, orders, or notifications of the Government of Sri Lanka or of any of its departments -
 - (i) by the records of the departments certified by the heads of those departments respectively, or by the Secretary to the Ministry or a Deputy or an Assistant Secretary ;
 - (ii) by any document purporting to be printed by order of the Government;
- (2) the proceedings of the Legislature -
 - (i) by the minutes of that body, or
 - (ii) by published enactments or abstracts, or
 - (iii) by copies purporting to be printed by order of Government;
- (3) proclamations, orders, or regulations issued by any department of Government -
 - by copies or extracts contained in the Gazette of Sri Lanka ;
- (4) the acts of the executive or the proceedings of the legislature of a foreign country -
 - (i) by journals published by their authority, or commonly received in that country as such. or
 - (ii) by a copy certified under the seal of the country or Sovereign, or
 - (iii) by a recognition thereof in some public enactment of Sri Lanka;

Public documents.

Private documents.

Certified copies of public documents.

(5) the proceedings of a municipal body in Sri Lanka -

- (i) by a copy of such proceedings certified by the legal keeper thereof, or
- (ii) by a printed book purporting to be published by the authority of such body ;

(6) public documents of any other class in a foreign country -

- (i) by the original, or
- (ii) by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of any Ambassador, High Commissioner, or other diplomatic agent of Sri Lanka, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS

Presumption as to genuineness of certified copies.

79. (1) The court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in Sri Lanka, to be genuine :

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper,

* See section 90 Explanation.

80. Whenever any document is produced before any court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a Judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the court shall presume ~

- (i) that the document is genuine ;
- (ii) that any statements, as to the circumstances under which it was taken, purporting to be made by the persons signing it, are true; and
- (iii) that such evidence, statement, or confession was duly taken.

81. The court shall presume the genuineness of every document purporting to be the Gazette of Ceylon or Sri Lanka, or purporting to be any similar publication of any foreign country, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.*

Presumption on production of record of evidence.

Presumption as to Gazettes.

82. When any document is produced before any court purporting to be a document which, by the law in force for the time being in any foreign country, would be admissible in proof of any particular in any Court of Justice in that country, without proof of the seal, or stamp, or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume -

- (a) that such seal, stamp, or signature is genuine, and
- (b) that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in that foreign country.

Presumption as to document admissible in any foreign country without proof of seal or signature.

Presumption as to maps or plans made or signed by Surveyor-General.

83. The court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor-General or officer acting on his behalf were duly made by his authority and are accurate ; but maps, plans, or surveys not so signed must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country and of every book purporting to contain reports of decisions of the courts of such country.

Presumption as to powers of attorney.

85. The court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary public, a person duly authorized by law in that behalf, or any court. Judge, Magistrate, an Ambassador or High Commissioner or other diplomatic representative of Sri Lanka, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The court may presume that any document purporting to be a certified copy of any judicial record of any country other than the Republic of Sri Lanka is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Republic of Sri Lanka in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books and maps.

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

Presumption as to telegraphic messages.

88. The court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any

presumption as to the person by whom such message was delivered for transmission.

89. The court shall presume that every document called for and not produced, after notice to produce given under section 66, was attested, stamped, and executed in the manner required by law.

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

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

Presumption as to document- thirty years old.

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

This explanation applies also to section 81.

Illustrations

- (a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it- The custody is proper.
- (b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.
- (c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI

BANKERS' BOOKS

90A. In this Chapter, unless there is interpretation. something repugnant in the subject or context-

"bank " and " banker " mean-

- (i) any company carrying on the business of bankers,

- (ii) any partnership or individual to whose books the provisions of this Chapter shall have been extended as hereinafter provided.
- (iii) any savings bank. National Savings Bank, or money order office ;

"bankers' books " include ledgers, day books, cash books, account books. and all other books used in the ordinary business of a bank ;

" certified copy " means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business ; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

"company " means a company incorporated or registered by or under any enactment relating to companies from time to time in force in Sri Lanka, and includes an "exempted company " or a company recognized as an "existing company " within the meaning of the Companies (Special Provisions) Law.

Power to extend provision of Chapter.

90B. The Minister may from time to time, by notification in the Gazette, extend the provisions of this Chapter to the books of any partnership or individual carrying on the business of bankers within Sri Lanka, and keeping a set of not less than three ordinary account books, namely, a cash book, a day book or journal, and a ledger, and may in like manner rescind any such notification.

Mode of proof of entries in banker's books.

90C. Subject to the provisions of this Chapter a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be

admitted as evidence of the matters. transactions, and accounts therein recorded in every case where, and to the same extent as. the original entry itself is now by law admissible, but not further or otherwise.

90D. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Chapter, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of the court, or a Judge, made for special cause,

Case in which officer of bank not compellable to produce books.

90E. (1) On the application of any party to a legal proceeding, the court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

Inspection of books by order of court or Judge.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the court or Judge shall otherwise direct.

(3) The bank may at any time, before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order,

90F. (1) The costs of any application to the court or a Judge under or for the purposes of this Chapter, and the costs of anything done or to be done under an order of the court or a Judge made under or for the purposes of this Chapter, shall be in the discretion of the court or Judge, who

Costs.

may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank-

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any court of civil judicature designated in the order, be executed by such court as if the order were a decree for money passed by itself:

Provided that nothing in this subsection shall be construed to derogate from any power which the court or judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

Explanation 7.-This section applies equally to cases in which the contracts, grants or dispositions of properly referred to are contained in one document, and to cases in which they are contained in more documents than one.

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

Explanation 11.-The statement in any document whatever of a fact other than the facts referred to in this section shall not preclude the admission of oral evidence as to the same fact.

Illustrations

- (a) If a contract be contained in several letters, all the letters in which it is contained must be proved.
- (b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.
- (c) If a bill of exchange is drawn in a set of three, one only need be proved.
- (d) A contracts in writing with B for the delivery of plumbago upon certain terms. The contract mentions the fact that B had paid A the price of other plumbago contracted for verbally on another occasion-

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

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

Oral evidence is offered of the payment. The evidence is admissible.

CHAPTER VII

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

Evidence of terms of contracts, grants, or other disposition of property reduced to form of document.

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

Exception 1.-When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.-Wills admitted to probate in Sri Lanka may be proved by the probate.

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

Proviso (1). Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law.

Proviso (2). The existence of any separate oral agreement as to any matter on which a document is silent, and which is

not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

Proviso (3). The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property may be proved.

Proviso (4). The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

- (a) A policy of insurance is effected on goods "in ships from Colombo to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.
- (b) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st of March, 1896. The fact that, at the same time, an oral agreement was made that money should not be paid till the 31st of March cannot be proved.
- (c) An estate called the "Rampore estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved
- (d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

- (e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, on the ground that that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.
- (f) A orders goods of B by a letter, in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.
- (g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500", B may prove the verbal warranty.
- (h) A hires lodgings of B, and gives B a card on which is written "Rooms Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.
A hires lodgings of B for a year, and a regularly stamped agreement drawn up by a notary is made between them- it is silent on the subject of board. A may not prove that board was include^:" the terms verbally.
- (i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.
- (j) A and B made a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B. who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is on its face ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects,

Exclusion of evidence to explain or amend ambiguous document.

Illustrations

- (a) A agrees in writing to sell a horse to B for "Rs. 1,000 or Rs. 1,500", Evidence cannot be given to show which price was to be given.
- (b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration

A sells to B by deed "My estate at Negombo containing 100 acres". A has an estate at Negombo containing 100 acres. Evidence may not be given of the fact that the estate meant was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a particular sense.

Illustration

A sells to B by deed "My house in Colombo".

A had no house in Colombo, but it appears that he had a house at Kotte, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Kotte.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B for Rs. 1,000 "My white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Halifax. Evidence may be given of facts showing whether Halifax in Yorkshire or Halifax in Nova Scotia was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration

A agrees to sell to B "My land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters. &c.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

Illustration

A, a sculptor, agrees to sell to B "All my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement, varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

CHAPTER VIII

ENGLISH LAW OF EVIDENCE WHEN IN FORCE

100. Whenever in a judicial proceeding a question of evidence arises not provided for by this Ordinance or by any other law in force in Sri Lanka, such question shall be determined in accordance with the English Law of Evidence for the time being.

What questions to be determined according to English Law of Evidence.

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER IX

OF THE BURDEN OF PROOF

101. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a court to give Judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

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

A must prove the existence of those facts.

On whom burden of proof lies.

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

Illustrations

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

If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A,

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

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

if no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B,

Burden of proof as to particular fact.

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

Illustrations

A prosecutes B for theft, and wishes the court to believe that B admitted the theft to C. A must prove the admission.

B wishes the court to believe that at the time in question, he was elsewhere. He must prove it.

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

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

Illustrations

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

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

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions.

Illustrations

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

The burden of the proof is on A.

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

The burden of proof is on A.

(c) Section 316 of the Penal Code provides that whoever, except in the case provided for by section 326, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 316.

The burden of proving the circumstances bringing the case under section 326 lies on A.

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

Burden of proving fact especially within knowledge of any person.

Illustrations

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

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

Burden of proof as to partnership, tenancy, and agency.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively is on the person who affirms it

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in position of active confidece.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

- (a) The good faith of a sale by a client to an attorney-at-law is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney-at-law.
- (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son- The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that such person is the legitimate son of that man, unless it can be shown that that man had no access to the mother at any time when such person could have been begotten or that he was impotent.

Presumption that a boy under twelve years cannot commit rape.

113. It shall be an irrebuttable presumption of the law that a boy under the age of twelve years is incapable of committing rape-

Court may presume existance of certian facts.

114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.

Illustrations

The court may presume-

- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;
- (b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars ;
- (c) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such thing or state of things usually ceases to exist is still in existence;
- (d) that judicial and official acts have been regularly performed;
- (e) that the common course of business has been followed in particular cases ;
- (f) that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it;
- (g) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;
- (h) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it :-

as to illustration (a)-a shopkeeper has in his till a marked currency note soon after it was stolen, and cannot account for its possession specifically, but is continually receiving currency notes in the course of his business.

as to illustration (b)-A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself.

as to illustration (b)- a crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

as to illustration (c)-it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course.

as to illustration (d)-a judicial act, the regularity of which is in question, was performed under exceptional circumstances.

- as to illustration (e)-the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances.
- as to illustration (f)-a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.
- as to illustration (g)-a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked.
- as to illustration (h)-a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

117. No bailee, agent, or licensee shall be permitted to deny that the bailor, principal, or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted :

Estoppel of bailee, &c.

Provided that any such bailee, agent, or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal, or licensor, or that his bailor, principal, or licensor wrongfully, and without notice to the bailee, agent, or licensee, obtained the goods from a third person, who has claimed them from such bailee, agent, or licensee.

CHAPTER X

EXTOPPEL

Esloppel.

115. When one person has by his declaration, act, or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that a certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale, on the ground that at the time of the sale he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant.

116. No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property ; and

and of licensee of person in possession.

no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

CHAPTER XI

OF WITNESSES

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

who may testify.

Explanation, -A person of unsound mind is not incompetent to testify unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them.

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

Dumb witnesses.

120. (1) In all civil proceedings the parties to the suit and the husband or wife of any party to the suit shall be competent witnesses.

Competent witnesses.

(2) In criminal proceedings against any person the husband or wife of such person respectively shall be a competent witness if called by the accused, but in that case all communications between them shall cease to be privileged.

(3) In criminal proceedings against a husband or wife for any bodily injury or violence inflicted on his or her wife or husband, such wife or husband shall be a competent and compellable witness.

(4) In criminal proceedings against a husband or wife for any attempt to cause any bodily injury or violence on his or her wife or husband, such wife or husband shall be a competent witness for the prosecution.

(5) In criminal proceedings against a husband or wife for an offence punishable under section 362B or 362C of the Penal Code, the wife or husband of the accused shall be a competent witness for the prosecution.

(6) In criminal trials the accused shall be a competent witness in his own behalf, and may give evidence in the same manner and with the like effect and consequences as any other witness, provided that, so far as the cross-examination relates to the credit of the accused, the court may limit the cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon special order of a Judge of a superior court, be compelled to answer any questions as to his own conduct in court as such Judge or Magistrate, or as to anything which came to his knowledge in court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence while he was so acting.

Illustrations

- (a) A, on his trial before the High Court, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of the Judge.
- (b) A is accused before the High Court of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the Judge of the High Court.
- (c) A is accused before the High Court of attempting to murder a police officer whilst on his trial before B, a Magistrate. B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage, by any person to whom he is or has been married, nor shall he be permitted to disclose any such communication unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other, and except in cases mentioned in section 120 (2).

Communications during marriage.

123. No one shall be permitted to produce any unpublished official records relating to any affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit, subject, however, to the control of the Minister.

Evidence as to affairs to State.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

Official communications.

125. No Magistrate or police officer shall be compelled to say whence he got the information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue or the excise laws.

Information as to commission of offences.

Explanation.-"Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue, or in or about the business of any Government farm.

126. (1) No attorney-at-law or notary shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such attorney-at-law or notary by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course of and for the purpose of such employment :

Professional communications.

Provided that nothing in this section shall protect from disclosure -

- (a) any such communication made in furtherance of any illegal purpose;
- (b) any fact observed by any attorney-at-law or notary in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such attorney-at-law or notary was or was not directed to such fact by or on behalf of his client.

Explanation.-The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney-at-law, " I have committed forgery, and I wish you to defend me."

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

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

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

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

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

shall be deemed to have consented to such disclosure only if he questions such attorney-at-law or notary on matters which but for such questions, he would not be at liberty to disclose.

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

Confidential communications with legal advisers.

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

production of witness's title deeds.

(2) No witness who is a party to the suit shall be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production.

By a party to the suit.

(3) No bank shall be compelled to produce the books of such bank in any legal proceeding to which such bank is not a party, except as provided by section 90D.

Bankers' books.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession (except for the purpose of identification), unless such last-mentioned person consents to their production, nor shall any one who is entitled to refuse to produce a document be compelled to give oral evidence of its contents.

Who may not be compelled to produce documents.

127. The provisions of section 126 shall apply to interpreters and the clerks or servants of attorneys-at-law and notaries.

Section 126 to apply to clerks, and servants of attorneys-at-law and notaries.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126, and if any party to a suit or proceeding calls any such attorney-at-law or notary as a witness, he

Privilege not waived by volunteering evidence,

132. (1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the

Witness not excused from answering on ground that answer will criminate.

answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind, or that it will establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of the State or of any other person.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the court is satisfied with such undertaking.

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

Not liable for prosecution for such answer (2) No answer which a witness shall be compelled by the court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Court shall explain subsection (2). (3) Before compelling a witness to answer a question the answer to which will criminate or may tend directly or indirectly to criminate such witness, the court shall explain to the witness the purport of the last preceding subsection.

Accomplice. 133. An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses. 134. No particular number of witnesses shall in any case be required for the proof of any fact.

Illustrations

(a) It is proposed to prove a statement about relevant fact by a person alleged to be dead, which statement is relevant under section 32.

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

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

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

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

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

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

(d) It is proposed to prove a fact (a) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts, (b), (c), and (d), which must be shown to exist before the fact (a) can be regarded as the cause or effect of the fact in issue. The court may either permit (a) to be proved before (b), (c), or (d) is proved, or may require proof of (b), (c), and (d) before permitting proof of (a).

CHAPTER XII

OF THE EXAMINATION OF WITNESSES

Order of production and examination of witness. 135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively and, in the absence of any such law, by the discretion of the court.

Judge to decide as to admissibility of evidence. 136. (1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

137. (1) The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination. Cross-examination.

Re-examination. (3) The examination of a witness subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations. 138. (1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

Examination and cross-examination. (2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Re-examination. (3) The re-examination shall be directed to the explanation of matters referred to in cross-examination and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Further examination and cross-examination. (4) The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so the parties have the right of further cross-examination and re-examination respectively.

Cross-examination of person called to produce a document. 139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is sailed as a witness.

Witnesses to character. 140. Witnesses to character may be cross-examined and re-examined.

Leading questions. 141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When leading questions must not be asked. 142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the court.

143. (1) Leading questions may be asked in cross-examination, subject to the following qualifications :-

- (a) the question must not put into the mouth of the witness the very words which he is to echo back again; and
(b) the question must not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact.

(2) The court in its discretion may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.

144. Any witness may be asked, whilst under examination whether any contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

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

Illustration

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

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

When leading questions may be asked in cross-examination.

Court may prohibit leading questions.

Evidence as to matters in writing.

Cross-examination as to previous statements in writing.

As to proof of previous statement.

(2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it ; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such a statement.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend -

- (a) to test his accuracy, veracity, or credibility;
- (b) to discover who he is, and what is his position in life ; or
- (c) to shake his credit, by injuring his character;

although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto,

Court to decide when witness shall be compelled to answer.

148. (1) If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the court shall have regard to the following considerations :-

- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies ;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(d) the court may, if it sees fit, draw from the witness's refusal to answer the inference that the answer if given would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Question not to be asked without reasonable grounds.

Illustrations

- (a) An attorney-at-law is instructed that an important witness is a thief. This is a reasonable ground for asking the witness whether he is a thief.
- (b) An attorney-at-law is informed by a person in court that an important witness is a professional gambler. The informant, on being questioned by the attorney-at-law, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a professional gambler.
- (c) A witness, of whom nothing whatever is known, is asked at random whether he is a thief. There are here no reasonable grounds for the question.
- (d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking if he is a professional gambler.

150. If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any attorney-at-law, report the circumstances of the case to the Supreme Court or other authority to which such attorney-at-law is subject in the exercise of his profession.

Procedure of court in case of question being asked without reasonable grounds.

Indecent and scandalous questions.

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

Questions intended to insult or annoy.

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

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered" any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him ; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.-If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

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

Illustrations

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

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

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

The evidence is inadmissible.

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

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

The evidence is not admissible.

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

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

Evidence is offered to show that A was on that date at Colombo.

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

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

(d) A is tried for a "rape" on B, B is asked in cross-examination whether she has not had illicit intercourse with C and D. She denies it. Evidence is offered to show that she has had such intercourse with C and D, The evidence is not admissible.

(e) A is asked whether he has not said that he would be revenged on B, against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The court may in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Questions by party to his own witness.

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

impeaching credit of witness.

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(d) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

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

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

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

The evidence is admissible.

(b) A is indicted for the murder of B.
 C says that B, when dying, declared that A had given B the wound of which he died.
 Evidence is offered to show that, on a previous occasion. C said that the wound was not given by A or in his presence.
 The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.
 Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statement of witness may be proved to corroborate later testimony as to same facts.

157. In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, relating to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

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

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

By writing made by another.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document:

When witness may use copy of document to refresh memory.

Provided the court be satisfied that there is sufficient reason for the non-production of the original.

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

By professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered,

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Right of adverse party as to writing used to refresh memory.

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

Production of documents.

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

Court may take evidence to enable it to determine admissibility of document.

(3) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the translator disobeys such direction he shall be held to have committed an offence under section 162 of the Penal Code.

Translation of documents.

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

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

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131 both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, excepting the cases herein before excepted.

Using as evidence, of document production of which was refused on notice.

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

Illustration

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

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper-

Power of jury or assessors to put questions.

Judge's power to put questions or order production.

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

Provided that the judgment must be based upon facts declared by this Ordinance to be relevant and duly proved :

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decisions in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

CHAPTER XIII

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE