stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

[1][(b) *A* is accused of fraudulently delivering to another person a counterfeit coin which at the time when he delivered it, he 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 fact that the dog had previously bitten *X*, *Y* and *Z*, and they had made complaints to *B*, are relevant.

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

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

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

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

The fact 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.

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1. Substituted by Section 1 (2) of the Indian Evidence Act, (1872) Amendment Act 1891 (3 of 1891) for the original Illustration (b).

(g) *A* is sued by *B* for the piece 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 he appropriated it, he believed in good faith that the real owner could not be found.

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

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

(i) *A* is charged with shooting at *B* with intent to kill him. In order to show *A*'s intent, the fact of *A*'s 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 carriage 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. Facts bearing on question whether act was accidental or intentional.—When there is a question whether an act was accidental or intentional, [1][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 fact that other entries made by *A* in the same book are false, and that the false entry is in each case in favour of *A*, are relevant.

1. Inserted by Section 2 of the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891).

(c) *A* is accused of fraudulently delivering to *B* a counterfeit rupee. The question is, whether the delivery of the rupee was accidental. The fact that, soon before or soon after the delivery to *B*, *A* delivered counterfeit rupees to *C*, *D* and *E* are relevant, as showing that delivery to *B* was not accidental.

COMMENTARY

Principle.—The state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at particular time is, but if it can be ascertained, it is as much a fact as anything else.[1] Section 14 makes all facts relevant which go to show a state of mind or body or bodily feeling, when the existence of any such state is in issue or relevant in the case. The Section is based on the principle that facts which tend to prove the existence or non-existence of a mental state are presumptive evidence of the existence or non-existence of that mental state. Section 15 is merely a deduction from the wider and more general provisions of Section 14.

Relevancy of facts showing the existence of a mental condition or state of mind of an accused person which is an element of the offence of which he is charged: Sections 14 and 15.—The rules of relevancy laid down in Section 14 and 15 deal, with the proof of the particular state of mind of the accused persons ('mens rea' of English law), which is a part of the definition of the offence of which he is accused and hence is an ingredient of that offence and a fact in issue in the case. Different mental conditions of which the accused is conscious are mentioned in the definitions of different offences in the Penal Code and other special Acts, and the commission of the offence in question by him can be said to have been established only when it is proved that he committed the criminal act with the particular state of mind which is mentioned in the definition of that offence.

Evidence admissible in proof of a mental or physical condition; Sections 14 and 15.—The Act classifies facts into "physical" facts and "psychological" facts. A physical fact is anything, state of things, or relation of things capable of being perceived by the senses. A psychological fact, on the other hand, is any mental condition of which any person is conscious.[2] In criminal law *mens rea* or criminal intent being an important test of criminality, the state of mind of the accused in doing an act is almost invariably an important ingredient of the offence charged against him. In civil cases, the state of mind of the defendant is generally immaterial, though even here there are some well recognized exceptions where the state of mind of the defendant in doing an act becomes a fact in issue, *e.g.*, in actions founded on fraud, slander, negligence false imprisonment and malicious prosecution. Therefore, in criminal cases generally, and in civil cases occasionally, the Court is required by the rule of substantive law applicable to the case to inquire into and record a finding as to the state of mind of a person in doing an act. Section 14 deals with facts which, according to the English textbooks on Evidence, are admissible in proof of the "mental" or "physical" condition of a person, when the

1. *Edgington* v. *Fitzmaurice*, 29 Ch.D. 483.
2. Section 3; see notes to Section 3.

"mental" or "physical" condition of that person is relevant.[1] In the language of Section 14, facts showing the "existence of any state of mind" or the "existence of any Stateof mind or the "existence of anystate, 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." It will, thus, be seen that the Section is not limited in its application to proof of what are merely "mental" or "psychological" facts, but also applies to proof of a particular class of "physical" facts, inasmuch as a state of body" is a physical fact. Leaving aside this class of physical facts, the subject-matter of Sections 14 and 15 is facts admissible to prove psychological facts.

When the question is as to the existence of a person's state of mind or body or bodily feeling, facts which show the existence of that state of mind, body or bodily feeling are relevant. Section 15 is merely an application of the general rule contained in Section 14,[2] and is, therefore, more, limited in its application.[3] The points of distinction between these two sections are: that whereas Section 15 deals with facts admissible in proof of only one state of mind namely, intention, Section 14 deals not only with facts which are admissible in proof of every state of mind, *e.g.*, knowledge, negligence, ill or good-will, etc., but also with facts which are admissible to prove a particular class of physical facts, namely, the state of body of a person. And further, whereas under Section 15 the evidentiary fact must be such as "formed part of a series of similar occurrences, in each of which the person doing the act was concerned," no such limitation is imposed on the evidentiary fact by Section 14, and every fact is provable under that section that goes to show the state of mind or body which is in question.[4] The assumption underlying Section 15 is that the 'act which formed part of a series of similar occurrences, in each of which the person doing the act was concerned," goes to show that the particular act which is the subject of inquiry, was done with a particular intention or knowledge. It follows, therefore, that every fact which is admissible under Section 14; in fact, it is difficult to conceive of a case where evidence admissible under Section 15 would also be admissible under Section 15 may not be admissible under the general provisions of Section 14. In this view of the matter Section 15 may, in a sense, be considered to be superfluous; but since in the English textbooks on Evidence relevancy of similar fact is treated under a separate head, the section was inserted to provide for the relevancy of such facts specifically.

Guess work is not a fact.—Mental condition is a fact but inference arrived at by a process of ratiocination is not a mental condition and hence not a fact—Guess or calculation of a person is not a fact.[5]

Evidence admitted under Section 14 or Section 15 is admissible in proof of only a mental fact, and is not admissible to prove the other ingredients of the right or liability.—The fundamental point, which must be borne in mind in connection with Section 14 and 15, is that the evidentiary fact, when properly admitted under these sections, is admitted merely to prove a person's state of mind such as intention, knowledge, etc., or a state of body, and that the fact, unless admitted under some other section as well, is no evidence of the other constituent facts of that right or liability which is the

1. *See* Phipson, Evidence, 6th Ed. 61, 145.
2. *E.* v. *Debendra Pershad*, 36 C. 573: 2 IC 801: 10 Cr.LJ 91.
3. See *Budhu Lal* v. *E.*, 46 IC 696: 19 Cr.LJ 776.
4. See *Pritchard* v. *E.*, 112 IC 850: 1928 L. 382: 30 Cr.LJ 18.
5. *Anant* v. *S.A.*, 1967 Bom. 109.

subject of litigation. This aspect of these sections has been explained and emphasized in several important decisions.[1] "Section 14", said Garth, C.J., seems to me to apply to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it.....But I think we must be very careful not to extend the operation of the section to other cases, where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. We have no right to prove that a man committed theft or any other crime on one occasion by showing that he committed similar crimes on other occasions."[2] This interpretation of the section is borne out by the various illustrations appended to the section. Thus, where the question is whether A received certain goods knowing them to be stolen, the fact that A was in possession of many other stolen articles is admissible to show that he knew the articles of which he was in possession to be stolen; but it is not admissible to prove the *factum* of possession of the articles.[3] Illustration (o) makes a previous attempt by the accused to shoot the person murdered evidence of the accused's intention to kill, but not of the act of killing.[4] The possession by a person of a number of other pieces of counterfeit coins is evidence of his knowledge that the particular counterfeit coin which he is charged with having delivered fraudulently was counterfeit; but it is no evidence of his having actually delivered the counterfeit coin with which he is charged.[5] Where the charge against an accused person is that of forgery, his possession of other documents suspected to be forged is no evidence of his having forged the particular document which is the subject-matter of the charge.[6] Evidence of a series of similar occurrences, which are not the offence charged, cannot be used as evidence of forgery, though it may be admissible to prove the intention of the person who forged the document which is the subject-matter of the charge.[7] Similarly, when evidence of similar facts is given under Section 15, the evidence is not admitted to prove either the occurrence of the main fact or the identity of its author but merely to show the state of mind of the party with regard to such fact.[8] Therefore, where the mental state of a person, or the state of his body or bodily feeling, is not relevant, neither Section 14 nor Section 15 can have any application.[9] Thus, in determining whether certain words used by a person contain an innuendo, the evidence of the writer is irrelevant on this question, which depends on the meaning which the words would be understood by ordinary persons to bear, and not whether the respondent intended them to bear that meaning.[10]

1. *E.* v. *Vyapoory Moodeliar*, 6 C 655; see *E.* v. *Shivkali*, IDR 1944 A 758; *Goma Rama* v. *E.*, 1945 B 152; *Gandhi* v. *E.* 1941 R 324; *Reg.* v. *Parbhudas Ambaram, etc.*, 11 Bom. H.C. 90; *E.* v. *Debendra Pershad*, 36 C 573: 2 IC 601: 10 Cr.LJ 91; *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 CrLJ 497; *Krishna Govinda Pal* v. *E.*, 43 C 783: 33 IC 306: 17 CrLJ 130; *Kashiram* v. *E.*, 73 IC 262: 1923 N 248: 24 CrLJ 566; *Pane M. Vaz* v. *E.*, 83 IC 889: 26 CrLJ 185.
2. *E.* v. *Vyapoory Moodeliar*, 6 C 655; *see* also *Pane M. Vaz* v. *E.*, 83 IC 889: 26 CrLJ 185; *Natha Singh* v. *E.*, 1946 PC 187.
3. *Reg.* v. *Parbhudas Ambaram, etc.*, 11 Bom. H.C. 90.
4. *Reg.* v. *Parbhudas Ambaram, etc.*, 11 Bom. H.C. 90.
5. Illustration (b).
6. *Reg.* v. *Parbhudas Ambaram, etc.*, 11 Bom. H.C. 90, explained in *Q.E.* v. *Nasir Mahomed*, 8 B 223; *Krishna Govinda Pal* v. *E.*, 43 C 783: 33 IC 306: 17 Cr LJ 130.
7. *Krishna Govinda Pal* v. *E.*, 43 C 783: 33 IC 306: 17 Cr LJ 130.
8. *E.* v. *Vyapoory Moodeliar*, 6 C 655; *E.* v. *Debendra Pershad*, 36 C 573: 2 IC 601: 10 Cr.LJ 91; *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr LJ 497; *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr LJ 849 (FB); *Pritchard* v. *E.*, 112 IC 850: 1928 L 382: 30 Cr LJ 18; *Pane M. Vaz* v. *E.*, 83 IC 889: 26 CrLJ 185.
9. *E.* v. *Vyapoory Moodeliar*, 6 C 655; *E.* v. *Abdul Wahid Khan*, 34 A 93: 12 IC 987: 12 Cr LJ 611.
10. *Rt. Hon. Gerald Lord Strickland* v. *Carmelo Mifsud Bonnici*, 1935 PC 34: 153 IC 1.

Where evidence is properly admissible under Section 14 or Section 15, it should ordinarily be admitted only after the main fact has been proved by other evidence.[1]

Evidence in Rebuttal.—Evidence in rebuttal of a very likely and probable defence on the question of intention can be led by the prosecution as part of its case. To anticipate a likely defence and to give evidence in rebuttal of such defence is in substance nothing more than the letting in of evidence by the prosecution of the requisite criminal intention beyond reasonable doubt.[2]

Similar facts, when they constitute a system or design, may become admissible to prove the connection of the accused with the transaction charged.—See notes under this head, *post*.

Sequence and proximity of time between the evidentiary fact and the fact to be proved.—Sections 14 and 15 do not lay down that the evidentiary fact should have taken place before the fact to be proved occurred. According to English law, facts occurring before or after the fact to be proved are admissible provided that they have the requisite evidentiary force, *i.e.*, they show the existence of a relevant state of mind or body;[3] and the same rule has been held to obtain under the Act.[4] From the point of view of admissibility alone, it is immaterial whether the evidentiary fact took place before or after, and how long before or after the fact to be proved, provided that, according to the ordinary rules of reasoning, it is possessed of the requisite evidentiary character. "The section gets rid of all technicalities as to the class of cases in which evidence is admissible, or as to the time within which the fact given as evidence of mental or bodily condition must have occurred. The only point for the provisions is whether the fact can be said to show the existence of the state of mind or body under investigation[5]." In a case, where the charge against the accused was that of uttering a forged note, it was remarked by Lord Ellenborough in admitting evidence of the accused having previously uttered a forged note that the more detached in point of time the previous uttering is, the less relation it will bear to the uttering stated in the indictment and that the distance between the two will affect the weight and not the admissibility of the uttering.[6] A statement made by an accused person immediately after the occurrence of the offence is relevant as showing his state of mind, but where that statement is a repetition of what somebody else said to the accused, the latter statement must be proved by direct oral evidence of a person who heard it.[7]

Direct evidence of mental condition or bodily feeling; declarations in Court.—The state of a man's mind or body is a fact,[8] and may, therefore, like any other fact, be proved by direct evidence or by circumstantial evidence. A witness cannot, in general, testify to the state of mind of another as to which he can have no direct knowledge, but should detail the facts from which the given condition may be inferred. A witness may,

1. *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr. LJ 497; *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr LJ 849 (FB); *Pritchard* v. *E.*, 112 IC 850: 1928 L 382: 30 Cr. LJ 18; Phipson Ev., 6 Ed., 172.
2. *Sardul Singh* v. *State of Bombay*, 1957 Cr LJ 1325.
3. Phipson Ev., 6 Ed., 145.
4. *Raghu Nath Lal* v. *E.*, 46 IC 696: 19 Cr LJ 776; *E.* v. *Debendra Pershad*, 36 C 573: 2 IC 601: 10 Cr.LJ 91; *Pare M. Vaz* v. *E.*, 83 IC 889: 26 Cr LJ 185; *see* also *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr.LJ 497.
5. Cunningham, 121.
6. *R.* v. *Whiley*, 2 Leach's CC 983; see *Q. E. V. Vajiam*, 16 B 414; *Gandhi* v. *E.*, 1941 R 324.
7. *Kartar Singh* v. *E.*, 81 IC 717: 1924 L 733: 25 Cr.LJ 1005.
8. Section 3.

however, testify in Court as to which were his own feelings, motives, intentions, opinions, knowledge and the like at any given time, his testimony being based not on inference but consciousness.[1] But much reliance cannot be placed on such evidence,[2] and in criminal cases such evidence is, generally, not available, as the person who can give direct evidence as to his state of mind or bodily feeling is an accused person in the case and is, therefore, incompetent to testify. Circumstantial evidence must, therefore, be resorted to for the proof of a state of mind or bodily feeling.

Circumstantial evidence of the existence of a mental condition; declarations out of Court.—Whenever the bodily or mental feelings of a person are material to be proved, the usual expression of such feelings made at the time may be given in evidence. Such expressions are original evidence and the question whether they were real or feigned is for the jury to determine.[3] How far such declarations unaccompanied by conduct are admissible is, in England, doubtful, though the trend of opinion is in favour of their admissibility.[4] Under the Act, such declarations are admissible as admissions when they are given in evidence against the declarant. They are also admissible when they are given in evidence in favour of the declarant, if they were made at or about the time when the state of mind or body existed and were accompanied by conduct rendering their falsehood improbable.[5] But their admissibility in favour of a party is doubtful when they are not accompanied by conduct, though it seems that the English rule, which on the whole seems to favour their admissibility, will govern such cases.[6] Not only a party's own statements but those made to him by third persons may be proved for the purpose of showing his state of mind at a given time.[7] A letter written by a woman to her paramour is good evidence of her feelings towards the paramour at the time it was written and is admissible in a divorce proceeding against her.[8]

Declarations as to religious belief.—A declaration in a will by a person as to his religious belief is admissible in evidence under Section 14 read with Section 21(2).[9]

Circumstantial evidence of the existence of a mental condition; prior or subsequent similar occurrences.—Where 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.[10] Section 15 is merely an application of the general rule contained in Section 14;[11] and being more particular, is more appropriate to be applied to cases where the evidence given to show intention or knowledge consists of a series of similar occurrences in each of which the person doing the act was concerned.[12] The principle governing the admission of evidence of similar occurrences is explained by Lord Herschell in *Makin* v. *A.G. of New South Wales*,[13] where he stated the rule as

1. Phipson, Ev., 6th Ed., 61.
2. *Ibid.*
3. Phipson, Ev., 6th Ed., 61-62.
4. See Phipson, Ev., 6th Ed., 62-63.
5. Section 21 (2).
6. See Phipson, Ev., 6th Ed., 63.
7. Wharton, § 254.
8. *Niranjan Das Mohan* v. *Ena Mohan*, 1943 C 146: 47 CWN 251.
9. *Leon Hone Waing* v. *Leon Ah Foon*, 121 IC 796: 1930 R 42.
10. Section 15.
11. *E.* v. *Debendra Pershad*, 36 C 573: 2 IC 601: 10 Cr. LJ 91.
12. *See Raghu Nath Lal* v. *E.*, 46 IC 696: 19 Cr LJ 776.
13. (1894) AC 57; See also *Ramsumiran* v. *E.*, 1942 P 291: *S.M.K. Alvi* v. *Crown*, P.L.D., 1953 FC 189: *Noor*

follows:— "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts, other than those covered by the indictment, for the purpose of leading to the conclusion that he is a person likely, from his criminal conduct or character, to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts, alleged to constitute the crime charged in the indictment, were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

Principle of admissibility of similar acts and its qualifications.—The principle on which evidence of similar acts is admissible is not to show that because the defendant has committed one crime, he would therefore be likely to commit another; but to establish the animus of the act, and rebut by anticipation, the defences of ignorance, accident, mistake or other innocent states of mind.[1]

Later on upon a review of all decisions it was pronounced that the principle laid down by Lord Herschell remains the proper principle without any need of modification; nor was it modified in any later case. His statement of law was analysed and clarified by indicating that when Lord Herschell speaks of evidence of other occasions "to rebut a defence", he does not require a specific line of defence to be set up before evidence is tendered which would overthrow it. So, the prosecution may adduce all proper evidence including evidence of criminal acts other than those charged without waiting for the accused to set up a specific defence calling for rebuttal, and evidence of similar acts, *e.g.* to show intention or to rebut a possible defence of accident may properly be admitted, but, though such evidence is strictly admissible, the judge has a discretion to exclude it, if it merely tends to deepen suspicion against the accused and its prejudicial effect is out of proportion of its probative value.[2]

In India, the rule has been enunciated in very similar terms. "Facts similar to, but not part of, the same transaction as the main fact are not in general, admissible to prove either the occurrence of the main fact or the identity of its author. But evidence of similar facts, although in general inadmissible to prove the main fact or the connection of the parties therewith is receivable, after evidence *aliunde* on these points has been given, to show the state of mind of the parties with regard to such fact; in other words, evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction, or his intent with respect thereto. In general, wherever it is necessary to rebut even by anticipation the defence of accident, mistake or other innocent condition of mind, evidence that the defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given."[3] The other acts sought to be given in evidence under this rule must be of the same specific kind as the act in question and not of a different character; and they must have been proximate in point of time of the act in question.[4] In cases where the conduct alleged

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Mohammad v. *King*, 1949 PC 161.

1. *Makin* v. *A G of New S. Wales*, 1894 AC 57.
2. *Harris* v. *D.P.P.*, 1952, 1 All ER 1044: 1952 AC 694, 707.
3. Per Mookerji J., in *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr LJ 497.
4. *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr LJ 849 (FB); *E.* v. *Harjiwan Valji*, 50 B 174: 98 IC 407: 1926 B 231: 27 Cr LJ 1335; *Pritchard* v. *E.*, 112 IC 850: 1928 L. 382: 30 Cr LJ 18.

and proved against the accused is capable of more than one interpretation, it is permissible for the prosecution to call evidence of similar acts on the part of the accused for the purpose of showing that the conduct is systematic and, therefore, not capable of a favourable interpretation.[1] Where the charge against the accused was that of cheating by falsely representing that he was the *diwan* of an estate and could procure for the complainant appointment to the vacant post of manager to the estate, and of thereby obtaining a sum of money as pretended security deposit, evidence of similar but unconnected transactions with other persons, before and after the date of the offence charged, was admitted not to establish the *factum* of the offence but to prove that the transaction in issue was one of a systematic series of frauds, and that the intention of the accused on the particular occasion in question was dishonest and fraudulent.[2] Where the charge against the accused, is that of cheating by ordering goods with the intention of not paying for them, evidence is admissible that, at or about the date in question, he ordered goods from others and did not pay for them.[3] Evidence of transactions which are not the subject of any charge, but which the witnesses had with the accused during, or shortly before or after the period covered by the dates of the offence charged, are admissible showing an intention.[4] The accused was charged under Section 420, I.P. Code, for having received from the two complainants certain sums of money on false pretences that he had been authorized to recruit unskilled labour for service in Africa, and that on payment of certain fees he would be able to engage them for service in that country. The prosecution alleged that the accused had not been given any such authority to recruit and that the whole of his recruiting business was bogus and fraudulent. The accused admitted having received this money, but alleged that he had done so honestly and not with any fraudulent intention. To rebut this defence the prosecution was allowed to show that in the course of this sham business the accused had defrauded other persons from whom he had received sums of money on false pretences of a similar kind.[5] It should be noted that in the case last cited the evidence was not admitted to prove the receipt of the money from the complainant, but to determine the question whether he had received the money with an honest or fraudulent intention.[6] Where the accused was indicted with having embezzled three specific sums of his employer's money, evidence of the accused having embezzled other sums of money was held admissible to enable the jury to determine the question, should the accused set up such defence, that the omission to enter in the books the items stated in the indictment was the result of a mistake in accounts, and not due to an intention to defraud the employer.[7] Where the accused was prosecuted under Section 209, I.P. Code, for having brought a false claim in a Court of justice against a particular person, evidence relating to other suits brought by the accused against other persons was held admissible under Section 15 for the purpose of showing the *animus* of the accused and a systematic course of fraud or a systematic series of fraudulent claims, and for the purpose of rebutting the defence

1. *Lloyd* v. *E.*, 142 IC 274: 1933 C 136: 31 Cr LJ 294.
2. *E.* v. *Debendra Pershad*. 36 C 573: 2 IC 601: 10 Cr LJ 91.
3. *Mohsinbhai Fateali* v. *E.*, 56 B 204: 137 IC 142: 1932 B 273: 33 Cr LJ 401.
4. *Srinivas Mall Bairoliya* v. *E.*, 1947 PC 135: 1947 ALJ 496: 51 CWN 900: 49 BLR 688: 26 P. 460: 1948 OWN 52: 1947 2 MLJ 328.
5. *Girdhari Lal* v. *E.*, 12 PR 1913 Cr. 6 IC 964: 11 Cr LJ 498.
6. *Pritchand* v. *E.*, 112 IC 850: 1928 L 382: 30 Cr LJ 18.
7. *R.* v. *Richardson*, (1958) 8 Cox CC 448, See also *Pritchard* v. *E.*, 112 IC 850: 1928 L. 382: 30 Cr LJ 18.

that the particular suit was brought in good faith, or any suggestion that it was brought under some mistake or misapprehension. But evidence of other suits instituted by other persons was held inadmissible, as there was no allegation of conspiracy between such persons and the accused nor any suggestion that the particular suit was a part of the larger transaction including the institution of other suits by other person.[1] Evidence of similar but unconnected facts is not admissible to prove a fact in issue. If in a suit for arrears of rent the defendant produces certain receipts to prove payment of the amounts alleged to be due from him and, when they are denied by the plaintiff, does not attempt to prove them, evidence of witnesses that in similar suits filed by them the defendant produced forged receipts by way of defence and never attempted to establish them when they were denied, is not admissible to prove that the receipts are forged.[2]

Evidence of similar occurrences should be given only when evidence as to the main fact and of the defendant's connection with it has been given.—Where evidence of similar facts is tendered under Section 15, proof both of the main fact and of the connection of the party is a condition precedent to the admission of such evidence.[3] In giving such evidence it is always supposed that the doing of an act, as a fact capable of external observation, is first confessed, or that there is sufficient independent testimony on the subject to be laid before the jury. Were the law otherwise, it is obvious that under the pretence of proving the prisoner's state of mind the external act itself could be proved and thus the common law principle excluding evidence of other unconnected crimes would be wholly set aside.[4] The proper course, where evidence of this class is intended to be given, is to exhaust the evidence, both as to the main fact and as to the party's connection with it, before tendering the evidence.[5] Evidence of similar facts, when it is intended to be given to prove intention or knowledge, is receivable only after evidence as to the main fact and as to the connection of the party with it has been given.[6] It has been explained above that evidence of similar facts may be given in anticipation to rebut a defence of mistake, accident or other innocent state of mind.[7] Therefore, if eventually no such defence is set up, the evidence shall have to be left out of consideration.

"Series of similar occurrences": Single occurrence, dissimilar instances.—In order to be admissible under the provisions of Section 15, the other instances must be similar to the instance charged,[8] though they need not be part of the transaction charged.[9] Where A was charged with fraudulently obtaining credit from B for a motor cycle, and evidence was given that some weeks earlier he had obtained a motor cycle from C and a camera from D without paying for them but under different names, as to which no false

1. *Raghu Nath Lal* v. *E.*, 46 IC 696: 19 Cr LJ 776.
2. *Kedar Nath* v. *E.*, 1935 A 521: 157 IC 567: 36 Cr LJ 1199.
3. *R.* v. *Francis*, LR 2 CC 128; *Blake* v. *Albion*, 4 CPD 94; *R.* v. *Baird*, 11 Cr. App. R 186; *Ramsumiran* v. *E.*, 1942 P 291; Phipson, Ev., 6th Ed., 172.
4. *R.* v. *Hall*, 5 NZLR 93, 104 CA, cited in Phipson, Ev., 6th Ed., 172.
5. Phipson, Ev., 6th Ed., 172.
6. *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr LJ 497; *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr.LJ 849 (FB); *Pritchard* v. *E.*, 112 IC 850: 1928 L 382: 30 Cr. LJ 18.
7. See *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr LJ 497; *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr. LJ 849 (FB); *Pritchard* v. *E.*, 112 IC 850: 1928 L 382: 30 Cr. LJ 18.
8. See *E.* v. *Panchu Das*, 47 C 671: 58 IC 929: 21 Cr LJ 849 (FB); *Amritlal Hazra* v. *E.*, 42 C 957: 29 IC 513: 16 Cr LJ 497; *Gandhi* v. *E.*, 1941 R 324.
9. *E.* v. *Debendra Pershad*, 36 C 573: 2 IC 601: 10 Cr LJ 91.

pretence was alleged by C or D, it was held that the evidence was inadmissible to show fraudulent intent, the other acts and methods, not being similar to that charged.[1] Evidence of a single previous act is admissible as a single evidentiary fact may from a series with the fact to be proved. But the previous act must be such as could be made the subject of a criminal charge.[2]

"In each of which the person doing the act was concerned": anonymous instances.—Section 15 makes a series of similar occurrences relevant only if the person doing the act was concerned in each of them and, therefore, the section will not be applicable where the connection of the party charged with the other similar occurrences has not been established. It should not, however, be inferred from this that other similar occurrences will not be admissible in evidence at all without proof of the defendant's connection with them. A series of similar occurrences may be admissible in evidence under Section 14 or Section 11 if a proper inference can be raised from it that the transaction in question was not accidental but intentional. Professor Wigmore thus describes the principle on which similar anonymous instances are admitted in evidence to prove intention:-"It is possible to negative accident or inadvertence and to infer deliberate human intent, without forming any conclusion as to the personality of the doer. Thus, if A's cellar window is found broken, and the pieces falling inside, one morning after a high wind, he may well assume the probability that the force of the wind blew the glass in, but if on the next morning and the next he again finds a window broken in the same way, though no high wind prevailed the night before, he gives up the hypothesis of the force of the wind as the explanation and concludes that a deliberate human effort was the highly probable cause of the breakage, although he can form no notion whatever of the personality of the doer. It is thus clear that innocent intent, accident, inadvertence or the like, may be negatived by anonymous instances of the previous occurrence of the same or a similar thing. After assuming or proving the defendant's connection with the deed charged, then, to negative innocent intent, resort is had to the anonymous instances, and they may have equal force for that purpose, whether they are connected with the defendant or not."[3] Cases of arson furnish a very apt illustration of the type of cases where evidence of other similar instances is admissible to show that the fires were not accidental, even if the defendant's connection or his presence near the place may not be established, and the principle is very lucidly explained by Pollock, C. B. in *R.* v. *Bailey*.[4]

Proof of similar occurrences.—The words of Section 15 are not so wide as to admit hearsay evidence or the evidence of facts alleged to have been discovered by the investigating officer in the course of his investigation and not properly proved.[5]

Explanation 1 to Section 14; evidence must relate not to the state of mind in general but to the state of mind in reference to the particular matter in question.—When a fact is tendered in evidence to show the state of mind of a person, it must tend to show his state of mind in reference to the particular matter in question and not his

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1. *R* v. *Baird*, 84 LJKB 1785 ; See also *R.* v. *Fisher* (1910) 1 KB 149
2. *Gandhi* v. *E.*, 1941 R 324; but see *Shivkali Goswami* v. *E.*, 1944 A 257; *Motilal Roy* v. *Panchbibi Bank*, 50 CWN 457; 1946 C 440 (single subsequent act held inadmissible).
3. Wigmore, § 303.
4. 2 Cox. Cr. 311.
5. *Shewaram* v. *E.*, 1939 S. 209.

state of mind in general.[1] The meaning of Explanation I is "that the state of mind to be proved must be not merely a general tendency or disposition towards conduct of a similar description to that in question but a condition of thought and feeling, having distinct and immediate reference to the matter which is under inquiry. The fact that a man is generally dishonest, generally malicious, generally negligent or criminal in his proceedings, does not bear with sufficient directness on his conduct on any particular occasion, or as any particular matter, to make it safe to take it as a guide in interpreting his conduct; what is wanted is a fact which will throw light on his motives and state of mind with immediate reference to that particular occasion or matter.[2] Thus, where the question is whether a person has been negligent in regard to a particular carriage, the evidence tendered must show that he has been negligent in regard to that particular carriage and not in regard to his carriages in general;[3] and where the question is whether A intentionally murdered B by shooting at him, the evidence must show not that A was in the habit of shooting at people to murder them but that he intended to shoot dead B.[4] If a person is charged with having committed a crime, the evidence must show that he intended to commit that particular crime, and evidence which merely shows an intention to commit crimes in general will not be admissible.[5]

General tendency of accused cannot be proved.—Facts must show the state of mind in reference to a particular matter in question.[6]

Explanation 2 to Section 14; previous conviction is admissible only when the commission of the offence is relevant as showing a state of mind.—The second explanation to Section 14 is merely an explanation and not an extension of the rule enacted by the section. A previous conviction for an offence becomes relevant under the explanation only when the commission of that offence, even if proved otherwise than by conviction, would show some relevant state of mind of the person charged. Therefore, where the commission of an offence does not show any such state of mind, the evidence of the commission of that offence will be inadmissible and proof of the commission of that offence by a previous conviction will be excluded.[7] An illustration of the relevancy of the previous commission of an offence, and, therefore of a conviction for it, is to be found in cases where a gang of persons is prosecuted for being habitually associated for purposes of committing dacoities, robberies or thefts.[8] On a charge of keeping a common gaming house, a previous conviction for the same house is relevant to prove guilty knowledge or intention.[9] In a prosecution under Section 153-A, Indian Penal Code, the previous conviction of the accused for a similar offence can be taken into consideration.[10] The explanation does not, of course, affect the relevancy of the commission of an offence, or of a conviction for it, under some other

1. Expl. 1 to Section 14.
2. Cunningham Ev., 118. See also *R.* v. *Parbhudas*, 11 Bom. HCR 90, per West, J. and *Hollingham* v. *Head*, 4 CBNS 388.
3. Ill. (n) to Section 14.
4. Ill. (o) to Section 14.
5. Ill. (p) to Section 14.
6. *Lakshmandas* v. *S.A.*, 1968 Bom. 400 ; *E.* v. *Allomniya Husan*, 28 B 129, per Jacob, J.
7. See note under the heading "previous commissions of dacoities, thefts, etc., relevant on the charge of forming a gang for habitually committing dacoities and thefts" infra.
8. *E.* v. *Allomiya Husan*, 28 B 129.
9. *Shib Sharma* v. *E.*, 1941 O 310.
10. See notes to Section 54.

section of the Act.[1]

Direct evidence of intention.—Intention being a state of mind can never be directly proved as a fact; it can only be inferred from other facts which are proved.[2] When the question is as to the intention of a person in doing an act, the intention may be proved by the person, whose intention is in question, deposing in Court as to his intention provided he is competent to depose.[3] Thus, the question being as to A's motive in instituting criminal proceedings against B, A, as a witness, may state that his motive was solely to further the ends of justice.[4] Where the question is as to A's domicile, A may testify what his intention was in residing in a particular place.[5] If A sues B for commission on the sale of B's house to C, C may testify that "he thought he should not have bought the house but for A's card to view".[6] But the question of intention ordinarily arises in criminal cases, where the person accused, whose intention is in question, is not a competent witness and, therefore, this mode of direct proof of intention is not generally available. Even where the person whose intention is in question is competent to depose and is available as a witness and is actually examined, little reliance can ordinarily be placed on such testimony.[7] Circumstantial evidence must, therefore, be resorted to in proof of intention.[8] In cases where the evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established.[8-1].

Burden of proof of intention.—When intention is an essential element of an offence, the burden of establishing such intention lies on the prosecution. Ordinarily an act will be presumed to be intentional. But if there are special circumstances on the record of the case which indicate that the act may not be intentional, the burden lies on the prosecution to prove affirmatively that the act was done intentionally, and if in such a case the prosecution fails to discharge that burden, so as to place the question of intention beyond doubt, the benefit of doubt must go to the accused. The accused was a police-inspector in Madras State. He was charged under the Madras District Police Act, 1859, for an offence of wilful desertion from duty without leave for several months. The accused gave an explanation of his conduct. His defence was that his son had disappeared from his home during the period in question, that he had gone in his search to various places in vain, that on receiving information, he went to Hyderabad when he was caught by Razakars and was detained for several months, and that he returned on duty as soon as he was released but found that his name had been struck off from service, whereupon he immediately applied for re-instatement but his application was rejected. It was held that in view of the circumstances explaining the absence of the accused from duty, the burden lay on the prosecution to prove affirmatively that he deserted from duty wilfully and that burden not having been discharged, the accused was entitled to the benefit of doubt and had to be acquitted.[9]

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1. *Sinnasamy* v. *King*, 1951 AC 83, 87.
3. Phipson, Ev., 6th Ed., 61.
4. *Hardwic* v. *Coleman*, 1 F and F 531.
5. *Wilson* v. *W*, LR 2 P & D 435.
6. *Mansell* v. *Clements*, LR 9 CP 139.
7. See Wharton, § 508.
8. See the observation of Mitter, J., in *Mathoora* v. *Ram*, 11 WR 482; *Madan Gopal* v. *State*, 1955 Pepsu 153.

8-1. *Laxmi Raj Shetty* v. *State of Tamil Nadu*, AIR 1988 S.C. 1274 (Para 20).

9. *Biyabani S.A.* v. *Madras*, 1954 Cr. LJ 1665.

Illustration relating to evidence of intention.—Illustrations (e), (f), (g), (h), (i), (j) show different kinds of intention, *viz.*, malice, fraud, good faith, bad faith, etc., illus. (i) is the case of *R.* v. *Voke*, R and R 551 and (j) is that of *R. v. Robinson*, 2 East PC 1110.

Proof of intention.—The state of a man's mind is a question of fact, whether the state of mind of a person should be proved by the evidence of that person himself or by the evidence of another person it is not a question of law. As a matter of abstract law, the state of a man's mind can be proved by evidence other than that of the man himself. But whether that would be enough in any given case, or whether the "best evidence rule" should be applied in strictness in that particular case, must necessarily depend upon this fact.[1]

Circumstantial evidence of intention.—Intention may be proved by a declaration, contemporaneous or subsequent, of the party whose intention is in question where such declaration amounts to an admission against the party.[2] But a declaration of intention by a party can be proved in his own favour only when the declaration formed part of the transaction, in which case it becomes admissible under Section 6 on the *res gestae* principle, or when the declaration explained or accompanied relevant conduct;[3] or when it was made at or about the time when that intention existed and was accompanied by conduct rendering the falsehood of the declaration highly improbable.[4] How far bare declarations of intention which are not admissible under the above rules may be admissible to prove the intention is, in English Law, doubtful,[5] though the trend of opinion both in England and America is in favour of the admissibility of such declarations. Mellish, L.J., remarked in *Sugden* v. *St. Leonards*,[6] "that wherever it is material to prove the state of a person's mind or what was passing in it and what were his intentions, there you may prove what he said, because that is often the only means by which you can find out what his intentions were." The best circumstantial proof of the intention of a person in doing an act is the nature of the act, his conduct and the circumstances surrounding the act.[7] The subsequent conduct of the accused and the surrounding circumstances may be looked at to ascertain his intention in doing the Act.[8] A man is presumed to intend the natural consequences of his act[9] and if a person does an with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.[10] Secrecy,[11] or silence where the circumstances cast a duty on the party to speak,[12] may be circumstantial evidence of a

1. *State of Bombay* v. *Purushottam*, 1952 SCJ 503, 54 Bom. LR 869.
2. Section 21; *See* Ill. (p) to Section 14; See also *Deputy Legal Remembrancer* v. *Karuna Baistobi*, 22 C 164 and *Satindra Nath Sen Gupta* v. *E.*, 111 IC 396: 1928 C 438: 29 Cr LJ 844.
3. Section 8.
4. Section 21.
5. Phipson Ev., 6th Ed., 63.
6. 1 PD 154, 251.
7. See *Deputy Legal Remembrancer* v. *Karuna Baistobi*. 22 C 164; *Khetramani Dasi* v. *E.*, 71 IC 232: 1922 C 539: 24 Cr LJ 104; *Khairullah* v. *Dhanrupmal*, 80 IC 905: 1925 N 82; *Balmokand Ram* v. *Chansaram*, 22 C 391 *Q. E.*, v. *Bholu and another*, 23 A 124.
8. *Ganesh Prasad* v. *E.*, 130 IC 269: 1931 P 52: 32 Cr LJ 478; *Bechai* v. *E.*, 69 IC 159: 1922 A 244: 23 Cr LJ 671.
9. *Sellamuthu Servaigaran* v. *Pallamuthu Karruppen* 35 M 186: 9 IC 152; 12 Cr LJ 30; *Hazrat Gul Khan* v. *E.*, 109 IC 482: 1928 C 430: 29 Cr LJ 546.
10. Ill. (a) to Section 106 *Deputy Legal Remembrancer* v. *Karuna Baistobi*, 22 C 164.
11. *Joshua* v. *Alliance Bank of Simla*, 22 C 185.
12. *Salamat Ali* v. *Budh Singh*, 1 A 303.

fraudulent intention. In a prosecution for criminal trespass, the main ingredient of the offence is the intention to commit an offence, or to intimidate, insult or annoy.[1] Such intention may be inferred from the circumstances attending the act of trespass,[2] and, if insult or annoyance was certain to result from the act, the inference will be justified.[3] Where several accused persons were tried for forgery and abetment of forgery, the fact that they had given evidence supporting the forged document as genuine is admissible to prove their participation in a conspiracy to forge.[4] Though drunkenness is no excuse for a crime, yet, where intention is a material ingredient, evidence may be given that the accused was in such a state of mind as to be incapable of forming the specific intent alleged.[5]

Direct evidence of knowledge.—The admissibility of evidence, direct or circumstantial, to prove knowledge is governed by principles similar to those which govern the admissibility of evidence as to intention.[6] Knowledge may be proved by direct testimony, that is, by the person whose knowledge is in question depositing in Court that he knew the fact.

Circumstantial evidence of knowledge.—Knowledge, like intention, may be proved by a declaration, contemporaneous or subsequent, of the party whose knowledge is in question, where such declaration amounts to an admission against the party.[7] The question of the application of the *res gestae* principle to declarations of knowledge seldom arises in practice, though the application of the principle to such declarations is theoretically possible. When the declaration of knowledge accompanies or explains relevant conduct, it will be admissible under Section 8; and where the declaration is made at or about the time when the given state of knowledge existed, and is accompanied by conduct rendering its falsehood improbable, the declaration will be receivable under Section 21 even in favour of the party making it. "A person's bare assertion, out of Court, that he knew a fact has been rejected to prove that he knew it;[8] but when the existence of the fact is proved *aliunde*, his knowledge thereof may, in general, be shown either by his own declarations manifesting such knowledge, or by those of others conveying notice or information to him.[9] Such statements need not, of course be made contemporaneously with the happening of the fact, nor even at the precise time when the existence of the knowledge is in issue, since previous knowledge may be evidence of subsequent knowledge, though not *vice versa*.[10] Actual knowledge may also be inferred circumstantially, from the fact that a party had reasonable means of knowledge. Thus, possession of, or access to documents containing the information, especially if he has answered or otherwise acted upon them, is evidence of knowledge of the contents of

1. *Mewa Lal* v. *E.*, 44 IC 41: 19 Cr LJ 249; *Damodar Das* v. *E.*, 65 IC 446; 1923 P 56; 23 Cr LJ 94; *E.*, v. *Jagmohan Das*, 75 IC 292 : 1924 O 297: 24 Cr LJ 916; *Safor Ali* v. *E.*, 130 IC 500: 1931 C 264: 32 Cr LJ 568; *Vullappa* v. *Bheema Row*, 41 M 156: 43 IC 578: 19 Cr LJ 162 (FB).
2. *E.* v. *Jagmohan Das*, 75 IC 292: 1924 O 297: 24 Cr LJ 916; *Balmakand Ram* v. *Ghansaram*, 22 C 391.
3. *Bhagwant Rao* v. *Champat Rao*, 81 IC 716; 1925 N 50: 25 Cr LJ 1004; *Chinna Venkatesu* v. *Pedda Kesamma*, 54 M 515: 131 IC 455: 1931 M 231: 32 Cr LJ 749.
4. *Ambar Ali* v. *E.*, 1929 C 539.
5. *R.* v. *Beard*, (1920) AC 479; Phipson Ev., 6th Ed., 148-149.
6. See the preceding two paragraphs.
7. Section 21. See also *Wahid Bux Bhuttoo* v. *E.*, 120 IC 81: 1929 S 250: 30 Cr LJ 1121.
8. *R.* v. *Gunsell*, 16 Cox 154.
9. *Vacher* v. *Cocks*, M & M 353; *Thomas* v. *Connel*, 4 M & W 267.
10. Phipson, Ev., 6th Ed., 65.

the documents. So, execution of a document will imply knowledge of its contents, though mere attestation will not. The previous course of dealing between a party and his opponent or others is also admissible to show his knowledge. So, a duty to know, or the notoriety of a fact, may support an inference of knowledge, and publication in a gazette or newspaper is receivable to fix a party with knowledge.[1]

Notice.—"A person is laid to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it".[2] This definition of "notice" includes both actual notice and "constructive" notice, which has been defined as a presumption of knowledge which will not be allowed to be rebutted. It arises in equity where a party or his agent has had the means of knowledge, and might have obtained it, but for his gross negligence or wilful abstention.[3] An "imputed notice," as distinguished from a constructive notice in its true sense, is notice through an agent.[4] Where any transaction relating to immovable property is required by law to be and has been effected by a validly registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument.[5] Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.[6] A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material, provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.[7] A person who refuses to receive a registered letter sent by post cannot afterwards plead ignorance of its contents.[8]

Knowledge of propensities of animals; Illustration (c) to section14.—In the case of wild and naturally ferocious animals such as lions, tigers, monkeys, etc., it is not necessary to prove *scienter, i.e.*, that the defendant knew and was well aware that the animals were ferocious, dangerous or mischievous, as the case may be; knowledge will be presumed.[9] But in the case of dogs, horses, and other domestic animals *scienter* must be proved in order to entitle the plaintiff to damages.[10] Where A sues B for damage done by a dog of B's which B knew to be ferocious, the fact that the dog had previously bitten X, Y and Z, and that they had made complaints to B, is relevant.[11] The question being whether A. the owner of a dog, knew of its mischievous propensities, evidence that he generally kept it tied up, and had promised to pay compensation to a person whom it was alleged, though not proved, to have bitten,[12] or that he had offered

1. Phipson, Ev., 6th Ed, 145-146.
2. Section 4 of Act XX of 1929: amending Section3 of the Transfer of Property Act, 1882.
3. Ashburner, Eq., 84-97.
4. *Kettlewell* v. *Watson*, LR 21 Ch D 685, 724.
5. Section 4 of Act XX of 1929.
6. *Ibid.*
7. *Ibid.*
8. *Lootf Ali Meah. etc.* v. *Pearee Mohun Roy etc.*, 16 WR 223.
9. *May* v. *Burdett*, 9 QB 112.
10. See the Law relating to Dogs by F. Lupton (1888), pp. 4, 7.
11. Ill. (c) to Section14.

to pay compensation for its biting cattle "if it was proved to have done so[1] or that he had warned another person to beware of it[2] is admissible; so, where the dog was reported to have been bitten by another dog which was mad, this fact, especially as the defendant had tied it up, was held evidence of *scienter*.[3] Where A's cow had killed B's cow, the fact that A had previously seen his cow kill C's cocks and hens was admitted to prove A's *scienter* of its mischievous propensities.[4]

Illustrations relating to evidence of knowledge.—Illustrations (a), (b), (c) and (d) relate to and indicate the kind of evidence which may be admissible in proof of knowledge.[5] The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious. The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee, if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.[6] As to the admissibility and value of similar occurrences in proof of knowledge, see notes to these sections, *infra*.

Ill-will; good-will; malice.—Where the question is whether A has been cruel to B, his wife, expressions of their feelings towards each other, shortly before or after the alleged cruelty, are relevant facts.[7] When the terms upon which two parties have lived are material, then letters to each other,[8] or to third persons,[9] are admissible evidence of that fact, though not of truth of all the matters stated.[10] The nature of malice varies in law with the proceedings in which it is in question. It has generally to be inferred from the previous and subsequent conduct of the parties, or the terms upon which they have lived, *e.g.*, previous enmity, threats, quarrels and violence, while in rebuttal previous expressions of good-will and acts of kindness may be shown.[11] In cases of libel, malice may be inferred not only from the transaction itself, *i.e.*, from the nature of the libel, with its mode and extent of publication, but from previous ill-feeling or dispute between the parties, the repetition of the libel, the publication of similar ones on other occasions and, in fact, from the defendant's whole conduct down to, or even at, the trial.[12] Where A is accused of defaming B by publishing an imputation intended to harm the reputation of B, the fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.[13] The knowledge and belief of the defendant as to the truth of the statements made by him are often material in determining his state of mind towards the plaintiff.[14] Thus, the defendant, in order to show that he did not intend to harm the reputation of the plaintiff, may prove that there was no previous

1. *Thomas* v. *Morgan*, 2 Cr M & R 496.
2. *Judge* v. *Cox*, 1 Stark : 285.
3. *Jones* v. *Perry*, 1 Esp. 482 ; Phipson, Ev., 6th Ed., 152-153.
4. Phipson, Ev., 6th Ed., 153. citing *Quin* v. *Q.*, 39 Ir. LTR 163.
5. For full notes on illustrations (a) and (b) see notes to section 14 and 15 under the headings "guilty knowledge in receiving stolen property" and "counterfeiting and forgery" *Infra*.
6. Ill. (d) to section 14 ; *Gibson* v. *Hunter*, 2 H Bl 288.
7. Ill. (k) to section 14.
8. *Tielowny* v. *Coleman*, 1 B and Ald. 90.
9. *Willis* v. *Bernard*, 8 Bing. 376.
10. Phipson, Ev., 6th Ed., 62-63.
11. Phipson, Ev., 6th Ed., 151.
12. *Praed* v. *Graham*, 24 QBD 53 CA ; *Simpson* v. *Robinson*, 12 QB 511 : Phipson, Ev., Ed., 6th 151.
13. Ill. (e) to section 14.
14. *Clark* v. *Molyneaux*, 3 QBD 237 : *Fountain* v. *Boodle*, 3 QB 5 ; Phipson Ev. 6th Ed., 151.

quarrel between the plaintiff and him and that he repeated the matter complained of as he heard it.[1] In actions for malicious prosecution the defendant's negligence in not making proper inquiries, or his want of reasonable and probable cause for the proceedings, does not necessarily import, though it is evidence of, malice. But his recklessness as to whether the charge be true or false, or a corrupt motive in instituting the charge, although coupled with an honest belief in its truth, will constitute malice.[2] If belief in the truth of the charge was honest, the mere fact that it was not based on reasonable grounds is no evidence of malice.[3]

When the allegation against the accused, an officer, was that he was acting in pursuance of the policy of the Ittehad-ul-Muslimeen, that his state of mind was to exterminate the Hindus, it was held, that he was entitled to lead evidence to show that he did not possess that state of mind but that, on the other hand, his behaviour towards the Hindus throughout his official career had been very good and he could not possibly think of exterminating them. A denial of this opportunity to him was a serious irregularity which vitiated the trial.[4]

Negligence and rashness.—In civil as well as in criminal cases, the question may arise whether a person has been rash or negligent in a particular instance. Where such question arises, all facts which go to show that the person has or has not been rash or negligent in the particular instance become relevant. The evidence tendered must, however, tend to show that the person has been rash or negligent in the particular instance, and evidence which tends merely to show that he is habitually rash or negligent will not be admissible. Thus, where the question is whether B has been negligent in providing A with a carriage for hire not reasonably fit for use, the fact that B was habitually negligent about the carriages which he let to hire will be irrelevant, but evidence that B's attention was drawn on other occasions to the defect in that particular carriage will be relevant.[5] Where the question is whether a surgeon had been negligent in performing a particular operation, evidence is not admissible to show that he had been negligent or skilful in other similar operations.[6] But where a doctor was charged with criminal negligence, and in order to show that a particular injection given by him was too strong, and to rebut the presumption that the death of a particular boy was due to an exceptional reaction to that injection, the prosecution tendered evidence of the symptoms, illness and death of nine other children, injected at the same time, it was held that the evidence was admissible not as evidence of a course of conduct of the doctor in injecting too much of a proper mixture but as evidence of the fact that too strong a preparation was used for the injection.[7] Where the accused is charged with rash driving, evidence of other instances of rash driving by the accused is not admissible[8]; "On questions involving negligence, reasonableness, and other qualities of conduct, when the criterion to be adopted is not clear, the acts or precautions proper to be taken under the circumstances, and even the general practice of the community or, in some

1. Ill. (e) to section 14.
2. Phipson Ev., 6th Ed., 151, citing *Brown v. Hawkes*, (1891) 2 QB 718 ; *Moore v. Trulock*, 33 Ir. LTR 62.
3. Phipson, Ev., 6th Ed., 151.
4. *Habeeb Mohammad v. State of Hyderabad*, 1953 SCJ 678.
5. Ill. (n) to section 14.
6. *R. v. Whitehead*, (1848) 3 C and K 202 cited in Phipson, Ev., 6th Ed., 165.
7. *John Oni Akerele v. King*, 1943 PC 72 : 207 IC 107 : 44 Cr. LJ 569 : 1943 ALJ 427.
8. *Collett v. E.*, 1929 MWN 395.

cases, of the particular individuals, is admissible as affording a measure by which the conduct in question may be gauged.".[1] Thus, where the question was whether a railway company was negligent in not employing more than one man to manage a coal engine, the fact that for twenty years it had been usual only to employ one man, and that no accident had happened, is admissible as tending to rebut negligence;[2] and so, in an action against a railway company for injury to goods by defective packing, evidence of the customary mode of packing is admissible.[3] The question being whether the captain of a ferry boat was negligent in starting in a fog the practice of other captains to cross the ferry in fogs is admissible.[4] Where a race-course had been roped instead of fenced, evidence that this was habitually done at other race-courses without accident was admitted.[5]

Facts showing a state of body or bodily feeling; health and feelings.—It has been noticed that section 14 and 15 deal with the proof of psychological facts. Bodily feeling is a mental phenomenon, but the state of the body of a person, which is included in section 14, may be a physical fact, as it is capable of being perceived by the senses. When the state of body or bodily feeling of a person is in issue or relevant, all facts showing that state are relevant. Thus, where the question is whether A's death was caused by poison, statements made by A during his illness as to his symptoms will be relevant.[6] Where 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 will be relevant.[7] The statements of patients to medical men and others are presumptive evidence of their state of health, provided they are confined to contemporaneous symptoms, and are not in the nature of a narrative as to how, or by whom, such symptoms were caused.[8] And if the condition of the patient before or after the time in issue be material, his declarations at such times as to his then present condition are equally receivable.[9]

Good faith: Bad faith.—A thing is said to be done in good faith, where it is done honestly, whether it is done negligently or not.[10] The presumption in law against misconduct generally presumes good faith in human transactions and, therefore, the burden of proving bad faith is generally on the party who alleges it. But where the question is 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 good faith of the transaction is on the party who is in a position of active confidence.[11] This exception to the general rule is based on the principle that a higher standard of probity is demanded from a party when the other with whom he deals is, *e.g.*, of weak intellect, intoxicated, illiterate, or

1. Phipson, Ev., 6th Ed., 107.
2. *Hart* v. *Lancs and York Ry.*, 21 LT 261, cited in Phipson, Ev., 6th Ed., 126.
3. *Lewis* v. *G.W. Railway*, 3 QBD 195 CA cited in Phipson, Ev., 6th Ed., 126.
4. *Ball* v. *Ballasey Board*, (1894) Times Jan. 31 CA., cited in Phipson Ev., 6th Ed., 127.
5. *Handley* v. *Wolverhampton Co.* (1903) Times Jan. 16, cited in Phipson Ev., 6th Ed., 127.
6. Ill. (i) to section 14.
7. Ill. (m) to section 14.
8. Gardner Peerage Le March, 169-179 ; *R.* v. *Gloster*, 16 Cox 471 ; *Gilbey* v. *G.W. Ry.*, 102 LT 202 ; *Amys* v. *Barton*, (1912) 1 KB 40 CA cited in Phipson, Ev., 6th Ed., 62.
9. *Aveson* v. *Kinnaird*, 6 East 188 ; *R.* v. *Johnson*, 2 C and K 354, cited in Phipson, Ev., 6th Ed., 62.
10. Section 3, General Clauses Act. For other definitions of good faith, see Section 2(7), Limitation Act and Section 52, I.P. Code.
11. Section 111, Evidence Act.

acting under duress or fear, or occupies the position of child, ward, client, or patient to the former.[1] "A party's good faith in doing an act may generally be inferred from any facts which would justify its doing. In such cases the state of his knowledge or the advice, however erroneous, that he received, or the information, whether true or false, on which he acted may often be relevant. So, to show the *bona fides* of a party's belief as to any matter, it is admissible to show the state of his knowledge and that he had reasonable grounds for such belief, or that it was shared by the community or even by individuals similarly situated to himself.[2] Thus, where 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.[3] The question being whether A gave credit to B, a married woman, *bona fide* believing her to be single, the fact that B had represented herself to other tradesmen as single in such a way as to reach A's ears is admissible in A's favour.[4] Where A and B were charged with conspiring to defraud C by a deed which falsely represented that A owned certain property, and B's defence was that he honestly believed the representation but was himself duped by A, it was held that letters by A to B in which A made similar representations to B were admissible in proof of B's good faith.[5] On the other hand, the absence of reasonable grounds of belief in the existence of a fact, *e.g.*, means of knowing the opposite, is evidence of want of honest belief.[6] 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 and C's own account and not as agent for A.[7] A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found. The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner, of the property could not be found. The fact that A knew, or had reason to believe, that the notice was given fraudulently by C who 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.[8]

Allegations of mala fides under the Companies Act.—Allegations of *mala fides* against the petitioner for winding up can generally be substantiated by circumstantial evidence only.[9]

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1. Phipson, Ev., 6th Ed., 149.
2. *Ibid.*
3. Ill. (f) to Section 14 : *Sheen* v. *Bumpstead*, 2 H and C 193.
4. *Barden* v. *Kyverbera*, 2 M and W 61 cited in Phipson, Ev., 6th Ed., 155.
5. *R.* v. *Whitehead*, 1 Dowl. and Ry. MC 367, cited in Phipson, Ev., 6th Ed. 155.
6. *Derry* v. *Peek*, 14 App Cas 337.
7. Ill. (g) to Section 14 ; *Girish* v. *Chartier*, 1 CB 13.
8. Ill. (h) to Section 14.
9. *Aluminium Corporation of India Ltd.* v. *Lakshmi Ratan Cotton Mills Co. Ltd.*, (1969) 2 Comp LJ 357, 40 Comp Cas 259 : 1970 All. LJ 487.

Fraud.—Where a transaction is sought to be attacked on the ground of fraud the particulars of the fraud alleged must be pleaded.[1] Fraud is not, generally, capable of being proved by direct testimony, and, in the generality of cases, circumstantial evidence is our only resource in dealing with questions of fraud.[2] When a question of fraud arises in a case, all the facts which, in law, go to constitute fraud, or which have a direct bearing on the existence of facts which constitute fraud, become admissible.[3] Fraud implied moral obliquity, a dishonest or wicked mind; but facts may, of course, be evidence of fraud without being in law sufficient to constitute fraud.[4] As to the admissibility of prior similar transactions to prove a fraudulent intent, see notes under the heading "false pretences and other fraud" *infra*.

Guilty knowledge in receiving stolen property.—A possessor of stolen property is not punishable unless he has knowledge that the property is stolen property, and the duty of showing such knowledge is on the prosecution.[5] Knowledge being a "psychological fact", it may be, and is generally, proved by circumstantial evidence. Whether the circumstances proved against the accused raise a presumption of guilty knowledge depends upon the circumstances of each case, and it is not possible to lay down any fixed rule on the point. The fact that the possessor made a declaration that he knew that the property was stolen property is probable as an admission, whereas the fact that he was informed by some one that the property was stolen property will be admissible under Section 14. The conduct of the accused with reference to the property and the circumstances under which he obtained it may also go to show that he was aware that the property was stolen property. If the possession of the accused is recent and exclusive and he is unable to account for his possession, the Court may raise an inference of guilty knowledge.[6] The conduct of the person accused of having purchased a stolen property, in attempting to conceal it at the time of recovery is not conclusive evidence of the state of mind of the accused at the time when he purchased it.[7] If a person is accused of being in possession of stolen property knowing it to be stolen, the fact that at the same time he was in possession of many stolen articles is relevant under section 14, to show that he knew the property to be stolen.[8] In England, possession of other stolen property within 12 months, or conviction for any offence involving fraud or dishonesty within 5 years preceding the date of the offence charged, is made relevant by statute to prove guilty knowledge.[9] From the point of view of admissibility, it is immaterial that the other property found in the possession of the accused was stolen from a person other than the complainants or that it was stolen long before the theft of the property for the possession of which he is prosecuted; these are circumstances which may affect the weight but not the admissibility of the evidence.[10] Illustration (a) to section 14 contemplates contemporaneous possession of other stolen property, and does not expressly say

1. C. 6, r. 4, Civil Procedure Code.
2. *Mathoora* v. *Ram*, 11 WR 482, per Mitter, J.
3. For the definition of fraud, see Section 17 of the Contract Act.
4. *Derry* v. *Peek*, 14 App. Cas 337.
5. *See* Section 441, I.P. Code.
6. Section 14, Ill. (a).
7. *Bharat Chandra Das*, v. *State*, 1950 Assam 193.
8. Section 14, Ill. (a) ; *R.* v. *Jones*, (1877), 14 Cox 3.
9. Larceny Act, 1916, section 43.
10. Norton 132.

whether previous possession, or previous conviction for possession, of stolen property would be admissible under section 14. On the other hand, illustration (b) which is very similar to illustration (a), specifically makes conviction for a similar offence relevant. It may, therefore, be a question whether, in a prosecution for being in possession of stolen property knowing it to be stolen, evidence of previous possession, or of conviction for possession, of other stolen property will be admissible under the Act. Such evidence, subject to certain restrictions as to the time of previous possession or conviction, is admissible under the English law[1] and the principle governing the admissibility of such evidence is in favour of its admissibility. The recurrence of a like act lessens by each instance the possibility that a given instance could be the result of inadvertence, accident or other innocent intent. Accordingly, the more often a person is found in possession of stolen goods, the less likely it is that his possession on the occasion charged was innocent. It is not a question of specifically proving knowledge; it is merely a question of the improbability of an innocent intent. From this principle the following rules may be deducted:—

(i) It is immaterial whether in the other instances a knowing possession is shown; it is the mere fact of the repeated possession of other stolen goods that lessens the chances of innocence. (ii) It is immaterial whether the other goods were similar in kind to those charged, or were received from the same person; on the contrary, the greater the variety of goods, and of the sources they came from, the more striking the coincidence, and the more difficult to believe that the explanation is an innocent one (iii) It is immaterial whether the other possession occurred before or after the possession charged; it is the multiplication of instances that makes the existence of guilty knowledge more probable and not the time of their occurrence, provided the time is not so distant as to be accountable for on the theory of chance acquisition.[2] Of course, if possession of other goods can be shown or suggested to have been with a guilty knowledge, its evidentiary value will be enhanced; and from this point of view, the similarity of the goods with those included in the charge and the identity of the person from whom they were received acquires a peculiar significance.[3] It is necessary to note that previous or contemporaneous possession of other stolen goods is admissible only to prove guilty knowledge. If therefore, receipt or possession of the goods on which the charge is based is denied, proof of possession of other stolen goods will not be admissible to prove such receipt or possession.[4]

Counterfeiting and forgery.—The chief forms of offences connected with forged and other counterfeit documents or money are: (i) making the false article; (ii) possessing it knowingly with intent to utter; and (iii) knowing utterance of it. In the last two, the defendant's knowledge is always in issue; in the first, it is occasionally in issue, as where the act of writing is conceded but an authority is claimed.[5] In England, possession under suspicious circumstances,[6] or uttering, previous or subsequent of counterfeit coins of the same or different description,[7] has been held to be admissible to show

1. See Larceny Act, 1916, section 43.
2. Wigmore, § 325.
3. Wigmore, § 324.
4. *R. v. Parbhudas*, 11 Bom. H.C. R. 90.
5. Wigmore, § 309.
6. *R. V. Jarvis*, 7 Cox 53. In this case the other counterfeit coins were found in the pocket of the accused, separately wrapped up in paper.
7. *R. V. Foster*, 24 L.J.M.C. 134 ; R. v. Weeks 8 Cox 455.

guilty knowledge. Illustration (b) to Section 14 makes contemporaneous possession of other counterfeit coins, or a previous conviction for uttering a counterfeit coin, relevant to prove guilty knowledge where the accused is charged with fraudulently delivering a counterfeit coin, and illustration (c) to section 15 makes other utterings soon before or after the uttering charged, relevant. Where the charge is that of being in possession of counterfeit coin and material for counterfeiting coin, evidence that other counterfeit coins and material for counterfeiting coin were found in another house of the accused in a different district is admissible to show his intention and knowledge.[1] Previous uttering of a counterfeit coin of a similar description is relevant to show guilty knowledge or intent.[2] even if the charge be that of making false coin.[3] The fact that, at the time of uttering, the accused gave a false name and address is relevant to show guilty knowledge.[4] Mere prior possession is considered to be no evidence of knowledge.[5] Possession may, however, involve conduct betraying a knowledge of the falsity of the article, as where counterfeit coins are separately wrapped in paper,[6] or counterfeit paper is kept secreted, or tools are also found, and thus the prior knowledge would apply equally to the article in question. Similarity of the article would here be immaterial, for the concealment indicates a general criminal knowledge.[7]

Where evidence of possession, or of uttering, of counterfeit money is admitted under section 14 or section 15, it is admitted merely on the issue of intention or knowledge. The *factum* of possessing or uttering the money with which the accused is charged must be proved *aliunde*. It does not, however, follow from this that prior possession or uttering may not, under some other section of the Act, become admissible to prove the possession or uttering of the coin with which the accused is charged. Thus, it has been held by the Bombay High Court that evidence of the possession and attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins soon afterwards, when the *factum* of uttering is denied,[8] and Professor Wigmore thinks that, where the prior acts suggest a system or plan, they are admissible to show the doing of the act, whether the act be of forging, uttering or the like.[9]

In a trial for the offence of forging a document; possession of other documents, *suspected* to be forged, is not evidence of forgery,[10] though proof of other similar instances of forgery may be evidence of intention,[11] and perhaps of the forgery itself.[12] Where the accused is tried for giving false evidence in respect of a forged document, the opinion of other Judges on other documents written by the accused, expressed in proceedings to which the accused was not a party, is inadmissible.[13] Where the accused

1. *Misri Gosain* v. *E* 61 I.C. 647 : 23 Cr LJ 407.
2. Wigmore, *$* 310, 312.
3. *R.* V. *Rowlands*, 3 Cr. App. R. 224.
4. *R. V. Whilley*, 2 Leach, 985.
5. Wigmore, $ 311.
6. *R. V. Jarvis*, 7 Cox, 53.
7. Wigmore, $ 311.
8. *Q. E.* v. *Noor Mahomed*, 8 B 223.
9. Wigmore, $ 304, 315
10. *R.* v. *Parbhudas*, 11 Bom. HCR 90 : *Krishna Govinda Pal* v. *E.*, 43 C. 783 : 33 IC 306 : 17 Cr. LJ 130.
11. *Krishna Govinda Pal* v. *E.*, 43 C 783 : 33 IC 306 : 17 Cr LJ 130.
12. *See Q. E.* v. *Nur Mahomed*, 8 B 223 : but see *Krishna Govinda Pal* v. *E.*, 43 C 783.
13. *Gunwant* v. *E.*, 38 IC 723 : 18 Cr. LJ 339.

was charged with forging a person's name to a bill of exchange and uttering the same, evidence that other bills to which that very person's name had been forged were found upon the accused was held admissible.[1]

Other coins or documents possessed or uttered must be proved to be counterfeit or forged.—When possession or utterance of other coins or documents is given in evidence against the accused, the fact that the coins or documents were counterfeit or forged must, of course, be proved, to make it a ground of inference.[2]

Homicide; other instances.—The intent to kill is in homicide practically always in issue and has to be proved by the prosecution; and the recurrence of other acts of the sort tends to negative inadvertence; defensive purpose or any other form of innocent purpose. For this purpose, therefore, the evidence is receivable irrespective of whether the act alleged is itself conceded or not. Where, as usual, it is not conceded, the evidence of intent goes to the jury to be used by them only on the assumption that they find the act to have been done by the accused; it is then to be employed by them in determining intent.[3] Thus, where the question is whether A voluntarily shot at B with the intention to kill, evidence that A previously[4] or subsequently[5] shot at B is admissible to show that A shot at B with the intention to kill;[6] but evidence that A murdered other persons and got innocent men convicted is not admissible.[7] There is always a possibility, when a body of twelve gets drowned in a tank, that there has been an accident, but previous attempts to kill the boy would be admissible to rebut a suggestion of accidental drowning.[8] A previous murder may be admissible as motive for a subsequent murder, though it is not admissible to show that the accused was likely to have committed the subsequent murder because he had previously committed a murder.[9]

Homicide: similar instances of poisoning.—Other instances of death by poison under somewhat similar circumstances serve to negative the supposition of inadvertent taking or of mistaken administration, even though the person responsible for the other poisonings is not identified, and thus a criminal intent having been shown for the act charged by whomsoever done the defendant may then be shown to be its doer.[10] If A is charged with the murder of B by poison, after proof of its administration by A, evidence that C and D, other members of B's family, to whom A also had access, had died, one previously and the other subsequently, from the same poison will be admissible to show that the administration of the poison was not accidental but intentional.[11] On proof of the fact that the accused administered *dhatura* poison to the deceased, evidence that the accused poisoned other persons with *dhatura* before or after the act charged will be admissible to show that the administration was intentional and not accidental.[12] But

1. *R.* v. *Hough*, (1806) R & R 120 : See also *R.* v. *Mason*, 10 Cr. App. R. 169 ; *Q. E.* v. *Nur Mahomed*, 8 B.223.
2. Wigmore, § 317 ; See also *Q. E.* v. *Nur Mahomed*, 8 B 223.
3. Wigmore, § 363.
4. Ill. (i) to Section 14.
5. *R.* v. *Voke*, (1823) R & R 531 : Wigmore, § 363.
6. See also Ill. (o) to Section 14.
7. *Gangaram Hari Parit* v. *E.*, 62 IC 545 : 22 Cr. LJ 529.
8. *E.* v. *Shankaraya Gurushudbhayya Hiremath*, 1940 B 365 : ILR 1940 B 695 : 191 IC 272.
9. *Natha Singh* v. *E.*, 1946 PC 187.
10. Wigmore, § 363.
11. *R.* v. *Geering*, 18 LJMC 215 ; *R.* v. *Garner*, 3 F. & F. 681 ; *R.* v. *Cotton*, 12 Cox 400 ; Phipson Ev., 6th Ed. 180.
12. *Lala* v. *E.*, 9 IC 731 ; 12 Cr. LJ 125 : 32 PLR 1911 : *Kashiram* v. *E.*, 73 IC 262 : 1923 N 248 : 24 Cr. LJ 566.

where it is not proved that the accused was concerned in the act charged, a previous conviction for *dhatura* poisoning will not be relevant.[1] Where the accused, a doctor, was charged with the murder of B, an unfortunate, by strychnine evidence of the deaths by strychnine of three other unfortunates with whom the accused had been intimate and of his attempted administration thereof to a fourth, was held admissible, after connecting those acts with the prisoner by showing his possession of strychnine, and that this was the cause of all the deaths.[2]

Where a medical practitioner is tried for causing death of a patient by administering a lethal dose of *dhatura* and the prosecution shows that even a man of no education is aware of the extremely poisonous nature of *dhatura*, but the defence is that there are cases in which the drug has been successfully administered for curing a certain disease, it is open to the prosecution to show that the previous experiments carried out by the accused himself, in exactly similar circumstances, had shown him that, far from being a cure, the drug was a certain killer.[3]

Homicide; other instances of deaths in similar circumstances.—Where the accused was charged with the murder of her child by suffocation, evidence that four other children of the accused had died early from causes unknown was held admissible to show that the death of the particular child with whose murder the accused was charged was not accidental but intentional.[4] A was charged with the murder of B, an infant, whom she had promised to adopt and maintain on receipt of a small premium from B's mother but whose body was afterwards found buried in A's garden. Evidence was tendered by the prosecution that A had received other infants from their mothers on similar terms, who had afterwards disappeared, and that the bodies of unidentified infants were found buried in the gardens of other houses occupied by A. It was held that the evidence was admissible to rebut the defence that B's death was accidental.[5] A was charged with the murder of B, his bigamous wife, who was found dead in her bath. Evidence was offered that subsequently to B's death C and D with both of whom A had contracted bigamous marriages, had also been found in their baths, under very similar circumstances, and that in all three cases A had benefited by their deaths. It was held that the evidence was admissible to rebut accident or innocent intent.[6]

Arson.—Where the act of firing is conceded or otherwise proved, and the subject is to negative inadvertence or accident, the recurrence of similar acts of firing by the defendant tends to diminish the possibility of an innocent explanation. Further, the recurrence of a similar fire may tend decidedly to negative innocent intent, even though the author of the other fires is not shown; thus the prosecution having negatived innocent intent in the present fire by whomsoever set, the defendant may be shown to have kindled it.[7] A is accused of burning down his house in order to obtain money for which it is insured. The fact that A had 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

1. *Ram Sumiran* v. *E.*, 1942 P. 291 : 198 IC 662 : 43 CR LJ 413.
2. *R.* v. *Neill Cream*, 116 CCC Sess. Pan. 1417, cited in Phipson Ev., 6th Ed. 180.
3. *Juggan Khan* v. *State*, 1963 MPLJ 839.
4. *R.* v. *Roden*, 12 Cox 630.
5. *Makin* v. *A.G. of New South Wales*, (1894) AC 57; *Noor Mohamed* v. *The King*, 1949 PC 161; *S. M. K. Alvi* v. *Crown*, PLD 1953 FC 189.
6. *R.* v. *Smith*, (1915) 11 Cr. App. R. 229.
7. Wigmore, § 354.

payment from a different insurance office, is relevant, as tending to show that the fires were not accidental.[1] Where the charge is that of setting fire to a house with intent to defraud an insurance company, and the defence is accident, previous attempts to set fire to the house, even if such attempts are not shown to have been made by the accused, are relevant to rebut the defence of accident.[2] Where A was charged with setting fire to B's rick by firing a gun, evidence that, the day before A was seen close to the same rick with a gun, and that the rick was then on fire was held admissible to show A's intent.[3] But where the fact to be proved was that a fire at a soap factory in 1940 was intentional and the fact sought to be tendered in evidence was a fire at a mill in 1932, the accused being concerned in both the concerns, the evidence was excluded.[4]

Bribery.—The accused was charged with having received illegal gratification from C & Co., on three specific occasions in 1876. In 1876, 1877 and 1878 C & Co., were doing business as commissariat contractors, and the accused was the manager of the commissariat office. It was held that evidence of similar but unconnected instances of receiving illegal gratification from C & Co., in 1877 and 1878 was not admissible, but that if the receipt of the illegal gratifications mentioned in the charge were considered proved by other evidence, and it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under Section 14 to prove that motive, but not to establish the fact of payment in 1876.[5] Professor Wigmore strongly criticises the tendency of the American Courts to exclude evidence of similar instances of corruption and describes this spot in the law of evidence as a "putrid one"[6] and states his conclusions as to what the law on the point is as follows:—"To show knowledge of the nature of the transaction, a former transaction of the sort may serve, as indicating an understanding of the particular transaction. To show intent, another transaction of the sort may serve to negative good faith. To show general design, former attempts towards the same general end may be significant."[7] Where the accused is being prosecuted for defaming the complainant by making an imputation of bribery, evidence that the complainant took bribes on other occasions is irrelevant, but his general reputation of being a bribe-taker is admissible.[8] Evidence that the accused got a bribe from the same person about two months before the commission of the offence charged, being a single transaction previous to the offence charged, is not admissible to prove a "system or course of conduct."[9]

False pretences and other fraud.—In a false representation or pretence, there is involved the general notion of intent to receive. In such cases it is the mere recurrence of similar incorrect (not necessarily knowingly false) representations which leads to the

1. Ill (a) to Section 15 : *Nurul Amin* v. *E.*, 1939 C. 335 : 182 IC 386 : ILR (1939) IC 511; *R.* v. *Gray*, 4 F and F 1102, approved in *Makin* v. *A. G. of New South Wales*, (1894) AC 57; See the observations of Telang, J., about Ill. (a) to section 15, in *Q. E.* v. *Vajiram*, 16 B 414; See also *Shewram* v. *E.*, 1939 S. 209.
2. *R.* v. *Bailey*, 2 Cox, 311 :
3. *R.* v. *Dossett*, 2 C & K 306.
4. *Gandhi* v. *E.*, 1941 R 324.
5. *E.* v. *Vyapoory Moodeliar*, 6 C 655; see also *E.* v. *Abdul Wahid Khan*, 34 A. 93 : 12 IC 987 : 12 Cr LJ 611; *Shivkali Goswami* v. *E.*, 1944 A. 257.
6. Wigmore § 343, footnote.
7. Wigmore § 343.
8. *Devi Dial* v. *E.*, 4 L 55 : 73 IC 805 : 1923 L 225 : 24 Cr LJ 693.
9. *Shivkali Goswami* v. *E.*, 1944 A. 257 : 216 IC 100 : 1944 ALJ 419 (FB); but see *Gandhi* v. *E.*, 1941 R 324.

belief that they could not have been made innocently.[1] Thus, where the charge against the accused was that of cheating the complainant by falsely representing to him that he was the *diwan* of an estate and could procure for him appointment to the vacant post of manager to the estate, and of thereby obtaining a sum of money as pretended security deposit, evidence of instances of similar but unconnected transactions with other persons, before and after the date of the offence charged, was held admissible, not to establish the *factum* of the offence but to prove that the transaction in issue was one of systematic series of frauds and that the intention of the accused on the particular occasion in question was dishonest and fraudulent.[2] In a trial for cheating, similar instances of cheating by false representations are admissible to prove the guilty intention of the accused.[3] The accused were charged with having obtained money from the complainants by falsely representing that they were servants of one Akbari Begum, a wealthy lady of Rampur, who was anxious to lend money on easy terms. Held, that evidence that, at or about the very same time when the accused were alleged to have made such representation to the complaints, they had been making precisely the same representation to a third person, was admissible to prove the intention of the accused.[4] A is charged with attempting to obtain money from B by falsely pretending that a certain ring was a diamond ring. The fact that A had previously attempted to obtain money from other persons by false representations as to the genuineness of other rings and jewellery, is admissible to show his knowledge that the ring in question was not genuine.[5] Where the accused was charged with obtaining eggs from the prosecutor by falsely pretending in an advertisement that he was carrying on business as a dairyman, and evidence was tendered by the prosecution that the accused subsequently obtained eggs from several other persons by a similar advertisement, it was held admissible as showing a general scheme to defraud.[6] A was charged with obtaining money from B, C and D by worthless cheques. Evidence was offered that A had previously obtained a cheque from E by the same means. The evidence was held admissible as part of a course of conduct showing guilty knowledge and intent negativing any reasonable belief that the cheques would be met, although A had already been tried and acquitted as to E's cheque.[7] Where, to a prosecution for obtaining furniture and credit from B at Brighton by falsely pretending that he was agent for a London syndicate, the accused set up the defence that he bought as principal and merely gave the syndicate as a reference, and the prosecution, to rebut this defence, gave evidence that a week later the accused obtained furniture and credit from C at Brighton by the same pretence, it was held that the evidence was admissible, inasmuch as it showed that the alleged business of the accused was a sham.[8] Where A, B's servant, was charged with obtaining money from C by falsely pretending that B had authorized him to collect it, and B having denied A's authority, evidence was tendered that within a week after collecting C's money, A had also collected money from D by a like false pretence, it was held that the

1. Wigmore, § 321.
2. *E. v. Debendra Pershad*, 36 C 573 : 2 IC 601 : 10 Cr. LJ 91.
3. *Har Chandi Lal v. Sheoraj Singh*, 39 A 178 : 39 IC 343 : 1916 PC 68.
4. *E. v. Yakub Ali*, 39 A. 273 : 39 IC 673 : 18 Cr LJ 529.
5. *R. v. Francis*, LR 2 CC 128.
6. *R. v. Rhodes*, (1899) 1 QB 77.
7. *R. v. Ollis*, (1900) 2 QB 758 CCR.
8. *R. v. Smith*, 92 LT 208; See also R. Wilks, 10 Cr. App. R. 16.

evidence was inadmissible.[1]

The question being whether an insurance company acted fraudulently in obtaining a premium from A through their agent B who had represented to A that if he would insure B would procure him a loan from the company, the fact that premiums had previously been obtained by the same agent and means from other persons, to the knowledge and for the benefit of the company, without loans being made, was held admissible, as showing the fraudulent character of the transaction in question.[2] A is charged with fraudulently obtaining credit for board and lodging from B. Evidence is given that, shortly before, A had hired lodgings from several other persons and left without paying, and that he still owed this money when he went to lodge with B. The evidence is admissible, as showing a systematic course of conduct negativing any reasonable, or honest motive.[3]

Embezzlement and cheating.—In cases of cheating and embezzlement, evidence of similar takings of property or, as is the usual case, of similar incorrect entries in account books, suffices to negative mistake or inadvertence on the occasion charged and is, therefore, admissible for that purpose.[4] A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is whether this false entry was accidental or intentional. The fact that other entries made by A in the same book are false and that the false entry is in each case in favour of A, is relevant.[5] It should, however, be borne in mind that evidence of other unconnected instances of cheating or embezzlement is not admissible to prove the receipt or appropriation of money in the instance charged;[6] but if the fact of receipt or appropriation has been otherwise proved, it is admissible to show the intent in receiving or appropriating the money,[7] and to rebut, by anticipation, a defence of innocent receipt or appropriation.[8] Thus, where the charge against the accused who was a clerk in charge of renewal of licenses for handcarts was that he represented to the three complainants named in the charge that they were bound to pay Rs. 2 instead of Re. 1-14-0 each as fee for the renewal of their licences, and on the strength of that representation induced each of them to pay two annas more than the actual fee and put the difference in his own pocket, it was held that evidence showing that the accused had taken two annas in excess from persons other than those named in the charge was inadmissible,[9] as the evidence was directed not to show the state of mind of the accused

1. *R.* v. *Holt*, 30 LJMC 11. This case was approved in *R.* v. *Rhodes*, (1899) 1 QB 77 and *R.* v. *Smith*, 92 LT 208. See also the comment on this case in *R.* v. *Bond*, (1906) 2 KB p. 424 and *R.* v. *Francis*, LR 2 CC 128. The case has however, been considered in *E.* v. *Debendra Pershad*, 36 C 573 : 2 IC 601 : 10 Cr LJ 91 and *Amritlal Hazra* v. *E.*, 42 C 947 : 29 IC 513 : 16 Cr LJ 497 to be no longer authority.
2. *Blake* v. *Albion Society* 4 CPD 94.
3. *R.* v. *Wyatt*, (1904) 1 KB 188; *R.* v. *Walford*, (1907) 71 JP Rep. 215; Phipson, Ev., 6th Ed., 182.
4. Wigmore, § 329.
5. Ill. (b) to Section 15: *R.* v. *Richardson*, 2 F. & F. 343.
6. *E.* v. *Abdul Wahid Khan*, 34 A 93 : 12 IC 937 : 12 Cr. LJ 611; *Gokul Khatik* v. *E.*, 86 IC 970 : 1925 C. 674; 26 Cr LJ 906; *Pritchard* v. *E.*, 112 IC 850 : 1928 L. 382 : 30 Cr LJ 18.
7. *Har Chandi Lal* v. *Sheoraj Singh*, 39 A 178 : 44 IA 60 : 39 IC 343 : 1916 PC 68 : *E.* v. *Bakhtawar Lal*, 102 IC 492 : 1927 L 549 : 28 Cr LJ 556; *Pritchard* v. *E.*, 112 IC 850 : 1928 L 382 : 30 Cr LJ 18; *E.* v. *Stewart*, 97 IC 1041; 1927 S. 28 :27 Cr LJ 1217.
8. *Ram Kishen* v. *E.*, 111 IC 387 : 1928 L 880 : 29 Cr LJ 835; *E.* v. *Stewart*, 97 IC 1041 : 1927 S 28 : 27 Cr LJ 1217.
9. *E.* v. *Abdul Wahid Khan*, 34 A 93 : 12 IC 987 : 12 Cr LJ 611.

but to prove the fact that, in the instances charged, he received two annas in excess of the usual fee. If, however, the accused had admitted the receipt of two annas more than the actual fee, or if this fact had been otherwise proved against him, the evidence would have been admissible to rebut a defence of mistake or innocent receipt. Where, on being charged with having misappropriated certain sums of money, the accused pleaded that payments were made to persons who were not entitled to receive them and that he acted *bona fide* and under misapprehension, and the prosecution tried to adduce evidence of other transactions in which the accused had misappropriated sums of money out of funds entrusted to him, it was held that the evidence so sought to be adduced would merely show dishonesty and as such would be irrelevant to rebut the accused's defence of *bona fide* payments to wrong persons.[1] The accused was charged with cheating, for importing goods in Karachi port by deceiving the Customs authorities. Evidence that before this fraud he had visited another port and tried to come to an arrangement with the Customs authorities there, with a similar object, in which attempt he had failed, was held admissible under Sections 8 and 9 on his prosecution for the offence committed in Karachi.[2]

Criminal breach of trust.—In a case of conspiracy to commit criminal breach of trust where each of the accused puts forward the defence that he was an unconscious tool in the hands of S. a towering personality about whose criminal intentions he was not aware, it was legitimate for the prosecution to anticipate such defence and to give rebutting evidence under S. 14 of other transactions beyond the period specified in the charge in proof of the requisite criminal intention.[3]

Procuring abortion.—On charges of causing abortion by instruments or drugs, other occasions of using such instruments or drugs, whether prior or subsequent, are admissible as tending to negative innocent intent.[4] Thus, where a medical man is charged with using certain instruments on B with intent to procure abortion, evidence that, some months before, he had performed a similar, though unsuccessful, operation on another woman, is admissible to show intent and to rebut the defence that the instruments were used for a lawful purpose, viz., to examine B for leucorrhoea.[5] Possession of instruments and drugs used in causing abortions is admissible on charges of abortion.[6]

Rape; sodomy; incest, indecent exposure; pandering; pimping.—In cases of rape, where the act is proved, no question of knowledge or intent can practically arise and, therefore, evidence of other instances of rape will not be admissible. But where the charge is that of an assault with intent to ravish, evidence of previous rape-assaults on the same woman or a different woman will be admissible,[7] and the same principle will apply where the charge is that of an assault with intent to commit sodomy.[8] Thus, where the charge against the accused was that of having carnal knowledge of a girl, the fact that the accused had connection with the girl before was held admissible to show intent

1. *Lloyd* v. *E.*, 142 IC 274: 1933 C 136; 34 CR LJ 294.
2. *Mohanlal Bhanalal Goela* v. *E.*, 1937 S. 293 : 172 IC 374 : 39 Cr LJ 123.
3. *Sardar Singh* v. *State of Bombay*, 1957 Cr. LJ 1325.
4. Wigmore, § 359.
5. *R.* v. *Bond*, (1906) 2 KB 389; *R.* v. *Dale*, 16 Cox, 703 : *R.* v. *Cooper*, 2 Cox, pp. 549, 550; but *see R.* v. *Hicks*, (1904) 39 LJ Jo. 421, where Ridley, J., held that two instances, especially where the second is a subsequent one, could not be relied on as proof of a systematic course-of action.
6. Phipson, Ev., 6th Ed., 138.
7. Wigmore, § 357; See *Raikhon Boro* v. *E.*, 1938 C 469 : 166 IC 364.
8. Wigmore, note (2) to § 360.

and guilty knowledge.[1] Where A and B, brother and sister, were charged with incest in 1910 and, after evidence had been given that at the time charged they occupied the same bed, further evidence was offered to show that they lived together in 1907 and had a child, it was held that the evidence offered was admissible to rebut the defence of innocent association as brother and sister.[2] On charges of certain sexual offences, possession of indecent photographs is admissible to show complicity in the offence charged.[3] Where a person is prosecuted for indecently exposing himself, evidence that on a previous occasion also he indecently exposed his person to the same girl would be admissible to prove that the exposure was wilful and not accidental.[4] In case of pandering, pimping, enticement for prostitution or living on prostitutes' earnings, similar occurrences are admissible to prove the intent requisite to constitute the offence.[5] Where in cases of alleged sexual assaults on children the evidence of a child deals only with the alleged assault on him or her and the defence is that the meeting between them never took place, evidence of other incidents between the accused and other children is not relevant to determine whether the alleged meeting took place; although evidence of a succession of incidents may properly be admissible to help to determine the truth of one incident on questions of identity, intent or guilty knowledge or to rebut a defence of innocent association.[6]

Treason; sedition; defamation, etc.—Cases of treason, sedition and defamation are governed by a common principle. On the particular act or utterance being proved or conceded, intent is the only ingredient to be proved to constitute the offence, and to prove such intent other similar acts or utterances may be given in evidence. Thus, on a charge of sedition prior or subsequent writings not included in the charge are relevant to determine intention.[7] In prosecutions for political offences political views of the accused are relevant on the question of his intention.[8] Seditious intent of the accused may be inferred from the speech, article or letter charged, or from that speech, article or letter considered in conjunction with what the accused has said, written or published on other occasions.[9] Where the charge of sedition is against the editor, proprietor or publisher of a newspaper, other articles or letters appearing in other issues of the same paper are admissable to prove intention and *animus*.[10] A was charged with treasonable conspiracy. Evidence having been adduced that under the cloak of parliamentary reform he mediated the establishment of a treasonable convention, books published and public speeches made by him many years before and entirely disconnected with the alleged conspiracy were held admissible in rebuttal to show what were his fixed political opinions on the subject.[11] In a case of defamation a prior publication by the accused showing ill-will towards the person defamed is relevant to show an intention to harm the reputation of the person defamed.[12] Where a previous publication in a newspaper is

1. *R.* v. *Shellaker*, (1914) 1 KB 414.
2. *R.* v. *Ball*, (1911) AC 47; Phipson, Ev., 6th Ed., 166.
3. Phipson, Ev., 6th Ed., 138.
4. *Perkins* v. *Jeffrey*, (1915) 2 KB 702 ; Wigmore, note (i) to § 360.
5. See Wigmore, § 360, note (4); See also *R.* v. *Hill*, 10 Cr. App. R. 56 (living on earnings of prostitution).
6. *R.* v. *Chandor*, 1959 1 All. ER 702.
7. *In re* Subramania Siva, 32 M 3 : 1 IC 22 : 9 Cr. LJ 108; *Om Prakash* v. *E.*, 127 IC 209 : 1930 L. 867 : 31 Cr. LJ 1182; *E.* v. *Philip Spratt*, 1928 B 78 : 108 IC 30 : 29 Cr. LJ 320.
8. *Manabendra Nath Roy* v. *E.*, 1933 A 498.
9. *Q. E.* v. *Amba Prasad*, 20 A 55 (FB) See also *Jagannath Prasad Verma* v. *E.*, 1940 NLJ 31.
10. *Q. E.* v. *Bal Gangadhar Tilak*, 22 B 112; *E.* v. *Phanendra Nath Mitter*, 35 C 945.
11. *R.* v. *Hardy*, 24 How. St. Tr. 1066, 1096 cited in Phipson, Ev., 6th Ed., 154.
12. Illustration (e) to Section 14.

given in evidence to show seditious intent underlying the publication charged, it must be proved that the accused was the author of the article previously published.[1] No question of intention, however, arises in restrictive orders under the Newspapers Incitement and Abetment Act.[2] In a prosecution under Section 153-A, Indian Penal Code, the previous conviction of the accused for similar offence can be taken into consideration[3]; Similarly in proceedings under Section 108, Cr. P.C., for speeches offending against Section 153-A, I.P.C., previous speeches made by the speaker would be admissible.[4]

False claims.—The recurrence of false claims of a similar sort tends to negative good faith in the present claim and thus to show an intent to make a false claim.[5] Thus, where the accused is prosecuted for making a false claim in a Court of justice, evidence relating to other suits brought by him against other persons is admissible for the purpose of showing ill-will or *animus* of the accused and a systematic course of fraud, or a systematic series of fraudulent claims, and for the purpose of rebutting the defence that, that particular suit was brought in good faith, or any suggestion that it was brought under some mistake or misapprehension. But, evidence of other suits brought by other persons against the same person will not, in the absence of an allegation of conspiracy between those persons and the accused, or a suggestion that all the suits formed part of the same transaction, be admissible.[6]

Fraudulent transfers.—In cases of fraudulent transfers the question is whether the transfer was made with intent to defraud the transferor's creditors by deceiving, delaying or hindering them. The factors which determine the existence or otherwise of such intent are the quantity of the property transferred, the persons to whom the transfers were made, the time of the other transfers, and the consideration for which the transfer was made.[7] Where the accused was charged under Section 206, I.P.C., with fraudulently transferring three properties to three different persons on the same day in order to prevent their being taken in execution of a decree, and the prosecution tendered evidence of five other fraudulent transfers effected on the same day, it was held that the evidence was admissible to prove a fraudulent intent, or to show that all those transfers were parts of the same transaction.[8]

Extortion and blackmail.—In cases of extortion and blackmail similar instances are admissible on the ground that successful obtaining of money on a former occasion by similar means tends to show the acquisition of knowledge that money can be obtained in this way.[9] Thus where A, the proprietor of a financial paper, was charged with demanding money from B by threats, made through C, to attack a company of which B was chairman, in A's paper, and evidence was tendered that some months previously a similar threat had been made by C and a sum of money obtained by C from D to abstain from attacks in A's paper, the evidence was held admissible to show intent.[10] A is charged with falsely accusing B of indecently assaulting him with intent to

1. *Man Mohan Singh* v. *E.*, 38 C 253: 8 IC 581 : 11 Cr. LJ 667.
2. Act VII of 1908 *See Girija Sunder Chakravarti* v. *E.*, 36 C 405 : 2 IC 285 : 9 Cr. LJ 545.
3. *Shib Sharma* v. *E.*, 1941 O 310.
4. *Jagan Nath Prasad* v. *E.*, 1940 N 134.
5. Wigmore, § 340.
6. *Raghu Nath Lal* v. *E.*, 46 IC 696 : 19 Cr. LJ 776.
7. Wigmore § 333.
8. *Q. E.* v. *Vajiram*, 46 B 414.
9. Wigmore, § 352.
10. *R.* v. *Boyle*, (1914) 3 KB 339.

extort money from B. Evidence, having been given that A gave B into custody saying "I charge him with indecently assaulting me," declarations by A on a former occasion that he had obtained money from C by threatening to accuse him of a similar crime were held admissible to show A's intent.[1] 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.[2]

Dealing in liquors or drugs.—There are four chief varieties of offences under these laws, (i) selling, (ii) being a common seller, (iii) keeping with intent to sell, and (iv) keeping a place for the purpose of sale. The first may raise the question how far an intent may be evidenced by other instances, and how far a design or plan, as showing probably an actual sale, may be evidenced by former acts of the sort. The second involves the principle of separate instances to show a character or habit. The third may raise the question how far other acts of keeping or selling may be received to show the intent; and the fourth may raise the same question.[3]

Gambling.—The fact that, on a previous occasion, the premises of a club had been raided and that certain persons, said to be members of that club, had been found there at the time and subsequently convicted under the Gambling Act, is quite irrelevant to show that, when on a subsequent occasion, the same premises were raided and other persons were found with gambling instruments, these persons were engaged in unlawful gambling.[4]

Evasion of payment of duty.—In a trial for non-payment of octroi duty, evidence that the accused had been connected with similar cases of non-payment of octroi is admissible to prove knowledge or intention of the accused.[5]

Previous conduct.—The previous conduct of a person is also in evidence in determining his intention. Where the intention of the person is directly in issue and is relevant, any fact showing such an intention is admissible in evidence.[6]

Previous attempts to commit an offence: Ss. 8 and 14.—Previous attempts to commit an offence are closely allied to preparation for the commission of it and only differ, in being carried one step further and nearer to the criminal act of which, however, like the former they fall short. The probative force, both of preparation and of previous attempts, manifestly rests on the presumption that an intention to commit the offence was framed in the mind of the accused which persisted until power and opportunity were found to carry it into execution. Such evidence will be admissible both under S. 8 and S. 14 of the Evidence Act.[7]

Previous commission of dacoities, thefts, etc., is relevant on charges of forming a gang for habitually committing dacoities or thefts but on charges of specific dacoities.—See notes to section 54.

Similar facts, when they constitute a system or design may become admissible to prove the connection of the accused with the transaction charged.—Mere similarity between the evidentiary fact and the fact to be proved is not, in the absence of a

1. *R. v. Cooper*, 3 Cox., 547.
2. Ill. (j) to Section 14.
3. Wigmore, § 368.
4. *Bonn Chin* v. *E.*, 1935 R 233 : 157 IC 798 : 36 Cr. LJ 1228.
5. *E.* v. *Harjivan Valji*, 50 B 174 : 98 IC 407 : 1926 B 231 : 27 Cr. LJ 1335.
6. *Mahesh Chandra* v. *State*, 1964 ALJ 581.
7. *Appu* v. *State*, (1971) 2 MLJ 53 : (1971) Cr. LJ 615.

specific connection between the two, a ground for the admission of the former.[1] The evidence of facts, whether similar or dissimilar to the main fact, which is admissible under section 14 or section 15 is admitted for the limited purpose of proving a mental or psychological fact and not for the purpose of proving the occurrence of the main fact; in other words, the evidence is admitted not for the purpose of proving the act but for the purpose of proving the intention, knowledge or other state of mind of the person who did the act.[2] It should not, however, be concluded from this that a prior or subsequent similar occurrence can never be given in evidence for the purpose of proving that the occurrence charged was brought about by the person who is proved to have brought about the similar occurrence which is sought to be given in evidence. It is true that evidence of similar acts done by a person cannot be given with the object of showing a general disposition, habit or propensity to commit, and a consequent probability of his having committed the act in question. But evidence of such similar facts is distinguishable in principle from evidence of those similar facts which are admitted in evidence on the *res gestae* principle as parts of the transaction charged, or which are given in evidence for the purpose of proving a design or system. Thus, similar crimes committed in pursuance of a common scheme or purpose may be admissible to connect the accused with the doing of the act, where such evidence is tendered to prove not that the accused was a bad man and so likely to commit crime, but that all the crimes being actuated by the same plan or motive, were likely to have been committed by the same person.[3] In an important New Zealand case,[4] the Court did not "deny the general proposition that a series of similar occurrences, manifestly not accidental, conjoined with the prisoner's agency in one or more, may, sometimes constitute ground for inferring that he is the cause of all." Professor Wigmore considers such evidence to be admissible on the "design" or "system" theory. When a similar fact is given in evidence under the "system theory," the object is to establish a definite prior design or system which included the doing of the act charged as a part of its consummation. It should, however, be remembered that when a prior or subsequent similar occurrence is sought to be given in evidence for the purpose of proving a design or system, there must be such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestation.[5] Possession of indecent photographs is relevant to show complicity in the offence charged in certain sexual charges; and so is possession of drugs and instruments, in cases of abortion.[6] Where there is sameness in the *modus operandi* in a series of house-breakings, the Court may infer that it must be the work of a gang.[7] In this country there are few reported decisions where evidence of similar occurrences, prior or subsequent to the occurrence charged, was admitted to prove that all the similar occurrences were brought about by

1. Phipson, Ev., 6th Ed., 158.
2. *Goma Rama* v. *E.*, 1945 B 152; *Pane M. Vaz* v. *E.*, 83 IC 889: 1921 S. 57 : 26 Cr LJ 185; *Krishna Govinda Pal* v. *E.*, 43 C 783 : 33 IC 306 : 17 Cr LJ 130.
3. Phipson Ev., 6th Ed., 164; *Thompson* v. *R.*, (1918) AC 211; *R.* v. *Ball*, (1911) AC 47; *Makin* v. *A.G. of New South Wales*, (1894) AC 57, 65; *Burr Jones*, 143 (143); *Ramsumiran* v. *E.*, 1942 P 291; *Noor Mohamed* v. *The King*, 1949 PC 161.
4. *R.* v. *Hall*, 5 NZLR 95, cited in Phipson, Ev., 6th Ed., 164.
5. Wigmore, § 304.
6. Phipson, Ev., 6th Ed., 138.
7. *Amdumiyan Guljar Patel* v. *Opposite party*, 1937 N 17.

the person charged. It seems, however, that the language of sections 6 and 11 is wide enough to embrace such cases, if the evidence is tendered subject to the conditions stated above.[1] A case very nearly involving this principle came before a Full Bench of the Calcutta High Court in the following manner:—

The two accused who had, some days before the occurrence, introduced themselves to a rich prostitute as the son of a Raja and his *durwan* were charged with having robbed and murdered her on the night of the 9th December, 1914. The prosecution tendered in evidence three subsequent instances in which the two-accused, after introducing themselves as master and servant to three other prostitutes in September, 1916 March, 1918 and November, 1918, had committed thefts in their houses. The evidence was tendered to show that the authors of the theft and murderers of 1914 were the same persons who had committed the three subsequent acts in similar circumstances, and sections 14, 15, 9 and 11 were relied on to justify the reception of this evidence for that purpose. The evidence was rejected by four out of the five Judges who considered the question, Sir Lancelot Sanderson, C.J., holding the evidence inadmissible mainly on the ground of time by which the four incidents were separated. Chaudhri, J., who dissented from the judgment of the majority, held the evidence to be relevant under Section 9, 14 and 15. There is no doubt that neither section 14 nor section 15 was applicable to the case, as there was no question of the murder being intentional or accidental, and from that point of view the evidence was rightly rejected. The incidents were separated by too wide a space of time and were lacking in the main feature of murder which was particular to the transaction charged.[2]—Where three successive shops belonging to the accused, each of which was insured, have been burnt down on three successive occasions, on each of which the accused has claimed and obtained the amount of the insurance, the successive fires indicate not only that the fires were not accidental but also they were part of a design in which the accused had a share.[3]

Illustration: Illustration (a)..—The illustration is founded on the case of *R.* v. *Gray*.[4]

Illustration (b).— This illustration is founded on *R.* v. *Richardson*.[5]

Illustration (c).— This illustration is very like illustration (b) to Section 14. The one speaks of possessing, the other of passing false coins. The presumption is the same. In a case so specific charges of user of forged document, evidence of similar instances of user is admissible to prove knowledge and intention.[6]

16. Existence of course of business when relevant.— 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, is a relevant fact.

Illustrations

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

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1. See *E.* v. *Yakub Ali*, 39 A 273 ; 39 IC 673 ; 18 Cr. LJ 529.
2. *E.* v. *Panchu Das*, 47 C 671 : 58 IC 929 : 21 Cr. LJ 849 (FB).
3. *Nural Amin* v. *E.*, 1939 C 335 : 182 IC 386 : ILR 1939 IC 511.
4. 4 F & F 1102.
5. 2 F & F 343 : Seph. Dig. Art. 12 illus. (b).
6. *State of Bihar* v. *Kailash Prasad*, AIR 1961 Pat, 451.

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 particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached *A*. The fact that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

COMMENTARY

Course of business, according to which an act would have been done, is admissible to prove that the act was done.— To prove that an act has been done it is under this section, admissible to prove any general course of business or office according to which it would naturally have been done, there being a probability that the general course was followed in the particular case.[1] The rule enacted by the present section and that embodied in illustration (f) to Section 114 are really parts of the same process of inference, the former declaring that the general course of business according to which an act would naturally have been done may be proved, and the latter making the course of business, when proved, foundation for the inference that the act was done. So that a presumption may be raised from the course of business that the act was done, the course of business must be clearly proved.

The expression "course of business" is used in the Act in several places,[2] The section applies to the course of business followed in public office as well as to the general practice followed in private offices and employments, as distinguished from the personal habits of individuals,[3] or mere usage in a private house which, however methodical, cannot carry the same weight as the ordinary routine of an office.[4] The presumption of the course of business having been followed is, however, specially strong in the case of public office e.g., the post office.[5] Where the question is whether a particular letter was despatched, the fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that letter was put in that place are relevant.[6] When it is proved that a letter was sent under a certificate of posting it must be presumed to have reached the addressee.[7]

But where the question was whether a certain letter said to have been posted by a detenu to the Assistant Collector of Customs had been received in his office, and the fact of despatch of the letter was sought to be proved by producing a photostat copy of a certificate of posting, the Supreme Court refused to draw any such presumption on the facts and circumstances of the case. It observed : "The certificate posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on 14-8-1980 and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114...compel the

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1. Phipson, Ev., 6th Ed., 105.
2. E.g. Section 32 (2) : Section 114. ills, (f) Section 47.
3. Phipson, Ev., 6th Ed., 105 ; See Taylor, § 179—182.
4. *Ningawa* v. *Bharmappa*, 23 B 63.
5. Phipson, Ev., 6th Ed., 105.
6. Ills, (a) to Section 16 ; *Skilbeck* v. *Gerbett*, 7 QB 846.
7. *Dhanpati Debi* v. *The Corporation of Calcutta*, 55 CWN 751.

Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the Court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured."[1]

The fact of sending a letter to the post office will, in general, be regarded as presumptively proved if the letter be shown to have been handed to, or left with, the clerk whose duty it was in the ordinary course of business to carry it to the post office,and if he can declare that, although he has no recollection of the particular letter, he invariably took to the post office all letters that either were delivered to him or were deposited in a certain place for that purpose.[2] In such cases it is not necessary to call the clerk, if the fact that the letter was left with him and that in the common course of business all letters were to be taken by him to the post office is otherwise proved.[3] Where the question was when a particular letter was received by the defendant and the evidence was that the letter was given on a particular day to the peon to deliver it to the defendant, that invariable practice followed by the peon was to despatch a letter, either on that day on which he received it or the next day, or else to return it to the office, and that the entry in the peon books showed that it was received by the defendant, the Court could draw the conclusion that it was received by the defendant, either on the date when the letter was despatched or on the next date.[4] To prove that a certain endorsement had been made on a lost licence at the customs house, it is relevant to show that the course of the office was not to permit the entry without such endorsement.[5] The question being whether A paid B his wages, A may show that his practice was to pay all his workmen regularly every Saturday night, that B was seen with the rest waiting to be paid and had not afterwards been heard to complain.[6]

Presumptions arising from the course of business in the post-office.—*See* notes to illustration (f) to Section 114.

Postal Service.—It was held that the evidence of a general clerk, whose duty was to make over the covers containing drafts to a peon of the office for posting that the particular letter was brought to him in an envelope, that he had the envelope sealed in his presence and made it over to the peon for posting is not sufficient to prove the posting of that letter, in the absence of the evidence of the peon.[7]

Illustration (b) Presumption if a letter posted was received.—The proof of mere posting of a letter is not presumptive evidence of the receipt thereof by the addressee unless there is also proof that the original has not been returned from the Dead Letter, Office. Illustration (b) to Section 16 of the Indian Evidence Act, 1872, cannot be relied upon to prove that a combination of the two facts is required to raise such a presumption. It only means that each one of these facts is relevant. It cannot be read as

1. *L.M.S. Ummu Saleema* v. *B.B. Gujral*, 1981 SC 1191.
2. *Hetherington* v. *Kemp*, 4 Camp 193; *Trotter* v. *Maclean*, 13 Ch D 574.
3. *See* Phipson, Ev, 6th Ed, 122.
4. *Sailabala Dassee* v. *H.A. Toppassier*, 1952 C 455.
5. *Butler* v. *Allnut*, 1 Stark 22; Phipson, Ev, 6th Ed, 122.
6. *Lucas* v. *Novosilieski*, 1 Esp. 296, in Phipson, Ev., 6th Ed, 122.
7. *Bank of Bihar* v. *T.S.D.*, AIR 1960 Cal 475; *Hulls* v. *Allahabad Bank*, AIR 1958 Cal 644.

indicating that without a combination of these facts no presumption can arise. Indeed that section with the illustration thereto has nothing to do with presumption but only with relevance.[1]

ADMISSIONS

17. Admission defined.—An admission is a statement, [2][oral or documentary or contained in electronic form], 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.

COMMENTARY

Ground for the reception of admissions in evidence : Sections 17 to 30 : Admissions and commissions.—A scrutiny of the provisions of Sections 17 to 30 of the Evidence Act discloses that statement is a genus, admission is the species and confession is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt.

Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be.[3]

Admissions are supposed to constitute one of the three exceptions to the rule which excludes hearsay, the other two exceptions being (i) statements made by persons deceased,[4] and (ii) statements contained in public documents.[5] The most generally accepted ground for their reception in evidence is that a party's declarations, whether for or against his interest when made, may always be taken to be true as against himself.[6] The general rule governing the admissibility of self-regarding statements is that self-harming statements are, but self-serving statements are not except in some special cases admissible.[7] What is admitted by a party to be true must be presumed to be true unless the contrary is shown.[8]

Definition of an admission; admissions by conduct.—An admission is defined in Section 17 as 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 mentioned in the three succeeding sections. The section does not, therefore, contain a complete definition of the word "admission", inasmuch as it does not

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1. *Mobarak Ali Ahmad* v. *The State of Bombay*, 1958 SCR 328 : 1957 Cr LJ 1346 : 1958 SCJ 111 : 61 BLR 58.
2. **Substituted by Information Technology Act, 2000 (Act 21 of 2000, S. 92 and Sch. II (w.e.f. 17-10-2000).**
3. *Sahoo* v. *State of Uttar Pradesh*, (1965) 2 SCWR 464 : 1965 SCD 809 : (1965) 2 Andh. LT 215.
4. Section 32.
5. Sections 35—38.
6. *Slatterie* v. *Pooley*, 6 M & W 664; *Darbey* v. *Ouseley*, 1 H & N 1; *R.* v. *Turner*, (1910) 1 KB 346; Phipson, Ev., 6th Ed.,229.
7. Section 21.
8. *Nathoo Lal* v. *Durga Prasad*, 1954 SC 355.

define the persons whose statements amount to admissions, nor the circumstances under which a statement must be made so that it may amount to an admission. This part of the definition of an admission is left to Sections 18—20. Therefore, the question whether a statement amounts to an admission or not depends upon whether it was made by any of the persons, and in any of the circumstances, described in Sections 18—20, and whether it suggests an inference as to a fact in issue or a relevant fact in the case. The fact that the statement suggests an inference in favour of the person who made the statement does not make the statement any the less an admission, as the question whether a statement is or is not an admission different from the question whether an admission may or may not be proved in favour of the person making it. So that a statement may be an "admission" in the sense in which this word is used in this set of sections, it must be an oral or documentary statement. A statement may be made otherwise than by word of mouth or writing,[1] but such a statement can hardly be described as an oral or documentary statement.[2] Thus, where at the instance of a Police Officer a specimen signature of an accused is taken in the course of the investigation, the signature does not amount to a statement,[3] nor does the making of a counterfeit coin for purposes of demonstration amount to a statement.[4] Admissions by conduct are not governed by this set of sections, as inferences suggested by active or passive conduct are not oral or documentary statements. The proper section under which the relevancy of admissions by conduct must be established is the eighth section of the Act, as a statement made by conduct will be admissible or inadmissible according to whether it falls or does not fall within the terms of that section.[5]

Statement.— The word "statement" has been used in Sections 17 to 21, 32, 39 and 145 in its primary meaning of "something that is stated", and communication is not necessary in order that it may be stated. The word has not been defined in the Act. Therefore, one has to go to the dictionary meaning in order to discover what it means. Assistance may also be taken from the use of the word in other parts of the Act to discover in what sense it has been used therein. The primary meaning of the word "statement" is "something that is stated"; "written or oral communication". Although a statement may be made to someone in the sense of a communication, yet that is not its primary meaning. The word has been used in a number of sections of the Act in its primary meaning of "something that is started." That meaning should be given to it unless there is something that cuts down that meaning for the purposes of any section. Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context.[6]

Admissions and confessions: importance of the distinction between the two.— The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some

1. *E.* v. *Nga Kyaing*, 3 R 656 : 94 IC 706 : 1926 R 112 : 27 Cr.LJ 658.
2. *Brij Nandan* v. *E.*, 133 IC 154 : 1931 A 9 : 32 Cr.LJ 1006.
3. *F.* v. *Ramrao Mangesh Burde*, 56 B 304 : 138 IC 708 : 1932 B 406 : 33 Cr LJ 666.
4. *Brij Nandan* v. *E.*, 133 IC 154 : 1931 A 9 : 32 Cr.LJ 1006.
5. See Woodroffe, Ev., 9th Ed., 225 ; Wigmore, ç 1052.
6. *Bhogilal Chunilal Panday* v. *State of Bombay*, 1959 SCR 389.

improper inducement, threat or promise, or was made to a Police Officer, or was made at a time when the accused was in the custody of a Police Officer.[1] If a statement was made by the accused in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does or does not amount to a confession. If it amounts to a confession, it will be inadmissible,[2] but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Court of Criminal Procedure.[3] Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance.

Distinction between admissions and confessions.— In America the term "confession" means an admission of a fact or bundle of facts from which guilt is directly deducible or which, within and of themselves, import guilt; but the admission of a particular act or acts or circumstances, which may or may not involve guilt and which is dependent for such result upon other facts or circumstances to be established, is not a confession.[4] In English law, the term "admission" is applied to civil transactions and to those matters of fact in criminal cases which do not involve criminal intent; whereas the term "confession" is generally restricted to acknowledgements of guilt.[5] In India, there is no statutory definition of the terms "confession"; but the arrangement of the sections which deal with "admissions" indicates that admissions are a genus of which confessions are a species. The sections of the Evidence Act which specifically refer to confessions, namely, Section 24-30, occur in that set of sections which deal with the relevancy of admissions, *i.e.*, Sections 17-31. This arrangement of the sections on admissions would seem to indicate that confessions are a special form of admissions and that whereas every confession must necessarily be an admission, every admission does not necessarily amount to a confession. An admission is defined by Section 17 as a statement which suggests any inference as to any fact in issue or any relevant fact; therefore, a confession also must satisfy this evidentiary test in order to be admissible as an admission. A statement made by an accused person, in order to be admissible as an admission under Section 21, must suggest an inference as to the existence of a fact in issue or relevant fact. Where a statement lacks this evidentiary qualification, it will not be admissible in evidence under Section 21, though it may be admissible under some other section of the Act. It does not, however, follow from this that every statement

1. *In re B. Titus*, 1941 M 720 ; *Sidheshwar Nath* v. *E.*, 56 A 730 : 152 IC 174 : 1934 A 351 : 36 Cr.LJ 45 ; In re *Arunachala Reddi*, 55 M 717 : 138 IC 240, 1932 M 500 : 33 Cr LJ 583 : *Abdul Ghani* v. *E.*, 133 IC 55 1931 L 763 : 32 Cr LJ 985 ; *Ilahi Baksh* v. *The Empress* 16 PR 1886 Cr : See also *Ramhit* v. *E.*, 65 IC 849 : 1922 A 24 : 23 Cr LJ 193.
2. Sections 24—26.
3. Sections 162, Cr P Code* : *Narayana Swami* v. *E.*, 1939 PC 47 : 180 IC 1 : 1939 ALJ 298 : 41 PLP 272 ; 41 Bom LR 428 : 1939 MWN 185 : 43 CWN 473 : 20 PLT 265 ; In re *Ramaswami Rendiar*, 1953 M 138 : 1953 Cr LJ 315 : 1952 2 MLJ 814 but see *Muhammad Baksh* v. *E.*, 1941 S 129 where it has been held that the exclusionary rules also apply to admissions.
4. Per Wolverion, J., in *State* v. *Porter*, 32 Or. 135, cited in Wigmore, ç 821.
5. Taylor, § 724. See *Ambar Ali* v. *E.*, 123 IC 739 : 1929 C 539 : 31 Cr LJ 564 ; *Ilahi Baksh* v. *The Empress* 16 PR 1886 Cr

* See new Cr.P.C., 1973.

made by an accused person which suggests an inference as to a fact in issue or a relevant fact will amount to a confession, because, as has been mentioned above, every admission need not necessarily be a confession.

Stephen defines a confession as an "admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime,"[1] This definition had, until recently, been accepted as correct by the Courts in this country,[2] with the result that even statements containing mere admissions of incriminating facts, as distinguished from statements containing direct acknowledgements of guilt were held to amount of confessions for purposes of Section 24-26.[3] The decision of the Privy Council in *Narayana Swami's* case[4] has definitely overruled this view. Lord Atkin in delivering the judgment of the Board in that case observed: "In their Lordships" view no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, *e.g.*, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of `confession' in Art. 22 of Stephen's Digest of the Law of Evidence which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding Articles are examined it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confession so as to cover all such admissions, in order to have a general term for use in the three following Articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872; and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused suggesting the inference that he committed the crime." The word "confession" occurs in several sections of the Act,[5] and, in the absence of a clear indication to the contrary, it should be taken to have been used in the same sense in all the sections.[6] But a careful analysis of the numerous decisions on the point shows that whereas in cases occurring under Section 30 the word has received a much restricted meaning, being applied only to statements that contain direct acknowledgments of guilt or from which the inference of guilt directly and necessarily follows,[7] in cases arising under Sections 24—26 the Courts have given a

1. Stephen's Digest, Art. 21.
2. *Q. E.* v. *Babu Lal*, 6A, 509, 539 (FB); *E.* v. *Pandharinath*, 6 B 34; *Q.E.* v. *Nana*, 14 B 260, 263 (FB); *Illahi Baksh* v. *The Empress* 16 PR 1886 Cr; *Hakiman* v. *K.E.*, 20 PR 1905 Cr.
3. *Mohammad Yusuf* v. *E.*, 126 IC 449 : 1930 S 225 31 Cr LJ 1026; *Shivabhai Becharbhai* v. *E.*, 50 B 683 : 97 IC 660 : 1926 B 513 : 27 Cr LJ 1140; *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr LJ 1478; *E.* v. *Sher Mohammed*, 46 B 961 : 75 IC 70 : 1923 B 65 : 24 Cr LJ 870; In re *Manicka Padayachi*, 72 IC 497 : 1921 N 490 : 24 Cr LJ 385; *E.* v. *Cunna*, 59 IC 324 : 22 Cr LJ 68; *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189; *Pan Gang* v. *E.*, 42 IC 1002 : 19 Cr LJ 42; *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713; *Mi Ein Tha* v. *E.*, 4 IC 1028 : 11 Cr LJ 153; *Farid* v. *K.E.*, 16 PR 1906 Cr; *Hakiman* v. *K.E.*, 20 PR 1905 Cr; *Q. E.* v. *Javecharam*, 19 B 363; *Q. E.* v. *Nana*, 14 B 260 (FB); *Q. E.* v. *Babu Lal*, 6 A 609 (FB); *E.* v. *Pandharinath*, 6 B 34.
4. *Narayama Swami* v. *E.*, 1939 PC 47.
5. IE Sections 24—30.
6. *Q. E.* v. *Jagrup*, 7 A 646, 648; *Ilahi Baksh* v. *The Empress* 16 PR 1886 Cr.
7. *See* notes to Section 30.

wider meaning to the word and have treated even statements that are *prima facie* exculpatory or explanatory as confessions.[1] The Privy Council decision in *Narayana Swami's* case is an authority for the proposition that the word "confession" even for purposes of Sections 24—26 must receive the same meaning as was assigned to it by the Courts in India in cases occurring under Section 30, i.e., a statement admitting in terms the offence or at any rate substantially all the facts which constitute the offence.

It has been suggested in some decisions that to determine the question whether a statement amounts to a confession or not the test to be applied is whether the prosecution tender the statement in evidence relying on its truth or for the purpose of showing that the accused made a false statement. If the prosecution rely on the truth of the statement, the statement would be a confession; otherwise, an admission.[2] This test has ceased to be applicable after *Narayana Swami's case* inasmuch as the observations of the Privy Council in that case make it clear that the prosecution can, subject to the other conditions of admissibility, give in evidence a statement relying on the truth of the facts admitted therein, if the facts do not themselves constitute the offence or are not a substantial part of all the facts constituting the offence.[3] The real point to remember, when distinguishing an admission from a confession, is that the statement alone and dissociated from the other evidence in the case, has to be looked at to determine whether it amounts to an admission of guilt or of substantially all the facts which constitute the offence.[4] If it does not it is a confession; if it does, it is not a confession. If the statement contains an admission of a fact in issue or relevant fact, but by itself it neither amounts to an acknowledgement of guilt nor an admission of substantially all the facts which constitute the offence, the statement is merely an admission and not a confession.

An admission must be taken as a whole though it is not necessary that it should be believed or disbelieved as a whole.— It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all.[5] When a statement which is sought to be given in evidence forms part of a longer statement, evidence shall be given of so much of the statement as is necessary to the full understanding of the nature and effect of the statement.[6] Where, therefore, an admission is tendered against a party, he is entitled to have proved so much of the whole statement, document or correspondence containing the admission as is necessary to explain the admission and although such explanatory parts may be favourable to himself.[7] It is a fundamental rule that the statement containing the admission must be put in evidence and considered as a whole.[8] An admission must be taken either altogether or not

1. *See* notes to Section 24—26.
2. *Mistri* v. *E.*, 151 IC 437 : 1934 S 100 : 35 Cr LJ 1332 ; *Mohammad Yusif* v. *E.*, 126 IL 449 : 1930 S 225 : 31 Cr LJ 1026 *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713 ; See also *Umer Duraz Munshi* v. *E.*, 86 IC 410 : 1925 S 237 : 26 Cr LJ 778 : *E.* v. *Sher Mohammed*, 46 B 961 : 75 IC 70 : 1923 B 65 : 24 Cr LJ 870 : *Ramhit* v. *E.*, 65 IC 849 : 1922 A 24 : 23 Cr LJ 193.
3. *Narayana Swami* v. *E.*, 1939 PC 47 : See also *Karu* v. *E.*, ILR 1937 N 524 : 1937 N 254.
4. See *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189 ; *Ilahi Baksh* v. *The Empress*, 16 PR 1886 Cr : but see *Karam Din* v. *E.*, 115 IC 1 : 1929 L 338 : 30 Cr LJ 295
5. *Hanumant Govind Nargundkar* v. [illegible] 1091 : 1952 SCA 623 : 1952 SCJ 509 : 1953 Cr LJ 129 : 1952 MWN 347 ; *Ishw.* [illegible] 745 ; *Shivram* v. *Shivcharan*, ILR 1964 Page 26.
6. Section 39.
7. Phipson, Ev., 6th Ed., 232, 22 CJ 415.
8. *Darshan Singh* v. *Baldeo Singh*, 151 IC 297 : 1934 O 370 : *Fakir* [illegible] 218 : 141 IC

at all.[1] Although a party cannot, by an admission, make evidence for himself, still if an admission is sought to be used against him, all the words of the admission must be taken together even if they operate in his favour.[2] It is not permissible for a party to pick out such part of the admission as may be favourable to himself and to neglect the rest.[3] Where an admission is made subject to a condition or qualification, the condition and the qualifying part of the statement must also be put in and considered.[4] Thus, where a suit be based upon a lost document which the plaintiff is unable to prove to have been lost, the plaintiff cannot succeed, merely on the defendant's admission of the execution of the document, if the admission is accompanied by a plea of payment endorsed on the document alleged to be lost.[5] An admission by a person of the execution of a promissory note accompanied by an allegation that the note was discharged must be taken subject to the accompanying qualification.[6] But though the whole statement containing the admission must be put in and considered the Court is not bound to believe or disbelieve the statement as a whole,[7] and *if there is other evidence in the case*, it may, in the light of that evidence, believe one part of the statement and disbelieve the other. Where, however, there is no other evidence in the case, or the other evidence is untrustworthy, and the material for decision is the admission, the admission must either be accepted or rejected *in toto*.[8]

A confession, like an admission, must be considered as a whole, though it is not necessary that it should be believed or disbelieved as a whole.[9]— A confession also, like an admission, must be taken and considered as a whole, and used *literatim at*

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264 : 1933 L 179 ; *Bengal Coal Co.* v. *Prosanna Kumar, Bhattacharjee*, 134 IC 921 : 1932 C 39 : *Jawala Das* v. *Sant Das*, 127 IC 746 : 1930 PC 245 ; *Baz Bahadur Singh* v. *Raghubir Prasad*, 49 A 707 : 100 IC 1037 : 1927 A 385 ; *Mg. Shwe Mvin* v. *Ma Naing*, 70 IC 911 : 1923 R 24 ; *Gobind Prasad Thakur* v. *Chattarbhuj Thakur*, 60 IC 482 ; *Shib Nath Dhar* v. *Aunonda Prasad Dhar*, 5 IC 340 : 11 CLJ 382 : *Goloke Chunder Chowdhry* v. *The Magistrate of Chittagong*, 25 WR 15 Cr ; *Juddo Nath* v. *Roy Rajah Baroda Kant Roy*, 22 WR 220 ; *Niamutoolah Khadim* v. *Himmut Ali Khadim*, 22 WR 519 ; *Tarinee Pershad Sein* v. *Dwarkanath Rukheet*, 15 WR 451 (2) ; *Ishan Chunder Singh* v. *Haron Sirdar, etc.*, 11 WR 525 : *Bykunt Coomar* v. *Chander Mohun Chowdhry*, 10 WR 190 ; *Kali Mohun Doss, etc.* v. *Sreenath Doss etc.*, ; 9 WR 290 ; *Rajah Nilmoney Singh Deo* v. *Ramnoograh Roy*, 7 WR 29 : 4 MIA 114 (PC). *Rosetta Evelyn Attatullah* v. *Justin Attaullah*, 1953 C 530.

1. *Harchandra* v. *Rex*, 1950 A 355 : 1950 ALJ 220 : 51 Cr LJ 993.
2. *Thirumalasseri Kottayil Sreedharam Vana Rajah* v. *Parakhat*, 71 IC 270 : 41 MLJ 525 ; *Kali Charan Singh* v. *Hirdai Narain*, 1935 P 24 : 154 IC 948.
3. *Baz Bahadur Singh* v. *Raghubir Prasad*, 49 A 707 : 100 IC 1037 : 1927 A 385 ; *Mg. Shwe Myin* v. *Ma Naing*, 70 IC 911 : 1923 R 24.
4. *Sundra Rajali* v. *Gopala Theevan*, 150 IC 132 : 1934 M 100 ; *Motabhoy Mulla Essabhoy* v. *Mulji Haridas* 39 B 399 : 42 IA 103 : 29 IC 223 : 1915 PC 2 : *Sri Ram* v. *Ram Lal*, 18 IC 878 ; *Altra* v. *Chhaju*, 12 IC 246 : 49 PWR 1911 *Doogarnath Roy* v. *Ram Chunder Sen*, 2 C 341, 350 : 4 IA 52 (PC) ; *Baboo Khettur Mohun Mookherjee* v. *Babu Umbika Churn Banerjee* 10 WR 190. *Fateh Chand Murlidhar* v. *Juggilal Kamlapat*, 1955 C 465.
5. *Atra* v. *Chhajju*, 12 IC 246 : 49 PWR 1911 ; *Sundara Rajali* v. *Gopala Pheevan*, 150 IC 132 : 1934 M 100.
6. *Sundra Rajali* v. *Gopala Theevan*, 150 IC 132 : 1934 M 100 ; See also *U. Min Sen* v. *Ko Kye*, 1941 R 117.
7. See Best, § 520, Phipson, Ev., 6th Ed., 232 ; *Ishan Chunder Singh* v. *Haron Sirdar, etc.*, 11 WR 190 ; *Kali Mohun Dass, etc.* v. *Sreenath Doss etc.*, 9 WR 290 ; *E.* v. *Jate Uraon*, 1940 P 541.
8. *Mg. Shwe Myin* v. *Ma Naing*, 70 IC 911 : 1923 R 24 ; *Hasim* v. *E.*, IC 145 : 20 Cr LJ 737 ; *Shaikh Surfaraz Mollah* v. *Shaikh Dhunnoo*, 16 WR 257 ; *Tarinee Pershad Sein* v. *Dwarkanath Rukheet*, 15 WR 451 (2) ; see also *Kali Mohun Dass, etc.* v. *Sreenath Doss etc.*, : 9 WR 290: *Rajah Nilmoney Singh Deo* v. *Ramanoogarh Roy*, 7 WR 290 : 1 MIA 114 (PC).
9. *James Dowdeall* v. *E.*, 1936 N 103 : 162 IC 430 : 37 Cr LJ 607 ; *Sher Gul* v. *E.*, 1935 L 671 : 156 IC 529 : *Khimji Knetsi* v. *E.*, 156 IC 972 ; *E.* v. *Nga San Win*, 6 R 140 : 147 IC 60 : 1933 R 326 : 35 Cr LJ 248 ; *Mst. Pathani* v. *E.*, 152 IC 1077 1934 L 673 : 35 Cr LJ 247 ; *Mohammad Shafi* v. *E.*, 153 IC 19 : 1934 L 620 ;

verbatim.[1] A confession is evidence against, as well as evidence for the prisoner,[2] and, therefore, the whole statement, including inculpatory as well as exculpatory parts, must be taken together.[3] The Court is not, however, bound to believe or disbelieve the confessional statement as a whole; it is open to it to believe one part of it and reject the other, where there is other credible evidence in the case.[4] The rule that a confession must either be accepted or rejected in the entirety applies only to those cases where there is no other evidence in the case, or where the other evidence is untrustworthy, and the only material for decision is the confession.[5] In such cases the confession must be used *literatim et verbatim* and due effect must be given to every statement contained therein, whether in favour of the accused or against him.[6] Where a confession comprises two parts, one being inculpatory and the other exculpatory, if there is no other evidence to show affirmatively that any portion of the inculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element is inherently improbable.[7] But where there is other credible evidence in the case incompatible with a part of the confessional statement, there is nothing to prevent the Court from rejecting that part of the confession and acting on the residue.[8] There is no such rule that a confession must be disbelieved in its entirety simply because a portion of it is found to be false.[9] The mere fact that the accused in his confession has given a wrong or an incomplete description of the way in which he brought about the deceased's death is not a reason for rejecting the confession.[10] But where a part of the confession is wrong in a material

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36 Cr LJ 292 ; *Sanalydo* v. *E.*, 147 IC 49 : 1933 R 204 : 35 Cr LJ 262 : *Balmukund* v. *E.*, 52 A 1011 : 129 IC 258 : 1931 A 1 ; 32 Cr LJ 362 (FB) ; *Durjan* v. *E.*, 121 IC 550 : 1930 A 192 ; In re *Katiri*, 88 IC 455 : 1925 M 106 : 26 Cr LJ 1143 ; *Nga Ba* v. *E.*, 38 IC 767 : 18 Cr LJ 383 ; *E.* v. *Moharman Singh*, 1883 AWN 148 ; *Q.* v. *Sonaollah*, 25 WR Cr 23 ; *Goloke Chunder Chowdory* v. *The Magistrate of Chittagong*, 25 WR Cr. 15 ; *Bishoo Manjee*, 9 WR Cr. 16 ; *Q.* v. *Sheikh Boodhoo*, 8 WR Cr. 38 ; *Q.* v. *Chakoo Khan, etc.*, 5 WR Cr 70 ; *Ghulam Mohammed* v. *E.*, 1942 L 271 ; *Harchanda* v. *Rex*, 1950 A 355 : 1950 ALJ 220 : 51 Cr LJ 993 ; *Jagmal* v. *E*, 1948 A 211: 1948 ALJ 106 : 49 Cr LJ 243 ; *Sant Ram* v. *State*, 1953 HP 105.

1. *Jagdeo* v. *E.*, 38 IC 740 : 18 Cr LJ 356 ; *Ghulam Mohammad* v. *E.*, 1942 L 271.
2. *Hasnu* v. *E.*, 53 IC 145 : 20 Cr LJ 737 ; *Ghulam Mohammad* v. *E.*, 1942 L 171.
3. *Ghulam Mohammed* v. *E.*, 1942 L 271 ; *Abdul Subhan* v. *E.*, 1940 A 46 ; In re *Srinivasa Rao*, 109 IC 605 : 1928 M 493 : 29 Cr LJ 589 : *Wafadar Khan* v. *Q. E.*, 21 C 955 : *E.*, v. *Moharman Singh*, 1883 AWN 148 : *Q.* v. *Sonaoolah*, 25 WR Cr 23 ; *Q.* v. *Nityo Gopal Dass Byragee*, 24 WR Cr 80 ; *Q.* v. *Sheikh Budhoo*, 8 WR Cr 38.
4. *Sultan* v. *E.*, 1945 L 91 ; *Nihal Singh* v. *E.*, 1940 L 157 ; *E.* v. *Nanua*, 1941 A 145 : 193 IC 873 : 42 Cr LJ 485 ; *E.* v. *Jate Uraon*, 1940 P 541 ; *E.*, v. *Chinnaya*, 1940 MWN 169 ; *E.* v. *Itwal Munda* 1938 P 258 : *Ghulam Nabi* v. *E.*, 40 PLR 265 : *Jumma Khan* v. *E.*, 1935 Pesh 59 : 156 IC 6 : 36 Cr LJ 914 ; *E.* v. *Shankar*, 149 IC 69 : 1934 O 22 : 35 Cr LJ 894 ; *Balmokund* v. *E.*, 52 A 1011 : 129 IC 258 : 1931 A 1 : 32 Cr LJ 362 ; *Sanlaydo* v. *E.*, 147 IC 49 ; 1933 R 204 : 35 Cr LJ 262 ; *Mata Din* v. *E.*, 5 Luck 255 ; 123 IC 886 ; 1930 O 113 : 31 Cr LJ 575 ; *Thogate Lakshmayya* v. *E.*, 1930 MWN 785 ; *E.* v. *Mohammad Yusuf Khan*, 121 IC 178 : 1930 L 269 : 31 Cr LJ 226 ; *Waryam Singh* v. *E.*, 99 IC 71 : 1926 L 554 : 28 Cr LJ 39 : *Nirbhay Nath* v. *E.*, 1 Luck, 417 : 98 IC 178 : 27 Cr LJ 1282 ; *Hasnu* v. *E.*, 53 IC 145 : 20 Cr LJ 737 ; *Kamoda* v. *E.*, 46 IC 705 : 19 Cr LJ 785 ; *Pulin Tanti* v. *E.*, 40 C 873 : 22 IC 169 : 15 Cr LJ 25.
5. *Hasnu* v. *E.*, 53 IC 145 : 20 Cr LJ 737 ; see also in re *Katiri*, 88 IC 455 : 1925 M 1069 : 26 Cr LJ 1143 ; *Waryam Singh* v. *E.*, 99 IC 71 : 1926 L 554 : 28 Cr LJ 39 ; *Pika Bewa* v. *E.*, 39 C 855 : 14 IC 195 : 13 Cr LJ 195 ; *Kamakka* v. *E.*, 9 IC 790 : 12 Cr LJ 142 ; *Kala Mohammad Akbar* v. *E.*, ILR 1940 L 217.
6. *Sher Gul* v. *E.*, 1935 L 671 : 156 IC 529 : 36 Cr LJ 966 ; In re *Katiri*, 88 IC 455 : 1925 M 1069 : 26 Cr LJ 1143 ; *Jagdo* v. *E.*, 38 IC 740 : 18 Cr LJ 356.
7. *Manohar Singh* v. *E.*, 1946 A 15 ; *Balmokund* v. *E.*, 52 A 1011 : 129 IC 258 : 1931 A 1 : 32 Cr LJ 362 (FB) ; *Manohar* v. *E.*, 1945 AWR 291 ; but see *Ghulam Nabi* v. *E.*, 40 PLR 265 ; *Kala Mohammad Akbar* v. *E.*, 1939 L 534.
8. *E.* v. *Shankar*, 1934 O 222 : 149 IC 69 : 35 Cr LJ 894 ; *Mata Din* v. *E.*, 5 Luck 255 : 123 IC 886 : 1930 O 313 : 31 Cr LJ 575; *Waryam Singh* v. *E.*, 99 IC 71 : 1926 L 554 : 28 Cr LJ 39 ; *Hasnu* v. *E.*, 53 IC 145 : 20 Cr LJ 737 ; *Pulin* v. *Tanti* v. *E.*, 40 C 873 : 22 IC 169 : 15 Cr LJ 25.
9. *E.* v. *Moharman Singh*, 1883 AWN 148 ; *Pulin Tanti* v. *E.*, 40 C 873 : 22 IC 169 : 15 Cr LJ 25.
10. *Bangaru Reddy*, In re 1940 M 699 : 190 IC 415 : 41 Cr LJ 909.

particular, it is difficult to hold that the rest of the confession is true.[1]

Admission must be clear and unambiguous.—Before any statement can be used as an admission, it must be shown to be unambiguous and clear on the point at issue.[2] If an admission is capable of two interpretations, an interpretation unfavourable to the person making it should not be put on his admission. The requirement is that an admission must be clear, precise, not vague or ambigious.[3] Admissions must be unambiguous, clear and precise, not vague or ambiguous. If an admission is capable of two interpretations, an interpretation unfavourable to the person making it should not be put on his admission.[4]

Form of admission; admissions in invalid unstamped or unregistered documents.—The form of the admission is, so far as its admissibility goes, generally immaterial; the admission may be oral, or it may be contained in a document. Thus, admissions are receivable which are contained in previous pleadings,[5] depositions[6] petitions,[7] deeds,[8] account books,[9] even if not regularly kept,[10] horoscopes[11] roadcess returns,[12] returns made to the Collector,[13] arbitration proceedings,[14] first information reports[15] or deeds of compromise[16] although the compromise containing the admission has been set aside.[17] Even statements in cancelled or invalid instruments[18] or unstamped documents[19] are receivable. Statements made in a document which is inadmissible in evidence for want of proper attestation[20] or registration[21] may be admissible as admissions.

Mode of proof of admissions: should an admission be put to the party making it?—When an admission is intended to be relied upon, the admission must be regulary proved.[22] An admission may be proved in any of the ways in which a statement is

1. *Jagmal* v. *E.*, 1948 A 211 : 49 Cr LJ 243 : 1948 ALJ 106.
2. *Paresh Nath* v. *Ghasi Ram*, AIR 1960 Pat 407.
3. *Chandra Kumar* v. *Navpat Singh*, LR 34 IA 27.
4. *Ramji* v. *Manohar*, 62 Bom LR 322.
5. *Sarvabhotla Thotapalle Chendikamba* v. *Kanala Indrakanti Viswamanthamayya*, 1939 M 446 : 49 MLW 273 : *Deb Prasanna Mukherjee* v. *Hari Kishon*, 1937 C 515 : *Jairam Mahaton* v. *Lokenath Mahaton*, 125 IC 782 : 1930 P 405 ; *Byathamma* v. *Avulla*, 15 M 19 ; *Grish Chunder Lahoree* v. *Shama Churn Sandyal*, 15 WR 437.
6. *Mst. Amina Khatun* v. *Khalilurrahman Khan*, 8 Luck, 445 : 1933 O 246 : *E.* v. *Wheeler*, 112 IC 50 : 1929 S. 15 : 29 Cr LJ 962 ; *Ali Mahommad Khan* v. *Maharaj Bepari*, 64 IC 266 : 36 CLJ 186 : *Baboo Umbica Churn Bose* v. *Banoo Girish Chunder Ghose*, 21 WR 414.
7. *Mun Mohan Ghose etc.* v. *Baboo Kally Kishen Sein*, 21 WR 34 ; *Grish Chunder Lahoree* v. *Shama Churn Sandyal*, 13 WR 437 ; *Mohinee Mohun Roy* v. *Kalee Mohun Das, etc.*, 14 WR 484.
8. *Jarao Kumari* v. *Lalonmoni*, 18 C 224 : 17 IA 145 (PC) ; *Gadian Chetti* v. *Veerappa Chetti*, 26 IC 899 : 28 MLJ 92.
9. *Narain Coomary* v. *Ramkrishna Dass*, 5 C 864 ; *Reg.* v. *Hanmanta*, 1 B 610.
10. *Reg.* v. *Hanmanta*, 1 B 610.
11. *Raja Goundan* v. *Raja Goundan*, 17 M 134.
12. *Swarnamoyi* v. *Surindra Nath Mitra*, 89 IC 747 : 1925 C 1189 ; *Sadhu Saran* v. *Ambika Lal*, 68 IC 676 : 1923 O. 163.
13. *Avudh Beharee Singh* v. *Ram Raj Tewaree etc.*, 18 WR 105.
14. *Huronath Sircar, etc.* v. *Pareeonath Sircar, etc.*, 7 WR 249.
15. *Kaku* v. *E.*, 63 IC 822 : 22 Cr LJ 694.
16. *Mahadeo Uraon* v. *Etwaria*, 43 IC 775 : 1917 P. 181.
17. *Neamattun Nessa Bibi* v. *Golam Panchaton Kazi*, 45 IC 601 : 27 Cr LJ 502.
18. Phipson Ev., 6th Ed., 235.
19. *Baboo Mohesh Chunder Chowdhry* v. *Baboo Chunder Madhub Ghose*, 23 WR 325.
20. *Shyam Lal* v. *Lakshmi Narain*, 1939 ALJ 142 : 1939 A 269 : 181 IC 612 : ILR 1939 A 366.
21. *Sailesh Chandra Sarkar* v. *Bireshwar Chatterjee*, 126 IC 715 : 1930 C 559.
22. *Moni Lal Kar Chowdhry* v. *Uma Charan Chakravarty*, 25 IC 571 : 19 CLJ 541.

permitted to be proved. The person who made the admission may be called and questioned as to his having made the alleged admission, or any person in whose presence the statement was made may be called and examined. If the admission is contained in a document, the document must be proved in any of the ways in which a document is provable. An admission contained in a plaint must be proved in one of the ways in which a statement contained in a document may be proved; and since a plaint is not a public document a certified copy of it is not the proper proof of an admission contained in it.[1]

It has been held in several decisions that when an admission is sought to be given in evidence, the admission must be put to the party making it to enable him to explain the admission,[2] but it is submitted that this view is erroneous. The Privy Council decision in *Balgangadhar Tilak* v. *Shrinivas Pandit*,[3] which is relied on for this view[4] is no authority for the proposition that an admission in the usual sense must be put to the party making it. In that case, certain documents were used, and inferences drawn from them, by the High Court to discredit the testimony of persons who had been examined as witnesses, without those documents or inferences arising from them being put to the witnesses. This was, as held by the Privy Council, clearly contrary to the provisions of Section 145 of the Evidence Act which provides that where it is intended to contradict a witness by a previous inconsistent statement of his, his attention must be drawn to that part of the statement by which it is intented to contradict him. But Section 145 of the Evidence Act applies only to previous statements of witnesses and does not apply to admissions of parties. An admission is admissible, *proprio vigore*, and is given in evidence as substantive evidence in the case and not for the purpose of contradicting the testimony of a witness. In other systems of evidence the rule requiring confrontation does not apply to admissions made by a party. Whether the party is called as a witness or not;[5] and there is no reason why the same rule should not be followed here, there being nothing in the Act to point to the contrary. There are observations in some Indian decisions also to the effect that the rule of confrontation does not apply to admissions.[6] The rule that an admission must be put to the party making it also conflicts with the well recognized rule that an admission shifts *onus* and that it is for the party making the admission to get rid of it by showing that the admission was untrue.[7] If, therefore, the *onus* of proving an admission to be untrue is on the party making it, it is no duty of his opponent to call him as a witness or to put the admission to him when and if he has called him. Further, a declaration, when admitted as an admission, is original evidence

1. *Ahmad Khan* v. *Hurmuzi Khanam*, 61 IC 177. See notes to S. 74 under the heading "records of the Acts and judicial officers and tribunals."
2. *Ude Bhan* v. *Daulat Ram*, 170 IC 315; *Latafat Husain* v. *Onkar Mal*, 152 IC 1042 : 1935 O 41 *Daulat Shah* v. *Bishan Das*, 1934 L 750 ; *Muharram Ali* v. *Barkat Ali*, 125 IC 886 : 1930 L 695 ; *Taja* v. *Nagina*, 11 L 410 : 123 IC 278 : 1930 L 991 ; *Molar* v. *Ram Prashad*, 102 IC 198 : 1927 L 377 ; *Upendra Nath Nag Chowdhury* v. *Bhupendra Nath Nag Chowdhury*, 32 IC 267 ; see also *Gajadhar Tewari* v. *Nand Lal Pande*, 1934 P. 55(2) : 150 IC 841 ; *Bombay Agarwal Co.* v. *Ramchand Diwanchand*, 1953 N 154 : ILR 1952 N 700.
3. *Bal Gangadhar Tilak* v. *Shri Srinivas Pandit*, 39 B 441 : 42 IA 135 ; 29 IC 639 : 1915 PC 7.
4. See *Muharram Ali* v. *Barkat Ali*, 125 IC 886: 1930 L 695.
5. Wigmore.§ 1339, 1051 ; *Andrews* v. *Askey*, (1837) 8 C & P 7.
6. See *Ramkeshwar Das* v. *Baldeo Singh*, 1936 P. 588 : 165 IC 805 ; *Nanduri Saradamba* v. *Parakala Pattabhiramayya*, 53 M 952 : 129 IC 463 : 1931 M 207 ; *Natha* v. *Hurmat*, 31 PR 1903.
7. *Bibi Kaniz Ayesha.* v. *Majibul Hasan Khan*, 1942 P. 230. See notes to Section 17.

and not hearsay. An admission may, therefore, be proved by any witness who heard it and the person making it need not be called at all.[1] If, therefore, the maker of the admission need not be examined as a witness, it is much less necessary to put the admission to him if and when called as a witness. The matter has been recently considered by a Full Bench of the Lahore High Court and it has been held that the rule as to confrontation enacted in Section 145 does not apply where the person making the admission has not been examined as a witness or if examined has not in his evidence stated anything inconsistent with his previous admission but that if he has in his evidence said something inconsistent with or contradictory to his previous admission he must be confronted with such admission and where this course is not adopted the previous admission is not admissible.[2]

In *Mst. Ulfat* v. *Zubida Khatoon*, Where the party sought to be bound by an admission contained in a statement made by her in a previous case came into the witness-box and denied having made the statement, but made no attempt to explain the admission, a Bench of the Allahabad High Court expressly dissented from the view taken in the above Lahore case and held that the admission could be used against the party who made it even though the statement containing the admission was not put to her while she was in the witness-box.[3] This view has since been affirmed in a Full Bench decision of the same Court in *Ayodhya Prasad* v. *Bhawani*,[4] *Bhargava* J., dissenting. After the exhaustive review of the case-law the learned Judges have held that if, in a civil suit, a party produces documents containing admissions by his opponent and they are admitted by the counsel for the opponent, it would not be obligatory on the party producing those documents to draw in cross-examination the attention of his opponent (when he enters the witness-box) to the said admission before he could be permitted to use them for contradicting his opponent, provided the admissions are clear and unambiguous. Reliance was placed upon the decision of their Lordships of the Privy Council in *Rani Chandar Kunwar* v. *Narpat Singh*,[5] that what a party himself admits to be true may reasonably be presumed to be so, though, the party making the admission may give evidence to rebut the presumption, but unless and until that is satisfactorily done, the fact admitted must be taken to be satisfactorily established.

The Allahabad view in *Ayodhya Prasad* v. *Bhawani Shanker*,[6] was approved by the Supreme Court in *Bharat Singh* v. *Bhagirath*,[7] and again in *Union of India* v. *Moksh Builders & Financiers*,[8] and the view taken by Punjab High Court in the case of *Moksh Builders & Financiers*,[9] was reversed. The Labour view on this point in *Des Raj, Faqir Chand* v. *Piarey Lal Ayaram*,[10] was also the view expressed in the several decision cited in Footnote 4 on page 220 already criticized as erroneous, cannot be deemed to be good

1. Taylor, § 793 ; *Ali Moidin Raouthan* v. *Elayachanidathil Kombi Achen*, 5 M 239.
2. *Des Raj Faqir Chand* v. *Piarey Lal Ayaram*, 1946 L 65 ; 47 PLR 391 : (FB) ; *Girdhari Biswal* v. *Golak Biswal*, 1949 Orissa 27 ; but see *Mst. Ulfat* v. *Zubaida Khatoon*, 1955 A 361, wherein the Lahore view has been dissented from.
3. 1955 A 361.
4. ILR 1956 (2) All. 359.
5. 34 IA 27.
6. ILR 1956 (2) All 356.
7. (1966) 1 SCR 606 : 1966 SC 405.
8. (1977) SC 409 (para 21).
9. *Ibid.*
10. 1946 L 65.

law any longer after the said rulings of the Supreme Court. The Supreme Court has cited with approval in *Moksh Builders*, case[1] the following passage on this point from Wigmore on Evidence Volume IV, 1048 (at p. 3).

> "The theory of the Hearsay rule is that as extra-judicial assertion is excluded unless there has been sufficient opportunity to test the grounds of assertion and the credit of the witness, by cross-examination by the party against whom it is offered (post 1362); *e.g.* if Jones had said out of Court. "The party-opponent Smith borrowed this fifty dollars", Smith is entitled to an opportunity to cross-examine Jones upon that assertion. But if it is Smith himself who said out of Court, "I borrowed this fifty dollars", certainly Smith cannot complain of lack of opportunity to cross-examine himself before his assertion is admitted against him. Such a request would be absurd. Hence the objection of the hearsay rule falls away, because the very basis of the rule is lacking, viz., the need and prudence of affording an opportunity of cross-examination."

Time when admission may be made.—That the party making the statement, that the consideration under the document in question was paid by a certain person was a child at the date of the document is not a ground referred to in Sec. 17 which will hinder the statement from being regarded as an admission" under law, by supposing that because of his childhood at the time he could not be expected to speak out of personal knowledge.[2]

Admission of a signature on a document is not tantamount to admission of its execution.—It is one thing to admit signature of person on a document and quite another thing which has different legal implications to admit that person whose signature is identified by the deponent has executed the document.[3]

Sections 17, 21 and 145.—Admission is substantive evidence of fact admitted—Not necessary that it should have been put to maker in the witness-box or maker should have been confronted with it.

Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Evidence Act though they are not conclusive proof of the matters admitted. The admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness-box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence.[4]

Reference to admissions in judgments.— Where there is a reference in a judgment to an admission made in Court on a certain point, there is a presumption that it was so

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1. (1977) SC 409 (para 21).
2. *Raghavan v. Soumini Amma*, AIR 1957 Ker 178.
3. *Gitabai v. Dayaram Shankar*, 1969 Mah LJ 838 : 72 Bom LR 32.
4. *Bharat Singh v. Mst. Bhagirathi*, AIR 1966 SC 405.

made, though the recital in the judgment is not conuclusive.[1] In the absence of an affidavit by counsel, a statement in the judgment as to an admission made before the Court should not be lightly doubted by the Court of appeal.[2] But a judgment not *inter partes* is not proper proof of the fact that an admission made before the Court in a previous case. The fact that an admission was made should be proved by producing the pleading containing the admission, and, where the admission was oral, by the evidence of some one who heard the admission.[3] An admission cannot be proved by a recital in a judgment[4] In any case recitals in a judgment[4] are no evidence whatsoever to prove the exact admission made by a party or a witness unless the whole of the statement is recited therein.[5] Where a pedigree table filed in the case contained an admission, and the decree recited the fact that the pedigree table had been filed by the parties, the Privy Council held the admission in the pedigree table to be sufficiently proved by the recital in the decree.[6] See also notes to Section 43 under the heading "a judgment may be secondary evidence of the pleadings of the parties thereto, and of any statement, admission or acknowledgement."

Admission by minors or without personal knowledge.—A primary use or effect of an admission is to discredit a party's claim by exhibiting his other inconsistent utterances. It is, therefore, immaterial whether these other utterances would have been independently receivable as the testimony of a qualified witness. It is their inconsistency with the party's present claim that gives them their logical force, The admissions of an infant party are, therefore, receivable.[7] On the same principle, it is not necessary to the relevancy of the admission that the declarant should have had personal knowledge of the matter of which the admission relates.[8]

Admission founded on hearsay or merely expressive of the declarant's belief or opinion.—An admission is receivable, although its weight may be slight, which is founded on hearsay or consists merely of the declarant's opinion or belief, but where the admission is a mere inference from facts not personally known to the declarant, the Court may disregard the inference and look to the facts, and a bare statement that a party "is informed," without the admission of his belief in the information, will not amount to an admission.[9] A person's admission as to his own age is evidence of the fact, though necessarily founded on hearsay.[10] Where goods are loaded in the wagon by the sender and not by the Railway servants, and the information given by the sender is

1. See *Madhu Sudan Chowdhri* v. *Chandrabati Chowdharain*, 42 IC 527 : 1917 PC 30 :21 CWN 897.
2. *Sarat Chandra Maiti* v. *Bibhabati Debi*, 1921 C 584 : 66 IC 433 : 34 CLJ 302.
3. *Debendra Nath Haldar* v. *Bireshwar Haldar*, 30 IC 821 : 22 CLJ 270; see also *Molar* v. *Ram Parshad*, 102 IC 198 : 1927 L 377; *Ram Prakash Das* v. *Anant Das*, 43 C 707 : 43 IA 73 : 33 IC 583 (PC) ; *Tripurana Seethapati Rao Dora* v. *Rokkam Vekanna Dora*, 45 M 332 : 66 IC 280 : 1922 M 71 (FB) ; but see *Subbaraya Dora*, 45 M 332 : 66 IC 280 : 1922 M 71 (FB) ; but see Subbaraya Chettiar v. Sellamuthu Asari, 142 IC 548 : 1933 M 184 ; *Rudra Pratap Narain* v. *Nirman Prasad Singh*, 74 IC 225 : 1923 O. 61 ; *Mirza Shamsher Bahadur* v. *Kunj Behari Lall*, 7 CLJ 414 : 12 CWN 273 ; *Lakshman Govind* v. *Amrit Gopal*, 26 B 591 ; *Parbutty Dassi* v. *Purno Chander Singh*, 9 C 586.
4. *Dundbahadur Singh* v. *Durga Prasad Singh*, 1953 P 346: 1953 BLJR 234.
5. *Indar Singh* v. *Commissioner of Income Tax*, 1943 P. 169: 206 IC 609 : 22 P. 55.
6. *Collector of Gorakhpur* v. *Ram Sunder Mal*, 56 A. 468 : 150 IC 545 : 1934 PC 157.
7. *Wigmore*, § 1053 ; see *Kesho Prasad Singh Bahadur* v. *Parmeshri Prasad Sigh*, 2 P 414 : 71 IC 902 : 1923 P 276.
8. Wigmore, § 1053.
9. Phipson, Ev., 6th Ed., 233 ; See *Mohadeo* v. *Baleshwar Prasad*, 1939 A. 626 : 1939 ALJ 708.
10. *R.* v. *Turner*, (1910) 1 KB 346.

accepted as correct for the purposes of charging freight, and a receipt is given in the words "said to contain 255 bags", there is no admission on the part of Railway as to the number of bags loaded in the Wagons.[1]

Admission on a pure matter of law.—In England, admissions are receivable to prove matter of law or mixed law and fact.[2] But an admission having been defined by the Evidence Act as "a statement which suggests any inference as to a fact in issue or relevant fact," it seems that an admission on a pure matter of law is not within the scope of Section 17-31 and will be governed by the rules of pleadings.[3] Generally, an admission on a point of law is not binding on the part making it,[4] nor does it operate as an estoppel under Section 115 of the Evidence Act.[5] But an admission on a question of custom is not an admission on a pure matter of and is, therefore, admissible.[6] A general allegation by an interested party as to the existence or non-existence of a custom is his conclusion on a mixed question on law and fact. This is particularly so in pleadings in which a party has to make allegations both of fact and law.[7] An admission by counsel that the parties are governed by custom is an admission on a question of law and is not binding on the client[8] and can be used against party making it.[9]

Evidentiary function of admissions.—Admissions which are dealt with in Section 17-31 are evidentiary admissions. They are relevant but not conclusive and may, therefore, be shown to be wrong.[10] An admission which is wrong in point of fact and is evidently made in ignorance of legal rights has no binding effect on the person making it.[11] But such admissions become conclusive and are, then, binding on the party making them if they amount to a representation on a matter of fact made to the other party who in consequence of such representation, has altered his position. When an admission is thus acted upon by the party to whom it is made, it operates as an estoppel and becomes conclusive, inasmuch as the party making it is not, then, permitted to show that the admission was wrong. Such evidentiary admissions which are relevant under Section 31 of the Act must be distinguished from admissions in pleadings or made for purposes of pleadings in a particular case. The latter class of admissions is governed by Section 58 of the Evidence Act and such admissions, unlike evidentiary admissions, are generally conclusive.[12] Admissions by non-traverse are admissible for purposes of the particular suit in which they are made but they are not governed by Section 17.[13]

Even where an evidentiary admission does not operate as an estoppel, it constitutes evidence of a very satisfactory character.[14] and casts on the party making the admission

1. *Dominion of India* v. *Firm Museram Kishunprasad, 1950 N 85 ; Union of India* v. *S.P.L. Lekhu Reddiar,* 1956 M. 176.
2. Phipson, Ev., 6th Ed., 233.
3. *Gulabchand* v. *Bhaiyalal,* 119 IC 698 : 1929 N 343; See also *Ghulam Sarwar Khan* v. *Abdul Majid Khan,* 113 IC 99 : 1928 L 779.
4. *Ram Bharosey* v. *Ram Bahadur Singh,* 1948 O. 125 : 23 Luck., 58 ; see notes to Section 18 under heading "admission by Counsel or Solicitor".
5. See notes to Section 115.
6. *Ghulam Sarwar Khan* v. *Abdul Majid Khan* 113 IC 99 : 1928 L 779.
7. *Mohadeo* v. *Baleshwar Prasad,* 1939 A 626 ; 1939 ALJ 708
8. *Kesar* v. *Buta* (1945) 47 PLR 384.
9. *Shanker* v. *Rustom,* AIR 1988 Raj 188.
10. Section 31 : *Daulat Singhji* v. *Khachar Mansur,* 1936 PC 150 : 162 IC 17 : 60 B, 634 : 63 IA 248.
11. *Amritlal Narsilal* v. *Sadashive,* 1944 B 233 ; *Mst Munia* v. *Monohar Lal, etc.,* 1941 O 429 : 194 IC 161 ; *Ram Jiwan* v. *Hanuman Prasad,* 1942 O 409.
12. *Abdul Aziz* v. *Maryam Bibi,* 49 A 219 : 97 IC 176 : 1926 A 710.
13. *Mst. Diali* v. *Lachhman Singh,* (1946) 48 PLR 21.
14. See Taylor, S 861 ; *Bhola Nath Chattopadhyay* v. *Mrityunjoy Chattopadhya, 1943* C 851 : 153 IC 532 :

the onus of proving that the admission was not true.[1] An admission of a party is a very strong piece of evidence. Though it may not be conclusive, it is almost conclusive if not explained.[2] Admission, unless explained, furnishes the best evidence.[3] What a party himself admits to be true must necessarily be presumed to be so, and it is for him to establish by evidence that the admission was made under circumstances which do not make it binding on him.[4] It is, therefore, one of the normal incidents of an admission that it shifts the burden of proof to the party making it.[5] The weight of an admission increases with the knowledge and deliberation of the speaker or the solemnity of the occasion of which it is made.[6]

In considering the value of an admission contained in a will, its scope should be determined not only with reference to the whole document in which it appears, but also in the light of the fact that the document was not intended to take effect until the death of the person making the admission.[7]

The admission of a party to an attested document of its execution by himself is sufficient proof of its execution against him,[8] though such admission will be of no avail where the document is required by law to be attested but has not been attested. An oral admission as to the contents of a document is not relevant. unless and until the party proposing to prove such contents shows that he is entitled to give secondary evidence of them or unless the genuineness of the document is in question.[9]

Oral admissions are generally received with a certain amount of distrust[10] and in some cases admissions, whether oral or in writing, are not considered sufficient proof of the facts admitted. Thus, in proceedings for divorce the opponent's admissions are not sufficient proof, there being a danger of collusion in such cases.[11] In certain cases where

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59 CLJ 532; *Abdul Kareen* v. *Rashiduddin*, 131 IC 903 : 1931 O 246; *Sirajuddin* v. *Johur Jan Bewa*, 134 IC 188 : 53 CLJ 222.

1. *Kishan Lal* v. *Lotan Singh*, 39 PLR 876; *Mst. Abadi* v. *Mumtazuddin*, 1934 L 662 : 153 IC 393 : 53 PLR 578; *Bhag Singh* v. *Jai Singh*, 10 L 694 : 116 IC 903; 1929 L 318.
2. *Sital Prasad Jagmohan Singh* v. *Kurban Hussain*, 1952 N 25; *Ramalinga Pillai* v. *Guru Granth Sahib*, 1951 Pepsu 101.
3. *Ramji Dayawala Sons (P) Ltd.* v. *Invest Sport*, 1981 SC 2085 (para 17)
4. *Des Raj Fakir Chand* v *Piara Lal Aya Ram*, 1946 L 65 (FB); *Sunder Kuer* v. *Shah Udey Ram*, 1944 A 42; *Sarvabhotala Thotapalle Chendikamba* v. *Kanala Indrakanti Viswanathamayya*, 1939 M 446 : 49 MLW 273; *Raj Krishna Prasad Lal Singh Deo* v. *Baraboni Coal Concern, Ltd.*, 1935 C 368 : 159 IC 98 : 62 C 346; *Ajit Narain Chattopadhaya* v. *Aswatha Narain Chatterjee*, 164 IC 530; *Radha Nath Maity* v. *Krishna Chandra Mukherji*, 1936 M 249 : 165 IC 682 : *Mst. Abadi* v. *Mumtazuddin*, 1934 L 662; *Bhola Nath Chattopadhyay* v. *Mrityunjoy Chattopadhyay*, 1934 C 851 : 153 IC 532 : 59 CLJ 532 : *Aminuddin Munshi* v. *Tajaddin*, 59 C 541 : 138 IC 761 : 1932 C 538; *Nanilal Das* v. *Nutbehari Das, etc.*, 38 CWN 861; *Chandra Kunwar* v. *Chaudhri Narpat Singh*, 29 A. 184 : 34 IA 27 (PC); *Sirajuddin* v. *Gohar Jan Bewa*, 134 IC 188; *Vir Singh* v. *Harnam Singh*, I L 137 : 56 IC 191; *but see Mst. Ulfat* v. *Zubaida Khatoon*, 1955 A 361.
5. *Dukharammath Zutshi* v. *Commercial Credit Corporation*, 1940 O 35 : *Sarvabhotla Thotapalle, Chendikamba* v. *Kanala Indrakanti Viswanathamayya*, 1939 M 446 : 49 MLW 273; *Ajit Narain Chattopadhaya* v. *Aswatha, Narain Chatterjee*, 164 IC 530; *Mst. Abadi* v. *Mumtazuddin*, 1934 L 662; *Bai Devmani* v. *Ravishanker Oghadbhai*, 53 B 321 : 116 IC 236 : 1929 B 147; *Bhag Singh* v. *Jai Singh*, 10 L 694 : 116 IC 903 : 1929 L 318; *Lal Shah* v. *Hira Lal*, 106 PR 1917; 41 IC 163.
6. *Nanilal Das* v. *Nubehari Das etc.*, 38 CWN 861.
7. *Hubert P. James* v. *Gulam Hussein*, 1949 PC 151; 1949 ALJ 148 : 1949 AWR 254; 1949 MWN 390 : 62 MLW 454 : 51 BLR 945.
8. Section 70, 72.
9. Section 22.
10. Wigmore, § 1056.
11. *Premchand Hira* v. *Bai Golal*, 51 B 1026 : 105 IC 871 : 1927 B 594; *Fattu* v. *Allah Rakhi* 130 IC 401 :

the fact of marriage is in issue, e.g. in prosecution under Sections 494, 495, 497 and 498. I.P. Code, and proceedings under the Indian Divorce Act, strict proof of the fact being required, mere admission of a spouse is not generally considered sufficient proof of marriage.[1]

Evidence of oral admissions ought always to be received with great caution. Such evidence is necessarily subject to much imperfection and mistake, for either the party himself may have been misinformed, or he may not have clearly expressed his meanings, or the witness may have misunderstood him or may purposely misquote the expression used. It may also sometimes happen that the witness, by unintentionally altering a few words, may give an effect to the statement completely at variance with what the party actually said.[2] A general statement by a witness that some persons admitted having committed a crime is valueless without some indication as to which of the persons made the admission and the particulars of what was actually said.[3] Thus, where the accused was asked whether he had three packets of cocaine and he replied that he had three packets but did not say that they contained cocaine, it was held that the admission was valueless.[4] For further notes on the evidentiary function and value of admissions, see notes to Section 31.

Statements in the presence, and documents in the possession of a party.— Statements made in the presence and hearings of a party and documents in his possession or to which he has access are evidence against him of the acquiesced in their contents.[5] In India, this kind of evidence is admissible more particularly under Section 8 of the Evidence Act than as an admission in the usual sense.[6] Documents which are or have been in the possession of a party are receivable against him as admissions, if he has in any way recognized, adopted or acted upon them.[7] To constitute an admission, it is not necessary that the document should have been written by the party against whom it is used; it is sufficient if it is found in his possession and his conduct with reference to the document creates an inference that he was aware of its contents and admitted their accuracy. But the mere fact of possession of a document is not of much value unless it is shown that its contents were recognized and adopted by the party.[8]

Admission not admissible against person other than the person making it.— There is no provision of law which makes the admissions admissible against a person other than the person making them, unless such person can be said to be bound by the admissions.[9]

Admission in plaint.—An admission by a party in a plaint signed and varified by him in a prior suit is an admission under Section 17 of the Evidence Act, 1872, and may be proved against him in other litigations. That section makes no distinction between an admission made by a party in a pleading and other admissions. In other litigations the

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1931 L 2 : Wigmore, § 1055 ; but *see Getty* v. *Getty*, 1907 P. 334 : *Robinson* v. *Robinson*, I S & T 362 : *Williams* v. *Williams*, LR 1 P & D 29.

1. *Q.E.* v. *Dal Singh*, 20 A 166 : Wigmore, 2058 : see notes to Section 50
2. Taylor, § 861.
3. *Sajjan Singh* v. *E.* 6 L 437 ; 90 IC 145 : 1925 L 418 ; 26 Cr LJ 1489.
4. *See Wali Muhammad* v. *E.*, 83 IC 904 : 1924 A 193 : 26 Cr LJ 200.
5. Phipson, Ev., 6th Ed., 255.
6. See notes to Section 8.
7. Phipson, Ev., 6th Ed., 257.
8. *Barindra Kumar Ghose* v. *E.*, 37 C 467 : 7 IC 359 : 11 Cr LJ 453; Se notes to Section 8.
9. *Saitaram Motilal Kalal* v. *Santanu Prasad Jaishankar Bhatt*, (1966) SCWR 974: 68 Bom LR 489.

admission cannot be regarded as conclusive and it is open to the party to show that it is not true.[1]

Effect of admission.—What is admitted by a party to be true must be presumed to be true unless the contrary is shown.[2]

At the same time, since every admission is capable of being explained or withdrawn, it cannot be used against the party making it, unless an opportunity has been afforded to him to explain or withdraw it. Where an admission of a plaintiff is sought to be used against him, it is incumbent on the defendant to plead the fact of the admission in his written statements.[3]

Weight to be given to admission.—Admissions must be clear, if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of this Section and Section 21 of the Act, though they are not conclusive proof of the matters admitted. Admissions duly proved are admissible in evidence, irrespective of whether a party making them appeared in the witness-box or not, and whether that party, when appearing as witness was confronted with those statements, in case he made a statement contrary to those admissions. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence.[4]

Evidentiary value of statement in returns filed by party to Statutory Board giving list of properties.—Though an admission is the best evidence for the opposite party to be relied on, it is only a piece of evidence, and can be explained by direct or circumstantial evidence. it is not necessary that the explanation must come in the pleading or from the evidence of the person who made it.[5]

Party to proceeding.—When a party to the suit makes a statement which is at variance with his pleading it is open to the other party to treat that statement as an admission and use it against him.[6] The Court is entitled to consider admission solemnly made by a party in the course of proceedings in the same or other suits.[7] Even statements made to the Police Officers can be proved under this section, though they cannot be used as evidence in confession.[8]

Admissions made solemnly by a party in an earlier proceedings are of value in other proceedings relating to the same subject matter.[9]

Admission by a party.—What is admitted by a party to be presumed to be true unless the contrary is shown.

18. Admission by party to proceedings or his agent.—Statements made by a party to the proceedings, or by agent to any such party, whom the court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

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1. *Basant Singh* v. *Janki and other*, 1961 SCJ (1) 476.
2. *Nathoo Lal* v *Durga Prasad*, 1954 SC 355 : 1954 SCJ 557 : 67 MLW 641.
3. *The Bombay Aggarwal Co.* v. *Ramchand Diwanchand*, 1953 Nag. 154 : ILR 1952 N 700.
4. *Bharat Singh* v. *Bhagirathi*, AIR 1956 SC 405.
5. *Bihar State Board of Religious Trust, Patna* v. *Hariksishan Das*, AIR 1971 Pat. 363.
6. *Sampat* v. *Surajmal*, ILR 1958 B 797 : 59 Bom. LR 1112.
7. *Dattatraya* v. *Shankar*, ILR 1959 B 1144, 61 Bom, LR 792.
8. *Biswanath* v. *Dhapu*, 1959 Bom. 1144.
9. *Nathoo Lal* v. *Durga Prasad*, 1955 SCR 51: 1954 SCJ 557 : 1954 SCA 921.

By suitor in representative character.— Statements made by parties to suits, suing or used in a representative character, are not admissions, unless they were made while the party making them held that character,

Statements made by—

By party interested in subject-matter.— (1) person 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 whom interest derived.— (2) 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.

COMMENTARY

Persons whose statements are admissions.— If a statement possesses the requisite evidentiary qualification laid down by Section 17, it must in order to amount to an admission be made by any one of the person mentioned in Sections 18 to 21. With respect to the persons whose statements are receivable as admissions, the general rule is that the statement must be either of a party to the proceeding or of one identified in interest with the party to the proceedings.[1] The word "proceeding" in section 18 refers to proceedings in which the matter stated by the party is in issue[2] Therefore, a statement made in a previous suit by a person who is not a party to the subsequent suit is not admissible in the subsequent suit.[3] The identity of interest may arise by reason of the person making the statements being the agent.[4] or referee[5] of the party against whom the statement is sought to be proved, or by reason of his having any proprietary or pecuniary interest in the subject of the litigation, or by reason of the suit having derived his interest in the subject of the suit from the person making the statements.[6]

Section 18 postulates that 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 authorised by him to make them, are admissions. Equally, statement made by a person who has any proprietary or pecuniary interest in the subject matter of the proceedings or by persons having derivative interest during the continuance of the interest also are admissions.[7]

Section 17, 18 and 21.—Admission of the adverse party is the best piece of evidence.—A party to a litigation may rely on the admission of his adverse party as the best piece of evidence in proof of facts admitted. It is equally well-known that an

1. Taylor § 740.
2. *Patel* v. *E.*, 6 R 113 : 146 IC 653 : 1933 R 292 : 35 Cr. LJ 131.
3. *Ahmad Khan* v. *Jawahar Singh*, 84 IC 257 : 1923 L 16.
4. Section 18.
5. Section 20.
6. Section 18 and 19..
7. *Sri Chand Gupta.* v. *Gulzar Singh*, (1992) 1 SCC 143 (para 2).

admission is decisive though not conclusive. It is equally well-known that an admission in a written statement in another litigation may be tendered as substantive evidence in any subsequent litigation even though the party whose admissions are proved may not be confronted with them. The law is also equally well settled that the adverse party against whom an admission is proved may show that such admission was not true and was made under circumstances to serve an ulterior purpose.[1]

Parties in criminal cases.—In criminal cases the accused is a party; his admissions are, therefore, receivable subject to the exclusionary rules enacted by section 24 to 26. The complainant is also a party in cases taken cognizance of on private complaint; but in cases taken cognizance of on police report, the person aggrieved, *i.e.* the person against whom the offence is committed, is in the position of a mere witness whose prior inconsistent statements are receivable not as admissions but by way of self-contradiction under Section 145.

Admissions by an accused.—Letters written by an accused are evidence as against him.[2] Bail application containing admissions of the accused which are not put to him under Sec. 342 can be used against him.[3]

Admission by co-accused.—Admission can be considered against other accused if there is other evidence to prove his guilt.[4]

Statements of parties suing or sued in a representative character.—Statements, made by parties to suits suing or sued in a representative character, are not admissions, unless they are made while the party making them held that character.[5] An admission made by a member of a community does not bind the other members of his community, unless it is proved that the statement was made in a representative character.[6] Where a party sues or is sued in a representative capacity, *e.g.* as trustee, executor, administrator or the like, his representative capacity is distinct from his ordinary capacity, and only admissions made in the former capacity are receivable whereas statements made before he acquired the representative character are inadmissible.[7] Thus, an admission by the trustee of a bankrupt, made before he acquired the character of a trustee, is not receivable against him when he is sued as a trustee.[8] Conversely, an admission by a person in his representative capacity is not receivable against him as a party in his personal capacity.[9] Cases are, however, conceivable where statements made by a person while holding a representative character may become admissible against him as an admission when subsequently sued in his personal capacity. Thus an affidavit of the guardian of an infant may be used against the guardian himself if he be afterward sued in his private capacity, for it is his own admission upon oath.[10] An admission made by a person in a written statement in a prior litigation in the character of a legal representative of a defendant as a legatee under his will is not binding on him in a subsequent suit

1. *Ujali Padhani* v. *Rushi Patra*, (1972) Cut LT 110.
2. *Sardul Singh* v. *State of Bombay*, 1957 Cr. LJ 1325.
3. *Satya Vir* v. *State*, 1958 Cr LJ 1266.
4. *Parasuraman* v. *State of Madras*, 1969 Mad LW (Cr) 68 (Mad.).
5. Section 18 *Changa* v. *Bhagwan Dei*, 1949 A 493 : 1950 ALJ 21.
6. *Changa* v. *Bhagwan Dei*. 1949 A 493 : 1950 ALJ 21.
7. Wigmore § 1076 : See *Sena Yasin Sahib* v. *Kadur Ekambara Iyer*, 54 IC 497 : 37 MLJ 698.
8. *Fenwick* v. *Thornton*, (1827) M & M 51 cited in Taylor, § 755.
9. *Wigmore* § 1076; *see Rukeya Banu* v. *Nazira Banu*, 55 C 448 : 105 IC 647 : 1928 C 130.
10. *Beasley* v. *Magrath*, (1804) 2 Sch & Lef 34, cited in Taylor.§ 755.

by him as the reversioner to the estate of the deceased, because in the subsequent suit he is suing not only on his behalf but on behalf of all the reversioners.[1]

Admissions by agents.—A statement made by an agent to a party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by the party to make it is an admission[2] and admissible against the party,[3] provided that the statement fulfils the evidentiary requirement prescribed by Section 17. The rule admitting the declarations of the agent is founded upon his legal identity with the principal; such declarations are, therefore, binding on the principal only so far as the agent had authority to make them.[4] "The principal constitutes the agent as his representative in the transaction of certain business. Whatever, therefore, the agent does in the lawful prosecution of that business is the fact of the principal. Where the acts of the agent will bind the principal, there his representations, declarations and admissions respecting the subject-matter will also bind him, if made at the same time and constituting part of the *res-gestae*".[5] The principle on which the statements of an agent are received as admissions against the principal is thus explained by an American Judge:— "The principle upon which the declarations or representations of an agent, within the scope of his authority, are permitted to be proved, is, that such declarations, as well as his acts, are considered and treated as the declarations of his principal. What is so done by an agent, is done by the principal through him, as his mere instrument. So whatever is said by an agent, either in the making of a contract for his principal, or at the time, and accompanying the performance of any act, within the scope of his authority, having relation to, and connected with, and in the course of the particular contract or transaction in which he is then engaged, is, in legal effect, said by his principal, and admissible in evidence: not merely because it is the declaration or admission of an agent but on the ground, that being made at the time of and accompanying the contract or transaction, it is treated as the declaration or admission of the principal, constituting a part of the *res-gestae*" a part of the contract or transaction, and as binding upon him as if in fact made by himself.[6] The Latin expression "*res gestae*" used in the rule as stated above is merely a compact expression for the business regarding which the law identifies the principal and agent and must not be taken to import that the declarations must form a part of the *res-gestae* in the evidentiary sense of that term; for, so long as they are made concerning the principal's business and in the ordinary course thereof, is immaterial whether they relate to past or present events.[7] Where the statement of a person is sought to be given in evidence against another as an admission by an agent against the principal not only must there be proof of an express or implied agency,[8] but it must be shown that the statement was within the scope of the agent's authority and was made at a time when the agency subsisted. Therefore, where the statement relates to matters which are not properly within the scope of the agent's employment[9] or where the transaction of business in which the agent is employed was at an end at the time the statement was

1. *Sarvabhotla Thotapale Chendikamba* v. *Kanala Indrakanti Vishwanathamavya*, 1939 M 446.
2. Section 18 : *Govindji Jhaver* v. *Chotalal Velsi*, 2 Bom LR 651.
3. *Raj Fateh Singh* v. *Baldeo Singh*, 3 Luck 416 : 109 IC 310 : 1928 O 233.
4. Taylor § 605.
5. Taylor. § 602.
6. Per Buchanan, C.J., *in Franklin Bank* v. *Pensylvania D. & M.S.N. Co.*, 11 G & J 28, 33, cited in Wigmore, § 1078.
7. Phipson Ev. 6th Ed., 246.
8. *Ritbaran Singh* v. *E.*, 46 IC 709 : 19 Cr LJ 789.
9. Phipson, Ev., 6th Ed., 246 : *Sita Ram Tewari* v. *Gya Prasad*, 1923 P. 37.

made, the statement will be rejected.[1] An admission by *muhktar-e-am* is admissible against the principal.[2]

Admission by agent without instigation or without benefit to principal is not binding on principal.[3]

Proof of agency.—The fact of agency must be somehow evidenced before the alleged agent's declarations can be received as admission;[4] and, therefore, the use of the alleged agent's hearsay assertions that he is agent would, for that purpose, be inadmissible, as merely begging the very question. Nevertheless, they might be received provisionally as verbal acts indicating that he was acting on another's behalf, not his own, leaving it to subsequent proof to establish his connection as agent with the present party.[5] Agency may be either general or special, and it may be express, by writing or by verbal authority, or it may be implied and inferred from the acts and conduct of the parties.[6] Agency may be inferred from the principal's conduct either in treating the party as agent, holding him out as such to third persons or adopting prior similar acts by him.[7] The section expressly includes cases of implied agency within the rule.

Agency should be pleaded and proved. In the absence of a proper case made in the pleadings, the case of agency made at the hearing cannot be taken notice of by the Court.[8]

The declaration as to the status of the plaintiff as wife of the defendant, being a judicial act ought not to be founded on admissions but on evidence. The admission of an agent, under certain circumstances, might be admissible against the principal, but it must be proved that the person making the admission was, at the time when he made the admission, the agent.[9]

Admissions by agents in criminal cases.— An admission by an agent is never evidence in criminal cases, as it sometimes is in civil cases. In civil cases, the admission of an agent, made in the course of his employment and in accordance with his duty, is binding upon the principal. But this has never been extended to criminal cases.[10] Therefore a solicitor has no authority in criminal cases to affect his client by any admission of fact.[11] An incriminating statement by the father of the accused is not receivable as an admission under this section.[12] An exception to this general rule, however, is to be found in Section 30 of the Evidence Act, according to which the confession of an agent may be admissible against the principal, if both are being tried for the same offence.

Admissions by Co-Defendants.— In general, the statement of defence made by one defendant cannot be read in evidence either for or against his co-defendant, the reason

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1. Phipson, Ev., 6th Ed., 246; *Kalee Churn Rawanee* v. *The Bengal Coal Co.*, 21 WR 405.
2. *Bhudhe Ram* v. *Hira*, 1953 HP 52.
3. *Laxmi Narayan* v. *State of Bank of India*, AIR 1969 Pat 385.
4. Wigmore, § 1078: *Ritbaran Singh* v. *E.*, 46 IC 700: 19 Cr LJ 789; *Kedar Nath Bajoria* v. *State*, 1954 SC 660.
5. Wigmore, § 1078.
6. Norton, 144.
7. Phipson, Ev., 6th Ed., 89.
8. *S. Bhattacharjee* v. *Sentinel Assurance Col. Ltd.*, 1955 C 594.
9. *Briji Sunder Sharma* v. *Election Tribunal, Jaipur*, 1 LR (1957) 7 Raj 34.
10. Roscoe, Cr. Ev., 12th Ed., 46, 47;
11. Phipson, Ev., 6th Ed., 250; *Gangappa Goundan* v. *E.*, 1936 M 426.
12. *Gul Zaman Khan* v. *E.*, 1935 Pesh 73: 158 IC 483: 36 Cr LJ 1442(1).

being as there is no issue between the defendants no opportunity for cross-examination is afforded, and if this course is followed, the plaintiff can make one of his friends a defendant and thus gain an unfair advantage.[1]

Admission by Government servants.—The Home Minister speaks on behalf of the Government as its spokesman and his answers to questions put to him in the House, as Home Minister, in relation to matters dealt by him as Home Minister, are admissible in evidence as admissions made by the Government. When Government is a party to the proceedings, these admissions are relevant and admissible against the Government.[2] Admissions of a Government Officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or if he exceeds that authority, when the Government in fact, or in law directly, or by implication, ratifies the excess.[3]

Admissions by officers of corporations and firms.— The directors of a company may make admissions on its behalf, when acting for it in the course of a transaction with a third person,[4] but the secretary of a company cannot, unless acting under the express order of the directors, make admissions against the company, even as to the receipt of a letter.[5] Admissions made by shareholders do not bind the company for any purpose whatever, as shareholders merely as such are not the agents of the company for any purpose whatsoever.[6] The manager of a banking company may make admissions against the bank as to its practice in making loans to customers.[7]

Admissions by counsel or solicitor.—As an admission is a statement which suggests any inference as to the existence of a fact in issue or relevant fact,[8] an admission on a question of law as distinguished from an admission on a question of fact, is not governed by Sections 17 to 31.[9] Therefore, an admission by council on what is a pure matter of law is not binding on the client.[10] Where counsel makes an admission on a mixed question of law and fact, *e.g.*, on a question of limitation, the party is not debarred from arguing the question in appeal, if no surprise is sprung on the opposite party.[11] But an admission on a pure question of fact, made by counsel in the conduct of

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1. *Harihar* v. *Naba Kishore*, ILR 1962 Cut. 422.
2. *Shib Nath* v. *Porter*, 1943 C 377: 208 IC 493: 47 CWN 802; *E.* v. *Sibnath Banerjee*, 1943 FC 75.
3. *Sujan Singh* v. *G.G. in Council*, 1944 Pesh 34: 46 PLR 266.
4. Re Devala Co. 22 Ch D 593; Meax's Exors Case, 2 De G.M. & G 533, 535-6, cited in Phipson, Ev., 6th Ed. 247.
5. *Bruff* v. *G.N. Ry.*, 1 F & F 344; *Burnside* v. *Davrell*, 3 Ex. 224; Phipson, Ev., 6th Ed., 247.
6. *Barnes* v. *Pennell*, 2 HLC 497.
7. *Simmons* v. *Lond*, JS Bank, 62 LT 427; Phipson, Ev., 6th Ed., 247.
8. Section 17.
9. See notes to Section 17 under the heading "admission on a pure matter of law.".
10. *Societe Belge De Bauque* v. *Girdhari Lal*, 1940 PC 90; *Ram Krishan*, v. *Om Parkash*, 1941 L 347; *Kamta Prasad Misir* v. *Chait Narain Singh* 154 IC 168: 1934 A 531; *Sivasubramania Nadar* v. *Subramania Nadar*, 138 IC 88: 1932 M 409; *Rajirao Narhar Peshwa* v. *Sakaram Balwant Peshwa*, 132 IC 434: 1931 B 295, *Surain Singh* v. *Sunder Singh*, 120 IC 532: 1929 L 879; *Gulab Chand* v. *Bhaiya Lal*, 119 IC 698: 1929 N 343; *Fatech Ali* v. *Ahmad Din*, 100 IC 833: 1927 L 284; *Nanak Chand* v. *Muhammad Khan*, 75 IC 1048: 1924 L 702; *Punjabai Bhilasa* v. *Bhagvandas Kisandas*, 53 B 309: 117 IC 518: 1929 B 89; *Ghulam Sarwar Khan* v. *Abdul Majid Khan*, 113 IC 99: 1928 L 779; *Ulichi Kottayya* v. *Nallamalli Sreeramulu*, 109 IC 178 1928 M 900; *Muthiah Chetti* v. *Muthu Karuppan Chetti*, 50 M 786: 105 IC 5:1927 M 852; *Narayan* v. *Kaucharya Balkrishacharya*, 28 B 408; *Krishnaji Naryan Parkhi* v. *Rajmal Manick chand Marwadi*, 24 B 360; *Beni Pershad Koeri* v. *Dudhnath Roy*, 27 C 156: 26 IA 216 (PC); *Jagwant Singh* v. *Silan Singh*, 21 A 265; but see *Nand Kishore Rai* v. *Ganesh Prasad Rai*, 118 IC 166: 1929 A 446; *Ghulam Sarwar Khan* v. *Abdul Majid Khan*, 113 IC 99: 1928 L 779.
11. *Ganesh Baksh Singh* v. *Ajudhiya Baksh Singh*, 7 Luck 564: 137 IC 349: 1932 O 172; but see *Fateh Ali* v.

the case, whether in the trial Court or in the appellate Court, is binding on the client[1] even if the client be a minor represented by a guardian.[2] A *vakil's* general powers in the conduct of a suit include the abandonment of an issue which in his discretion he considers unadvisable to press.[3] Therefore, when a person engages a vakil to conduct his case, he is presumed to authorize him to make binding admissions before the Court in the conduct of the case.[4] A pleader has authority to admit a certain fact so as to dispense with the necessity of additional evidence in a criminal case at the appellate stage.[5] In civil cases, a solicitor has implied authority to make admissions against his client during the actual progress of litigation, either for the purpose of dispensing with proof at the trial, when they are generally conclusive,[6] or incidentally as to any of the facts, when they are *prima facie* evidence merely.[7] Such admissions may be made in Court or Chambers, or by documents and correspondence connected with the proceedings. Thus, an undertaking signed by their solicitor to appear for A and B "as joint owners of the sloop in question" is evidence of such joint ownership;[8] so, a notice, served by the defendant's solicitor, to produce "all documents relating to the bill accepted by the said defendant" is *prima facie* evidence of the acceptance.[9] An admission of the execution of a document by the attorney of the man who executed it is evidence to prove that the document was duly executed.[10] A statement in a case drawn up by an attorney for the opinion of counsel is admissible in evidence against the client, as it must be regarded a statement of the party on whose behalf the attorney was acting.[11] But admissions made by a party's solicitor before litigation has commenced,[12] or during litigation but in mere conversation,[13] or to a third person and not to the opposite party,[14] are not evidence against the client. So although a solicitor's admission on the trial of an action is evidence against his client on a new trial of the same action,[15] an admission made by him in one action cannot be used against the client in another, being regarded as a mere waiver of proof.[16] So, admissions by a solicitor in front of his

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Ahmad Din, 1927 L 284; as to an admission on a question of custom, see *Ghulam Sarwar Khan* v. *Abdul Majid Khan*, 1928 L 779; *Kesar* v. *Buta*, (1945) 47 PLR 384.

1. *Shiv Prasad Singh* v. *Sris Chandra Nandy*, 22 P 220: 1943 P 327; *Chhagan Lal Shiv Lal* v. *Bounderbai Rup Chand Lohar*, 151 IC 376; *Ulichi Kottayya* v. *Nallamalli Sreeramulu*, 109 IC 178: 1928 M 900; *Muthiah Chetti* v. *Muthu Karuppan Chetti*, 50 M 786: 105 IC 5: 1927 M 852; *Risal Singh* v. *Manohar Lal*, 102 IC 283: 1927 L 748; *Jahadali* v. *Ajimannessa Bibi*, 44 IC 18; *Bhut Nath Sircar* v. *Ram Lal Sircar*, 6 CWN 82; *Indar Singh* v. *Karm Singh*, 35 IC 870; 86 PLR 1916.
2. *Indar Singh* v. *Karam Singh*, 35 IC 870:88 PLR 1916.
3. *Buta Ram* v. *Sayad Mohammad*, 16 L 328: 157 IC 806; *Naidu Venkata Narasimha Naidu* v. *Bashyabrlu* Naidu 25 M 367: 29 IA 76 (PC); *Ulichi Kottayya* v. *Nallamalli Sreeramulu*, 109 IC 178: 1928 M 900.
4. *Bhut Nath Sircar* v. *Ram Lal Sircar*, 6 CWN 82.
5. *Bansilal Gangaram Vani* v. *E.*, 52 B 686: 112 IC 110: 1928 B 241: 29 Cr LJ 990.
6. *Elton* v. *Larkins*, 1 M & Rob 196; *Doe* v. *Bird*, 7 C & P 6; *Langley* v. *Oxford*, 5 LJ Ev., 166; Phipson, Ev., 7th Ed., 242.
7. *Holt* v. *Squire*, Ry & M 282; Phipson, Ev., 7th Ed., 242.
8. *Marshal* v. *Cliff*, 4 Camp 133; *Wagstaff* v. *Wilson*, 4 B & Ad 339; Phipson, Ev., 7th Ed., 242.
9. *Holt* v. *Squire*, Ry & M 282; Phipson, Ev., 7th Ed., 242.
10. *Beni Madho* v. *Major A.U. John*, 1947 A 110: 1947 ALJ 283: ILR 1947 A 321.
11. *Chandreswar Prosad Narain Singh* v. *Bisheshwar Pratap Narain Singh*, 5 P 777: 101 IC 289: 1927 P 61.
12. *Wagstaff* v. *Wilson*, 4 B & Ad 339; *Ley* v. *Peter*, 3 H & N 101, 111; Phipson, Ev., 7th Ed., 242.
13. *Petch* v. *Lyon*, 9 QB 127; *Watson* v. *King*, 3 CB 608; Phipson, Ev., 7th Ed., 242.
14. *Wilson* v. *Turner*, 1 Taunt, 398; Phipson, Ev., 7th Ed., 242.
15. *Elton* v. *Larkins*, 5 C & P 385; *Doe* v. *Bird*, 7 C & P 6.
16. *Blackstone* v. *Wilson*, 26 LJ Ex. 229; *Doe* v. *Ross*, 7 M & W 102, 122; Phipson, Ev., 7th Ed., 242.

client are not evidence against the latter.[1] When a solicitor is already constituted in the cause, admissions made by his managing clerk or agent are in general receivable as his own, not only against the client, but against the solicitor in favour of the client. This rule, however, is not invariable, since the client, being entitled to the skill and judgment of his solicitor in the conduct of his business, is not bound to be satisfied with those of a clerk.[2]

Admissions by counsel stand upon a narrower footing, for while the attorney represents the client throughout the cause, the former represents him upon the particular occasion for which he is briefed.[3] Subject to this, such admissions are, in civil cases, conclusive if made for the purpose of dispensing with proof at the trial.[4] but are otherwise merely *prima facie* evidence against the client.[5] Admissions made by counsel out of Court in conversation with the solicitor for the opposite side are not evidence against the client.[6] The general authority of counsel in civil cases embraces the complete control of the suit and the mode of conducting it, *e.g.*, calling no witnesses, assenting to a verdict,[7] agreeing not to appeal[8] or compromising any matter in dispute.[9] On the question of the authority of counsel to make admissions on behalf of his client, the following propositions have been deduced from the authorities by Kumaraswami, J., in *Muthian Chetty* v. *Muthu*—[10]

(i) A counsel has authority to make admissions in Court on behalf of his client on matters of fact relevant to the issue in the case in which he is engaged. Admissions on questions of law will not bind the client.

(ii) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed, if his doing so is for his client's advantage or benefit, even though he has no express authority from his client."[11]

(iii) A counsel cannot, without express authority, agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit in which he is instructed.[12]

(iv) Where in the course of a suit a counsel makes an admission as to a collateral matter, or gives up a doubtful claim which is not the subject-matter of the suit, there is a presumption that the counsel acts under instructions, if the admission or the giving up of the doubtful claim is for the benefit of the client.

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1. *Williams* v. *Preston*, 20 Ch. D 672.
2. Phipson, Ev., 6th Ed., 250.
3. *Richardson* v. *Peto*, 1 M & G 896; *R.* v. *Greenwich*, 15 QBD 54; Phipson, Ev., 6th Ed., 250.
4. *Urquhart* v. *Butterfield*, 37 Ch. D 357.
5. Phipson, Ev., 6th Ed., 250.
6. *Richardson* v. *Peto*, 1 M & G 896.
7. *Mathews* v. *Munster*, 29 QBD 141; Phipson, Ev., 6th Ed., 251.
8. Re *West Devon Mine*, 38 Ch. D 51; Phipson, Ev., 6th Ed., 251.
9. *Ellender* v. *Wood*, 32 SJ 628; *Alliance Syndicate* v. *McIvor*, 7 TLR 599; *Kempshall* v. *Holland*, 14 R 336; *Nundo Lal Bose* v. *Nistarini Dassi*, 27 C 428; *Sen & Bros.* v. *Chani Lal Dutt & Co.*, 51 C 385: 83 IC 611: 1924 C 651; Phipson, Ev., 6th Ed., 251; See *Viswanathan Chettiar* v. *Appa Naicken*, 1943 M 672; but see *Haji Hussain Habibulla* v. *Haji Vali Mohammad*, ILR 1940 Kar. 467.
10. *Muthiah Chetti* v. *Muthu Karuppan Chetti*, 50 M 786: 105 IC 5: 1927 M 852, followed in Mst. *Bashiran* v. *Muhammad Abrar*, 158 IC 97: 1935 A 626.
11. See *Viswanathan Chettiar* v. *Appa Naicken*, 1943 M 672; *Toyo Menka Kaisha* v. *Sohan Singh Harnam Singh*, 1944 S. 51. But see *Jaipal Tewary* v. *Tapeswari Tewary*, 45 IC 321; *Haji Husain Habibulla* v. *Haji Vali Mohammed*, ILR 1940 Kar. 467.
12. See also *Ambalal Chunthabhai* v. *Somabhai Bakarbhai*, 1944 B 46.

(v) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit, and the Court, on a consideration of the probabilities and the circumstances of the case, can find that the counsel acted on instructions, even though there is no direct evidence on the point.

(vi) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit if he is instructed not to do so.

The power to compromise given to a *vakil* does not include the power to withdraw an appeal unconditionally, in the absence of specific authority given to him by the client for the purpose.[1] The apparent authority of counsel who is retained to conduct a suit to bind his client by his admissions and acts is restricted to acts and admissions in Court, and such acts admissions out of Court do not bind the client, unless, in fact, they are authorized by the client or by his agent duly authorized in that behalf. The nature of the duty which an advocate accepts by undertaking to appear for a client indicates that he is clothed with authority to bind his client only when he is in fact engaged in the actual management of the suit. A compromise effected by counsel out of Court and not assented to by the client is only binding upon the client if it was expressly authorized or is subsequently ratified, by the client or by his agent in that behalf.[2]

The law does not make provision for an admission by counsel in a criminal case. No admission by counsel can relieve the prosecution of the duty of proving any fact in issue.[3]

Admission by counsel after deliberation cannot be realized from merely on the ground that party or his counsel was not in full possession of facts.[4]

Unless the vakalatnama of a counsel is worded in such a wide term as to enable him to make particular admission or to waive the rights of the client without referring the matter to him, the counsel or other lawyer, is not competent to make an admission affecting the interest of his client to waive the patent to make an admission affecting the interest of his client to waive the patent to make an admission right which his client had. The question in each case, would be whether the counsel had an express or implied authority to bind the client by his admission or waiver. If the knowledge of the lawyer, and his intentional relinquishment of the right on behalf of his client, is sufficient to fasten on the client himself, when he is not aware of the position in law and does not in fact relinquish his right voluntarily with knowledge of the same, the case falls within the authority conferred on the lawyer and the client is bound.[5]

Information as to facts obtained from counsel across the bar amount to admission so far as it goes against the interest of party and must form part of record.[6]

Affidavits and depositions of witnesses.— There is no rule of law that a party must be bound by the statements of his witnesses, though the belief in such a rule is not uncommon and does great harm in judicial trials in some of the subordinate Courts.[7]

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1. *Ramaswami Pillai* v. *Badra Nayakar*, 55 IC 267: 38 MLJ 322.
2. *Askaran Choutmal* v. *E.I. Ry. Co.*, 52 C 386: 88 IC 413: 1925 C 696.
3. *S.C. Mitter* v. *State*, 1950 C 435: 86 CLJ 21: *Attorney-General* v. *Henry Louis Bertrand*, 1867, 36 LJ PC 51: LR 1 PC 520.
4. *Shiva Pd.* v. *Sris Ch.*, 1943 P 327.
5. *B.K. Gooyee* v. *Commissioner of Income-tax*, AIR 1956 CA 438.
6. *Sunder* v. *Caltex (1) Ltd.* AIR 1969 B 24.
7. *Jalal Din* v. *Nawab*, 1941 L 55; 193 IC 186.

The deposition or *viva voce* testimony of a party's witnesses is not receivable against such party in subsequent proceedings as an admission. But affidavits or documents, which a party has expressly caused to be made or knowingly used as true in a judicial proceeding for the purpose of proving a particular fact, are evidence against him in subsequent proceedings to prove the same fact, even on behalf of strangers; and it is immaterial in such a case whether the documents are originals or copies.[1] Admissions contained in an affidavit are admissible against the interests of the party filing them.[2] Where a defendant is called as a witness by another defendant and examined, the statement made by the former cannot be given in evidence on the trial of a different issue as an admission by latter, nor can the former be treated as the purpose of making admissions,[3] and, witness cannot be categorized as chance witness.[3a]

Admissions by the manager of a joint Hindu family.—The manager of a joint Hindu family is the agent of the other members and has authority to do all acts for their common necessity or benefit.[4] He fully represents the family and, in the absence of fraud or collusion, his acts are binding on the other members of the family.[5] Therefore, his admissions, made as such manager and within the scope of his authority, are provable against the other members of family. It is within his functions to acknowledge debts but he has, unless specifically authorized by the other members no power to revive a time barred debt.[6] Similarly, he is the agent of the family within the meaning of Section 20 of the Limitation Act and a payment of interest by him saves limitation against the other members of the family as well.[7]

Admissions by guardian or manager of Court of Wards.—An admission by a guardian or next friend, made in good faith in a pending suit for the purpose of the trial, is admissible at the trial;[8] but previous admissions made by next friend or guardian are not receivable as evidentiary admissions, because these persons, though named on the record, are merely officers of the Court appointed for the infant's protection.[9] A guardian is not, in general competent to bind his ward by an admission of previous transactions.[10] Thus, a ward cannot be prejudiced by an admission made by the manager of the Court of Wards.[11] Casual statement as to the age of a minor, made by a guardian in the

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1. Phipson, Ev., 6th Ed., 251; See *Babu Ram* v. *E.*, 1937 A 754.
2. *Dominion of India* v. *Rupchad Heerchand*, 1953 N 169.
3. *Parbhudas Girdhardas Shah* v. *Lallubhai Khushal Mehta*, 137 IC 710: 1932 B 117.

3a. *State of U.P.* v. *Anil Singh*, AIR 1988 S.C. 1998.

4. *Kotta Ramsami Chetty* v. *Bangari Seshama Nayanivaru*, 3 M 145, 150.
5. *Jagan Nath* v. *Mannu Lal*, 16 A 231, 233.
6. *Chinnaya Nayudu* v. *Gurunatham Chetti*, 5 M 169 (FB); *Kondappa* v. *Subba*, 13 M 189; *Bhasker Tatya Shet* v. *Vijalal Nathu*, 17 B 512; *Sobhandri Appa Rau* v. *Sriramulu*, 17 M 221; *Kailasa Padiachi* v. *Pounukannu Achi*, 18 M 456, 457; *Dinkar* v. *Appaji*, 20 B 155.
7. *Saroda Charan Chukerbutty* v. *Durga Ram De Sinha*, 37 C 461: 5 IC 484: 11 CLJ 484.
8. Taylor, § 742; see *Syud Abdul Hye* v. *Baboo Banee Pershad*, 21 WR 228; as to an admission by counsel of a minor represented by a guardian; see *Inhar Singh* v. *Karm Singh*, 35 IC 370: 86 PLR 1916.
9. *Ingram* v. *Little*, 11 QBD 251; *Marshall* v. *Prince*, 6 BWCC 755; Phipson, Ev., 6th Ed., 238, but see *Kesho Prasad Singh Bahadur* v. *Parmeshri Prasad Singh*, 2 P 414: 71 IC 902: 1923 P 176; *Dost Mohammad* v. *Sher Mohammad*, 1935 L 489: 159 IC 693.
10. *Banwarilal Singh* v. *Dwarkanath Missir*, 52 IC 825: 29 CLJ 577; *Suraj Mookhi Konwar* v. *Bhagwati Konwar*, 10 CLR 377 (PC); *Woodroffe* v. *Baboo Unnoda Pershad Banerjee*, 20 WR 223; but see *Kesho Prasad Singh Bahadur* v. *Parmeshari Prasad Singh*, 2 P 414: 71 IC 902: 1923 P 276.
11. *Ram Autar* v. *Mohammad Mumtaz Ali*, 24 C 853: 24 IA 107: 1 CWN 417 (PC); *Banwarilal Singh* v. *Dwarkanath Missir*, 52 IC 825: 29 CLJ 577.

course of mutation proceedings or in a *mukhtiarnama* cannot be used as admissions against the minor.[1] But a lawful guardian is an agent of the minor for purposes of Sections 19 and 20 of the Limitation Act,[2] and as such can make acknowledgment of liability, or payment of interest, or part payment of principal, so as to extend the period of limitation. Where persons to be sued are majors, a suit brought without their knowledge against them on the footing that they are minors is wrong, and the guardian *ad litem* appointed to represent them has no legal standing to act for them in the suit and his admission of liability is not binding on them.[3]

Other instances of agency.—The admissions of a land agent or rent-collector, though evidence to prove the receipt of rent, are not receivable as to his landlord's title;[4] but books kept by a mutual agent of landlord and tenant are admissible against both.[5] The admissions of a shopman are evidence against his master as to matters within the ordinary course of business, *e.g.*, the receipt of shop goods, but not as to a transaction outside the usual business.[6] The captain of a ship may make admissions against the owners either in the official or ship's logs, in the protest, or perhaps in letters to, or conversations with, third persons.[7] A wife, merely as such, cannot affect her husband by her admissions, though the latter may, of course, constitute her/his agent for that purpose either expressly or impliedly. Thus, where a husband allows his wife to conduct the business of his shop in his absence, her admissions in the ordinary course of such business, *e.g.*, as to the receipt of shop goods, or by offering to pay for them, will be evidence against him; though not her admissions outside the scope of such business, *e.g.*, as to the amount of the shop rent, or other terms of the tenancy.[8] Admissions made by the Eastern Bengal Railway are admissions made by the agents of the Government and are, therefore, binding on the Government.[9]

Admissions by a partner are admissible against the other partners.— When any number of persons are associated together in the joint prosecution of a common enterprise or design, as in commercial partnerships and similar cases, the act or declaration of each member in furtherance of the common object of the association is the act or declaration of all. By the very act of association each partner is constituted the agent of the others for all purposes within the scope of the partnership concern, and his acts and declarations bind his copartners and the firm. Therefore, an admission or representation made by one partner concerning the partnership affairs in the ordinary course of its business is evidence against the firm[10] under the first paragraph of Section 18.[11] Further, an admission made by a person as a partner and during the subsistence of the partnership will ordinary be an admission made by a person "having a proprietary or pecuniary

1. See *Shakergir Guru Motigir* v. *Chinnuji*, 71 IC 140: 1923 N 164.
2. Section 21, Indian Limitation Act; *Begeshwari Charan Singh* v. *Bindeshwari Charan Singh*, 1932 P 337: 13 PLT 509.
3. *Firm R.M.A.R.M. Chettyar* v. *Maung Shwe Humun* 1938 R 468.
4. *Ley* v. *Peter*, 3 H & N 101; Phipson, Ev., 7th Ed. 241.
5. *Weller* v. *Stone*, 54 LJ Ch 497; Phipson, Ev., 7th Ed. 241.
6. *Garth* v. *Howard*, 8 Bing 451; Phipson, Ev., 7th Ed. 241.
7. Phipson, Ev., 7th Ed. 244, citing The Midlothian, 15 Jur. 806; The Manchester, 1 W Rob. 63: The Europa, 13 Jur. 856.
8. Phipson, Ev., 7th Ed. 241, citing *Clifford* v. *Burton*, 1 Bing, 199; *Meredith* v. *Footner*, 11 M & W 202.
9. *Secretary of State* v. *District Board Rangpur*. 1939 C 758.
10. Taylor, § 598; Section 23 of the Act IX of 1932.
11. See *Thomas Bear & Sons* v. *Rulia Ram*, 143 IC 763: 1934 L 625.

interest in the subject-matter of the proceeding" and will, therefore, be admissible against the other partners under clause (1) of the second paragraph of Section 18. The admission must, however, relate to the joint business, and not to matters outside its scope,[1] and must, ordinarily, be made during the partnership is not admissible against his co-partner, nor generally is an admission made after the dissolution, unless the joint liability continues. In which case the joint interest is deemed to continue also.[2] While the firm exists, it speaks and acts only by the several members, but when that existence ceases by dissolution, the subsequent acts of the individual members are binding on themselves alone, except so far as they may be acts necessary to wind up the affairs of the partnership or to complete transactions, begun but unfinished at the time of the dissolution. But declarations and admissions made after the dissolution relating to the previous business of the firm are admissible against all the partners interested in the transaction.[3] Admissions made by a partner in fraud of the firm are admissible against the latter, unless made collusively with the other side.[4]

Whether a partner is an agent of the other partners to make an acknowledgment of liability, or payment of interest, or part payment of the principal and thus to extend the period of limitation.—Where, before the expiry of the period of limitation, an acknowledgment of liability has been made in writing signed by the party or his agent,[5] or where before the prescribed period, interest on a debt has been paid by the party or his agent, or a party of the principal has been paid by the party or his agent and the fact of such payment appears in the handwriting of the person making the payment,[6] a fresh period of limitation shall start. This rule does not, however, render one of several joint contractors or partners chargeable by reason only of a written acknowledgment signed, or of a payment made, by any other or others of them,[7] in the absence of proof, direct or circumstantial, that the partner signing the acknowledgment or making the payment had authority, express or implied, to do so. According to the Bombay,[8] Allahabad,[9] Rangoon[10] and Lahore[11] High Courts, such agency is to be presumed in the case of a going mercantile concern, but the Madras High Court holds that there is no such presumption and that there must be evidence to show that the partner making the acknowledgment or payment had authority to do so on the firm's behalf[12] Of course, at the time the acknowledgment was signed or the payment made by a partner, the partnership had been dissolved or discontinued, it must be proved that the partner making the acknowledgment of payment had been expressly authorized to do so by the

1. Phipson, Ev., 6th Ed., 244.
2. Phipson, Ev., 7th Ed., 236-7.
3. Taylor, § 598.
4. Phipson, Ev., 7th Ed., 237.
5. Section 19, Limitation Act.
6. Section 20, Limitation Act.
7. Section 21, Limitation Act.
8. *Gordhanas Baldeodas* v. *Bhulabhai Ranchhoddas*, 138 IC 805 : 1932 B 316 ; *Premji Ludha* v. *Dossa Doongersey Lowji Nanji*, 10 B 358 ; *Dalsukhram Nagindas* v. *Kalidas Sankalchand*, 26 B 42.
9. See *Gadu Bibi* v. *Parsotram*, 10 A 418.
10. *Rala Singh* v. *Bogwan Singh*, 84 IC 391 : 2 R 367.
11. *Kuljas Ram* v. *Wishan Singh*, 137 IC 771 : 1932 L 456.
12. *Pandiri Veeranna* v. *Grandhi Veerabhadraswami*, 41 M 427 : 45 IC 18 ; *K.R.V. Firm* v. *Sathyavada Sitharama Swami*, 37 M 146 : 21 IC 634 ; *Mohideen Sahib* v. *Official Assignee*, 35 M 142 : 11 IC 832 ; *Valasubramania Pillai* v. *Ramanathan Chettiar*, 32 M 421 : 2 IC 309.

other partners.[1]

Admissions by partners admissible inter se.—Though admissions by partners bind the firm when rendered by strangers,[2] they do not necessarily have this effect when tendered *inter se*. Thus, it has been held that, as between themselves, entries in the partnership books made without the knowledge of a partner will, as against him, be inadmissible; and a similar rule holds as to directors and other members of a company.[3] But where partnership account books are accessible to all the partners, and are kept more or less under the surveillance of them all, they are *prima facie* evidence against each of them, and, therefore, also, for any of them against the others. Consequently, in a suit by some of the partners against the others it is not open to the defendants to ask that the partnership account books relied upon by the plaintiffs be formally proved, or to contend that they are not *prima facie* evidence against them.[4]

Admissions by persons having a joint proprietary or pecuniary interest in the subject-matter of the suit.—Statements made by persons who have any proprietary or pecuniary interest in the subject-matter of the suit are receivable as admissions, if they were made by them in their character of persons so interested and during the continuance of such interest.[5] Where several persons are jointly interested in the subject-matter of the suit, the admissions of any one of such persons are receivable against himself and fellows, whether they be all jointly suing or sued, or whether an action be brought in favour of, or against, one or more of them separately, provided the admission relates to the subject-matter in dispute, and is made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. Where there are several persons engaged in one common business or dealing, a statement made by one of them, with reference to any transaction which forms part of their joint business, has always been held admissible against the others.[6] Thus, the admissions of partners,[7] joint contractors, joint tenants and joint indorsees of a promissory-note, are receivable against the others.[8] A distinction must be drawn between persons who are jointly interested in the subject-matter of the suit and those who have no joint interest but merely a community of interest with each other, the rule being that, in the former case, the admissions are receivable, but not in the latter. Thus, the admissions of tenants in common, of co-owners, co-legatees, co-devisees and successive indorsees of a promissory-note, are not receivable against the other.[9] Where a title is created as a joint interest and by a single legal act, the admissions of any one of the holders would be receivable against another as party. This would dictate the use of the admissions of a co-obligee in a joint contract, but not of a co-tenant, nor of a co-trustee.[10] As admission by a co-tenant as to who is the

1. *Premji Ludha* v. *Dossa Doongersey Lowji Nanji*, 10 B 358 ; *Naubat Rai* v. *Sewa Ram*, 140 PR 1889.
2. See *Thomas Bear & Sons* v. *Rulia Ram*, 148 IC 763 : 1934 L 625.
3. Phipson, Ev., 7th Ed., 238.
4. *Dongar Mal* v. *Sunam Ram*, 1944 L 58 : 212 IC 416 : 45 PLR 441.
5. Section 18.
6. Per Garth, C.J. in *Kowsulliah Sundari Dasi* v. *Mukta Sundari Dasi*, 11 C 588 ; See also *Chalho Singh* v. *Jharo Singh*, 39 C 9995 : 18 IC 61 ; *Meajan Matbor* v. *Alimuddin Mea*, 44 C 130 : 34 IC 571 ; *Dileshwar Ram Brahman* v. *Nahar Singh*, 48 IC 193 ; *Nagendra Nath Ghose* v. *Lawrence Jute Co.*, 61 IC 544 : 1921 C 197 ; *Brajaballav Ghose* v. *Akhoy Bagdi*, 18 IC 61 : *Meajan Matbor* v. *Alimuddin Mea*. 44 C 130 (supra).
7. See *Thomas Bear & Sons* v. *Rulia Ram*, 148 IC 763 : 1934 L 625.
8. Phipson, Ev., 7th Ed., 235.
9. Phipson, Ev., 7th Ed., 235 ; Wigmore, § 1081 ; Burr Jones, 253(254).
10. Wigmore, § 1081.

landlord of a particular holding is not admissible against another co-tenant,[1] nor is an admission by a co-tenant as to the rate of rent at which he holds admissible against the other co-tenants.[2] An admission by a co-sharer is admissible against the other co-sharers in the subject-matter of the admission.[3] An admission by a joint owner, made as such and at a time when the maker held a joint interest in the property, is receivable against the other joint owners.[4] But an admission by a co-heir is not receivable against the other co-heirs.[5] It has however been held that where the question is whether the defendants are the nearest reversionary heirs of a deceased person, an admission made by a person that they are such heirs is admissible against the plaintiff who together with the person making the admission claims to be a nearer heir than the defendants.[6] An admission by a co-mortgagee of payment of the mortgage debt is admissible against the other co-mortgagees.[7] The admission must be shown to have been made by its maker in his character of being jointly interested with those against whom it is intended to be proved.[8] Therefore, a statement by a person that certain property was not joint of him and others will not be admissible against other persons who claim the property as joint.[9] In the case of joint contractors or joint owners, an admission made by one is admissible against the others, if the admission relates to the subject-matter of the suit and if it is made by the declarant in his character of a person jointly interested with the others against whom it is tendered as evidence. In the absence of either of these two conditions, an admission by one joint tenant is not admissible against his co-tenant.[10] Where a sale-deed executed by some of the co-sharers of the property was written by one S who also signed the deed for one of the executants and the deed recited the vendor's share as three annas and odd; held, that the recital was an admission by S and was binding only on the representatives in interest of S but also on the representatives in interest of his brother, as the admission was made at the time when the interests of S and his brother were joint.[11] An admission made by the guardian as jointly interested with the minor is receivable against both.[12]

Jointly interest in tort or crime.—In an action for negligence or trespass, or in any other action for tort, the admissions of one defendant will not be evidence against the others, and the same rule prevails in criminal proceedings, as the law cannot recognize any partnership or joint interest in crime.[13] It has, however been held by Lord Ellenborough that if there is good evidence to show persons to be co-trespassers, the declarations of the one, as to the motives and circumstances of the trespass, are receivable

1. *Kali Kishore Chowdhury* v. *Gopi Mohan Roy Chowdhury*, 2 CWN 166.
2. *Nurrohurry Mohanto* v. *Narainee Dassee*, 1862 WR 23 (FB).
3. *Bhutnath* v. *Jagat Tarini Dasi*, 71 CLJ 200; *Chalho Singh* v. *Jharo Singh*, 39 C 995 : 18 IC 61 : See also *Kowsalliah Sundari Dasi* v. *Mukta Sundari Dasi*, 11 C 588; *Abdul Hamid Chowdhuri* v. *Brojendra Kumar Roy Chowdhury*, 90 IC 643 : 1926 C 290.
4. *Ambar Ali* v. *Lutfe Ali*, 45 C 159 : 41 IC 116; *Ramjhari Kuer* v. *Deyanand Singh*, 222 IC 604 : 1946 P 278.
5. *Maung Thu* v *Maung Shwe Hla*, 1929 R 272.
6. *Yaggana Obanna* v. *Kutagullah Gangaiah*, 1945 M 361.
7. *Appavu Chettiar* v. *Nanjappa Goundan*, 20 IC 792 : 25 MLJ 329.
8. *Brajaballav Ghose* v. *Akhoy Bagdi*, 93 IC 115 : 1926 C 705.
9. *Nagendra Nath Ghose* v. *Lawrence Jute Co.*, 61 IC 544 : 1921 C 197.
10. *Kanta Mohan Mallik* v. *Makhan Santra*, (1935) 39 CWN 277.
11. *Bhutnath* v. *Jagat Tarini Dasi*, 71 CLJ 200.
12. *Dost Mohammad* v. *Sher Mohammad*, 1935 L 489 : 159 IC 693.
13. Taylor, § 751.

against others who are proved to have combined together for the common object.[1] Where a partner admits the infringement of a trade mark, the admission, if made in a representative capacity, is evidence against the firm.[2]

Admissions by the predecessors in title of the parties.—Statements of a person, from whom a party to the suit has derived his interest in the subject-matter of the suit are receivable as admissions against the latter, if the statements were made during the continuance of the interest of the former.[3] The party against whom the statement is tendered in evidence is, in such a case, in "privity" with the person making the statement; and the ground upon which such statements are received is that the maker of the statement and the party who has derived this interest from him are identified in interest.[4] Privies are of three classes; (i) privies in blood, as heir and ancestor, (ii) privies in law as executor and testator, or administrator and intestate, and (iii) privies in estate or interest, as vendor and purchaser, grantor and grantee, donor and donee, lessor and lessee, joint tenants, etc.[5]

Statements by persons in possession of property, qualifying or affecting their title thereto, are receivable against a party claiming through them by title subsequent to the admission.[6] When an admission is tendered in evidence under this rule, it must be shown that the party against whom it is so tendered has derived his interest from the person who made the admission.[7] A daughter is not the representative-in-interest of her mother when she does not claim her title through her, but through her father, and is, therefore, not bound by an admission made by her mother.[8] A transferee is a representative of the transferor,[9] an assignee of a lease of the lessee,[10] and a purchaser from the mortgagor, of the mortgagor.[11] But the mere fact that B purchased his plot from the executant of another sale-deed in favour of S would not make B a representative of the executant inasmuch as *vis-a-vis* S's plot B is not his representative.[12] The heir is a representative of the ancestor through whom he claims.[13] A widow is the representative of her husband if she claims through him,[14] but a reversioner is not the representative of a widow and, therefore not bound by a recital as to legal necessity contained in a deed of sale by her.[15] An actual reversioner is not a representative of the presumptive reversioner,[16] unless he derives his interest from the latter.[17] A reversioner is not bound by

1. *R.* v. *Hardwicke*, 11 East 578, 585.
2. *Thomas Bear & Sons* v. *Rulia Ram*, 148 IC 763 : 1934 L 625.
3. Section 18 ; *Dhurani* v. *Charu Chandra Chaudhuri*, 64 IC 334.
4. *Woolway* v. *Rowe*, IA & E 114.
5. Phipson, Ev., 6th Ed., 239.
6. Phipson, Ev., 6th Ed., 238 ; *Galstaun* v. *Abid Hussain*, 73 IC 428 : 1924 O 19.
7. *Baboo Greesh Chunder Ghose* v. *Baboo Chunder Madhub Ghose & Obhoy Churn Bose*, 10 WR 89.
8. *Kaliammal* v. *Sundarammal*, 1949 M 84 : 61 MLW 332 : 1948, 1 MLJ 366 : 1948 MWN 381 : ILR 1949 M 171.
9. *Jagannath Prasad Singh* v. *Abdullah*, 45 C 909 : 45 IA 97 : 45 IC 770 : 1918 PC 35 ; *Waris Khan* v. *Abdulla Khan*, 1952 N 238.
10. *T.V. Kochuvareed* v. *P. Marriappa Gounder*, 1954 TC 10.
11. *Narain Singh* v. *Bhikha Ram*, 21 IC 841 ; *Narain Das* v. *Dilawar*, 41 A 250 : 52 IC 880 ; *Jamuna Prasad Shah* v. *Faujdar Shahni*, 8 P 766 : 1929 P 254.
12. *Bulakidas Hardas Mahesari* v. *Sk. Chotu Pikan*, 1942, N 84 : 200 IC 194 : ILR 1942 N 661.
13. *Moman* v. *Mst. Dhanni*, 1 L 31 ; *Luchmun Chunder Geer Gossain, etc.* v. *Kalli Churn Singh, etc.*, 19 WR 292 (PC) ; *Ananda Mohan Roy Choudhury* v. *Nilphamari Loan Office*, 65 IC 245 : 26 CWN 436 ; *Gopaldas* v. *Sri Thakurj*, 1943 PC 83.
14. *Dadabhoy Framji Cama* v. *Cowasji Dorabji Panday*, 94 IC 535 : 1925 PC 305, 306.
15. *Gopal Jana* v. *Brojo Mohan Swami*, 130 IC 230 : 1931 C 105.
16. *Muhammad Abdul Karim Khan* v. *Bishan Sahari*, 121 IC 387 ; 1930 A 9.
17. *Dhurani* v. *Charu Chandra Chaudhri*, 64 IC 334.

the admissions of his father or grandfather in respect of an adoption,[1] or consent to a transfer by a widow.[2] An Administrator is the representative of the intestate and, therefore, an admission by the latter is provable against the former.[3] The admissions of a testator are admissible against his representatives[4] *i.e.*, against the executor. The admission of the adoptive father, made after the adoption, does not affect the adopted son but it is doubtful, whether the adopted son will not be affected by an admission made before the adoption.[5] A recital of the receipt of consideration contained in a deed is admissible as an admission against the representative in interest of the executant.[6] Admissions made in previous proceedings for obtaining letters of administration are binding upon those claiming under the maker of those admissions.[7]

Admission by a mortgagor.— The acknowledgment of the subsistence of the mortgage by the mortgagor is binding on his assignee who derives his title to the mortgage right from him.[8]

Purchaser at a sale for arrears of revenue is not the representative of the defaulting proprietor.—An auction purchaser at a sale for arrears of revenue does not derive his interest from the defaulting proprietor and is not, therefore, his representative in interest.[9] He will not, thus, be bound by the acts and admissions of the defaulting proprietor. He may, however, be treated as a representative of the Government, from whom he derives his title to the property sold, and as such, will be bound by the same limitations which would bind the Government.[10]

Auction purchaser is the representative of the judgment-debtor.—Though there was at one time, some conflict and perhaps some confusion on the question whether a purchaser in execution of a decree is or is not the representative in interest of the judgment-debtor, the present state of authorities permits it to be stated as a rule that, since an auction purchaser derives his right, title and interest in the property purchased from the judgment-debtor, he is the representative in interest of the judgment-debtor[11] and, therefore, bound by the same rule of estoppel as the judgment-debtor.[12] There is no distinction in this respect between an auction purchaser in execution of a money, decree

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1. *Gopal Singh* v. *Hukam Singh*, 1950 A 644 ; *Jholi* v. *Khazana*, 96 IC 749 : 1926 L 654 ; *Gulab Thakur* v. *Fadali*, 68 IC 566 ; 1921 N 153 ; but see *Mohan* v. *Mst. Dhanni*, 1 L 31 : *Pratap Kishore* v. *Gyanendranath*, 1951 Orissa 313.
2. *Kalishankar Das* v. *Dhirendra Nath*, 1954 SC 505.
3. *Smith* v. *Smith*, 3 Bing. NC 29, cited in Woodroffe, Ev., 9th Ed., 255.
4. *Nana bin Krishnaji* v. *Shankar Bin Nagappa*, 3 Bom LR 465.
5. *Brojjendro Coomar Roy Chowdhry* v. *The Chairman of the Dacca Municipality*, 20 WR 223.
6. *Birbal* v. *Behari*, 76 IC 815 ; *Narain Das* v. *Dilwar*, 41 A 250 : 52 IC 830 ; *Bakshi Ram* v. *Liladhar*, 35 A 353 : 21 IC 619 ; *Bihari Lal* v. *Makhdum Baksh*, 35 A 194 : 18 IC 744 ; *Gadian Chetti* v. *Veerappa Chetti*, 26 IC 899 : 28 MLJ 92 ; *Nawal Kunwar* v. *Bakhtawar Singh*, 17 IC 644 : 10 ALJ 390 ; *Nazir Abbas Shujjat Ali* v. *Raje Ajamshah*, 1949 N 60 : ILR 1947 N 955 : 1948 NLJ 293.
7. *M. Narayanaswami Naidu* v. *Parvati Bai*, 1949 M 379 : 61 MLW 542 : 1948 MWN 555 : 1948, 2 MLJ 211.
8. *Sankar Pillai* v. *Anand Pillai*, ILR (1957) Ker. 859.
9. *Radha Gobind Koer* v. *Rakhal Das Mukherji*, 12 C 82 ; *Moonshee Buzlool Rahman* v. *Pran Dhun Dutt*, 8 WR 222.
10. *Moonshee Buzlool Rahman* v. *Pran Dhun Dutt*, 8 WR 222.
11. *Lakhpat Lal* v. *Makhan Ram*, 1942 P 369 ; *Darson Mahto* v. *Sheo Kumar*, 1941 P 612 ; *Basumati Kuar* v. *Harbans Kuar*, 1940 PWN 818.
12. *Maharaj Bahadur Singh* v. *Forbes*, 97 IC 205 : 1926 P 478 ; *Nanda Lal Agrani* v. *Jogendra Chandra Datta*, 82 IC 297, 303 : 1924 C 881 ; *Nanda Lal Agrani* v. *Jogendra Dutta*, 70 IC 960 : 1923 C 53 ; *Ananda Mohan Roy Chaudhury* v. *Nilphamari Loan Office*, 65 IC 245 : 26 CWN 436 ; *Kalidas Choudhury* v. *Prasanna Kumar Das*, 47 C 446 : 55 IC 189 ; *Narain Das* v. *Dilawar*, 41 A 250 : 52 IC 830 ; *Prodyot Kumar Tagore*

and an auction purchaser in execution of a mortgage decree.[1] An execution purchaser is bound by the same rule of estoppel as the judgment-debtor mortgagor. This being so, the admissions of a judgment-debtor are receivable against the auction purchaser under Section 18 of the Evidence Act.[2] It should, however, be remembered that this rule would be applicable only to admissions made by the judgment-debtor before the attachment, and not to those made subsequently;[3] because an admission, in order to be admissible against a representative in interest, must be made during the continuance of the interest of the person making the admission,[4] and a judgment-debtor after attachment has no power to bind the auction purchaser by making admissions. Of course, a person who purchases property form the judgment-debtor by private treaty in satisfaction, and not in execution, of a decree, stands in the position of an ordinary transferee and is the representative in interest of the judgment-debtor and is, therefore, affected by his acts and admissions.[5]

Admissions of a former holder are not admissible against a holder in due course of a negotiable instrument.—A distinction must be drawn between the case of an assignee of land or other property, and that of an ordinary assignee of a negotiable instrument, the former having in general no title in law or equity unless his assignor had, while the latter may have a good title though his assignor had none. Accordingly, unless the plaintiff on a bill or note stands on the title of the former holder, *e.g.*, by taking the bill overdue, or with notice, or without consideration, the declarations of such holder are not evidence against him.[6]

Admission by insolvents.—The estate of the insolvent or bankrupt passes to the assignee as the debtor's successor; therefore admissions made by the insolvent before his bankruptcy are provable against the official assignee to prove the petitioning creditor's debts.[7] But admissions made by an insolvent after the act of insolvency are not so provable except against himself.[8] Hence, admissions made by an applicant in insol-

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v. *Isri Ram Marwari*, 16 IC 792 ; *Debendra Nath Sen* v. *Abdul Samed Khan*, 1 IC 264 : 10 CLJ 150 ; *Ishan Chunder Sirkar* v. *Beni Madhuh Sirkar*, 24 C 62 (FB) ; *Mohomed Mozuffar Hassein* v. *Kishori Mohun Roy*, 22 C 909 ; 22 IA 129 (PC) ; *Prayag Raj* v. *Sidhu Prasad Tewari*, 35 C 877 ; but see *Veerappa Chetti* v. *Ramaswami Chetti* ; 43 M 135 : 53 IC 579 ; *Ganesh Moreshwar* v. *Purshottam Balkrishna Rode*, 33 B 311 : 1 IC 106 ; *Bashi Chunder Sen* v. *Enayat Ali*, 20 C 236 ; *Gour Sundar Lahiri* v. *Hem Chunder Chowdhry*, 16 C 355 ; *Parbhu Lal* v. *Mylne*, 14 C 401 ; *Dinenaronath Sannial* v. *Raj Kumar Ghose*, 7 C 107 : 8 IA 65 (PC) ; *Baboo Mahesh Chunder Chowdhry* v. *Baboo Hem Chunder Banerjee*, 18 WR 200.

1. *Piruji Hazariji* v. *Amrati*, 1944 S. 233 ; *Maharaj Bahadur Singh* v. *Forbes*, 97 IC 205 : 1926 P 478 ; *Harbhagat* v. *Narayanrao*, 78 IC 338 : 1924 N 208 ; *see* also *Kalidas Choudhury* v. *Prasanna Kumar Das*, 47 C 446, 55 IC 189 : *Tota Ram* v. *Har Govind*, 36 A 141 : 21 IC 721 ; *Bakshi Ram* v. *Liladhar*, 35 A 353 : 21 IC 619 ; *Prayag Raj* v. *Sidhu Prasad Tiwari*, 35 C 877 ; *Poreshnath Mukerji* v. *Anathnath Deb*, 9 C 265 : 9 IA 147 (PC).
2. *Birbal* v. *Behari*, 76 IC 815 ; *Bakhshi Ram* v. *Liladhar*, 35 A 353 : 21 IC 619 ; *Ishan Chunder Sirkar* v. *Beni Madhub Sikar*, 24 C 62 (FB) ; *Mahomed Mozuffar Hossein* v. *Kishori Muhun Roy*, 22 C 909 : 22 IA 129 (PC) ; *Kishen Lal* v. *Ganga Ram*, 13 A 28 ; *Hunkar Singh* v. *Madho Lall*, 21 WR 148 ; Woodroffe, Ev., 9th Ed., 259 ; but see Baboo Mohesh Chunder Chowdhary v. *Baboo Hem Chunder Banerjee*, 18 WR 200.
3. *Dinendronath Sannial* v. *Ram Kumar Ghose*, 7 C 107 : 8 IA 65 (PC).
4. Section 18.
5. See *Dinendranath Sannial* v. *Ram Kumar Ghose*, 7 C 107 : 8 IA 65 (PC) ; *Gour Sundar Lahiri* v. *Hem Chunder Chowdhry*, 16 C 355 ; *Janki Prasad* v. *Ulfat Ali*, 16 A 284 ; *Bakhshi Ram* v. *Liladhar*, 35 A 353 : 21 IC 619 ; *Bihari Lal* v. *Makhdum Baksh*, 35 A 194 ; See also *Gendmal* v. *Laxman*, ILR 1944 N 852.
6. Phipson, Ev., 7th Ed., 233.
7. *Coole* v. *Braham*, (1848)77 RR 589 ; Wigmore, § 1081.
8. *Luchiram Moti Lal* v. *Radha Charan Poddar*, 49 C 93 : 66 IC 15 : 1922 C 267.

vency in the course of the trial of his petition are not admissible against a third party or anybody else except himself.[1] An admission made by an insolvent during the trial of a petition for insolvency, is receivable against himself in a subsequent criminal trial.[2]

Admissions of the principal when admissible against the surety.—The admissions of a principal can sometimes be received as evidence in an action against the surety upon his collateral undertaking. In these cases the main inquiry is whether the declarations of the principal were made during the transaction of the business for which the surety was bound, so as to become part of the *res gestae*. If so, they are admissible; otherwise, they are not.[3] The surety contracts with the creditor and there is no privity between the principal and himself. Admissions made by the principal subsequently and not constituting part of the *res-gestae* are not, therefore, admissible against the surety.[4] Thus, where A guaranteed such goods as B should send to C in the way of trade, the admissions of C that he had received the goods, made after the time of their supposed delivery, are not evidence against A.[5] Such admissions may, however, become admissible under Section 19.[6] If a man becomes surety in a bond conditioned for the faithful conduct of a clerk or collector, confessions of embezzlement made by the principal after his dismissal cannot be given in evidence if the surety be sued on the bond though entries made by the principal in the course of his duty are admissible against the surety as being part of the *res-gesta*.[7] In a suit by a creditor against the surety, an admission of the principal debtor as to the amount of the debt is not admissible against the surety.[8] Where the principal and the surety are impleaded as co-defendants, the admissions of the principal cannot ordinarily be received against the surety.[9]

Admission of the insured are not admissible against the beneficiary.—In a beneficiary's action for the sum conditioned in a policy of life insurance, there is no legal identity of title between the deceased and the beneficiary although the beneficiary's right is after all no more than the creation of the insured's contract; hence, unless the beneficiary has, in the beginning been made a party to the contract so as to bind himself to be identified with the insured, the insured's admissions will not be receivable against the beneficiary.[10]

Admissions by trustees.—An admission of the receipt of money by one of several trustees, who are personally liable, will bind the others;[11] although *aliter* if they are not so liable.[12] So, the admissions of an executor, made in his representative character, will bind his co-executors in their representative, though not in their personal capacity.[13] But an admission made by a *mahant* not binding on a subsequent incumbent of the office, or

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1. *Janendra Bala Debi* v. *Official Assignee of Calcutta*, 93 IC 834 : 1926 C 597 : 30 CWN 346.
2. In re *Joseph Perry*, 46 C 996 : 54 IC 478 ; *Joseph Perry* v. *Official Assignee of Calcutta*, 47 C 254 : 56 IC 778 : 21 Cr.LJ 522.
3. Taylor, § 785.
4. Phipson, Ev., 6th Ed., 243
5. *Evans* v. *Beattie*, 6 Esp. 26 ; *Bacon* v. *Chesney*, 1 Stark, 192 cited in Phipson, Ev., 6th Ed., 243.
6. *Parameswara Pattar* v. *Viyathen Sreedevi*, 20 IC 637 : 25 MLJ 51 ; Steph, Dig., Art. 17.
7. *Abbeyleix Guardians* v. *Sutcliffe*, cited in Phipson, Ev., 6th Ed., 243.
8. *Rambhajan* v. *Sheo Parshad*, 1907 AWN 293 ; but *see* Section 19.
9. *Gopal Daji Sathe* v. *Gopal Bin Sonu Bait*, 28 B, 248 ; but *see* Section 19.
10. Wigmore, § 1081.
11. *Skaif* v. *Jackson*, 3 B & C 421, cited in Phipson, Ev., 6th Ed., 242.
12. *Davies* v. *Ridge*, 3 Esp. 101, cited in Phipson, Ev., 7th Ed., 235.
13. Re Macdonald, *Dick* v. *Fraser*, (1897) 2 Ch. 181, cited in Phipson, Ev., 6th Ed., 242 ; but see *Peck* v. *Ray*,

on the worshippers.[1] Admission by, and conduct of, the trustees of a public institution cannot be allowed to prejudice the institution.[2] An admission by an *anandravan* cannot be used as an admission to the *tarward* to which he subsequently becomes the *karnavan*.[3]

An admission by a co-plaintiff or a co-defendant is not admissible unless the party making the admission is jointly interested with, or is the predecessor in title of, the party against whom it is tendered in evidence.—The admissions of a co-plaintiff or a co-defendant are not, merely by virtue of his position as to co-party in the litigation, receivable against another plaintiff or defendant,[4] nor is the admission of a co-respondent admissible against another co-respondent,[5] or against the petitioner.[6] An admission by a defendant is binding on the other when they are not represented by him and have independent rights of their own.[7] But where there is privity of obligation or of title between one co-plaintiff and another, or one between one co-defendant and another, an admission made by one co-plaintiff or co-defendant will be admissible against another, not by reason of the declarant's relation to the litigation, but because of the privity of obligation or title which exists between the declarant party and the party against whom it is tendered in evidence.[8] Thus, where a party derives interest in the subject-matter from, or has a joint proprietary or pecuniary interest in the subject-matter with, another party to the suit, the admission of the latter is receivable against the former under the second paragraph of Section 18, if the statement was made by the declarant in his character of a person interested in the subject-matter and during the continuance of his interest.[9] When an admission by one party is intended to be used against another party it should be made evidence by examining the party making the admission.[10]

(1894) 3 Ch. 282, 289 per Kay, LJ.

1. *Ram Parshad* v. *Gurdwara Prabandhak Committee*, 12 L 497 : 135 IC 657 : 1931 L 161.
2. *Balak Ram High School* v. *Nanu Mal*, 11 L 503 : 128 IC 532 : 1930 L. 579.
3. See *Oliyath Vazhayil Abuvakkar* v. *Oliyath Kunhikuttiyali*, 74 IC 27, 32 : 1923 M. 153.
4. Wigmore, § 1076 ; *Bibi Kaniz Ayesha* v.*Mojibul Hasan Khan*, 1942 P. 230 ; *Kanta Mohan Mallik* v.*Makhan Santra*, 39 CWN 277 ; *Trikha Ram* v.*Murari Lal*, 1935 A 720 : 158 IC 109 ; *Parbhudas Girdhardas Shah* v.*Lallubhai Khushal Mehta*, 137 IC 710 : 1932 B. 117 ; *Ganesh Das* v.*Dhalu Ram*, 132 IC 7 : 12 LLJ 187 ; *Kishan Singh* v.*Lachman Das*, 122 IC 109 : 1930 L 238 ; *Rashid-ud-Din Khan* v.*Nazir-ud-Din* 1929 L 721 ; *Dina Nath* v.*Sayed Habib*, 10 L 816 : 117 IC 884 : 1929 L 129 ; *Narindar Singh* v.*King*, 115 IC 425 : 1928 L 769 ; *Saidu* v. *Mehr Dad*, 101 IC 589 : 1927 L 356 ; *Brajaballav Ghose* v.*Akhoy Bagdi*, 93 IC 115 : 1926 C 705 ; *Abdul Hamid Chowdhuri* v. *Brojendra Kumar Roy Chowdhuri*, 90 IC 643 : 1926 C. 290 ; *Bhikha Mal* v. *Puran Mal*, 69 IC 35 : 1922 L 123 ; *Ambar Ali* v. *Lutfe Ali*, 45 C 159 : 41 IC 116 : *Puran Mal* v. *Tarif*, 30 IC 2 : 13 ALJ 1089 ; *Heyat Baksh* v.*Lachminia*, 22 IC 916 ; *Kali Dut Jha* v.*Abdul Ali*, 16 C 627, 635 : 16 IA 96 (PC) ; *Aziz-ullah Khan* v.*Ahmad Ali Khan*, 7 A 353, 359 ; *Lachman Singh* v. *Tansukh*, 6 A 395 ; *Niamutoollah Khadim* v. *Himmut Ali Khadim*, 22 WR 519.
5. *William Hay* v. *Gordon*, 18 W 480 (PC) ; *Robinson* v.*R.I.S.& T.362* ; *Crawford* v.*C.*, 11 PD 150 ; Phipson Ev., 6th Ed., 243.
6. *Plumer* v.*P.*, 4 S. & T. 257 ; Phipson, Ev., 6th Ed., 243.
7. *Kishen Singh* v.*Lachman Das* 122 IC 109 : 1930 L 238 : *Changa* v.*Bhagwan Dei*, 1949 A 493 : 1950 ALJ 21.
8. Wigmore, § 1076 ; *Ganesh Das* v.*Dhalu Ram*, 132 IC 7 : 12 LLJ 117 ; *Brajaballav Ghose* v.*Akhoy Bagdi*, 93 IC 115 : 1926 C 705 : *Bhikha Mal* v.*Puran Mal*, 69 IC 35 : 1922 L. 123 ; *Ambar Ali* v. *Lutfe Ali* 45 C 159 : 41 IC 116.
9. See Taylor, § 754 ; *Nagendra Nath Ghose* v.*Lawrence Jute Co.*, 61 IC 544 : 25 CWN 89 : *Dileshwar Ram Brahman* v.*Nahar Singh*, 48 IC 193.
10. *Seshagiri Aiyangar* v.*Sadachi*, 29 IC 924 ; see *Parbhudas Girdhardas Shah* v.*Lallubhai Khushal Mehta*, 137 IC 710 : 1932 B 117.

Admission must have been made during the continuance of the interest of the person making it and must relate to his title and not to independent matters.—Where a statement is given in evidence against a party as an admission under the second paragraph of Section 18, it must be shown that the statement was made during the continuance of the interest of the person making it.[1] An admission by a person jointly interested must, in order to be admissible against others, have been made not only in relation to the joint interest but during the continuance of the joint interest. Thus, where the joint interest is served by bankruptcy or death, the admissions of the survivor will not bind the estate of the deceased nor conversely, will those of his representatives bind the survivors.[2] An admission made by a partner before the partnership is not evidence against his co-partners, nor, generally, is an admission made after the dissolution, unless the joint liability continues, in which case the joint interest is deemed to continue also.[3] Where the existence of joint interest is disputed, it cannot be established by the admission itself but must be established by independent proof.[4] Similarly, when an admission is given in evidence against the representative in interest of the person making the admission, the admission must be shown to have been made at a time when the maker of the admission had interest in the subject-matter.[5] The admission must have been made while the predecessor was in possession of the property, status or interest which entitled him to make it, and not after he has parted therewith.[6] Therefore, the admission of a former owner of property, made after he ceased to have any interest in it, is not evidence against the person in possession.[7] For the like reason, when an admission of a party's predecessor in title is given in evidence against the party, the statement must be shown to have been made at a time when he had interest in the property.[8] Therefore, statements made by a transferor or realty or of personalty after transfer of title, are not receivable as admissions against the transferee.[9] A purchaser is not affected by an admission made by his vender after the sale,[10] and an admission by a creditor after the transfer of the debt is not provable against the transferee.[11] The admission, to be admissible against the successor, must qualify or effect the predecessor's title, and not relate to independent matters.[12]

Transfers in fraud of creditors.—Where a transfer is attacked as having been made in fraud of the creditors, the admissions of the transferor made after the transfer are, in general, inadmissible against the transferee. To this rule, there are, however, certain exceptions. Thus, the transferor's statements may be receivable when made in the presence of the transferee and impliedly assented to by his silence. As a part of the issue

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1. Section 18; *Ma Shwe Yat Aung* v. *Maung Da Li*, 33 IC 888; *Jogeswar, Gorain* v. *Akhoy Ghose*, 22 IC 714 : 19 CLJ 1; *Maung Aung* v. *Maung Shwe Lien* 73 IC 1039 : 1923 R. 51; *Chunder Madhub Ghose* v. *Sreenath Banerjee*, 5 WR 268.
2. Phipson, Ev., 6th Ed., 243.
3. Phipson, Ev., 6th Ed., 243.
4. Taylor, § 753.
5. Section 18.
6. Phipson, Ev., 6th Ed., 240.
7. *Ram Singh* v. *Gainda Ram*, 1953 Punj, 63 : 1953 PLR 127; *Chunder Madhub Ghose* v. *Sreenath Banerjee*, 5 WR 268.
8. *Galstaun* v. *Abid Hussain*, 73 IC 428 : 1924 O 19.
9. Wigmore, § 1085; *Galstaun* v. *Abid Hussain*, 73 IC 428 : 1924 O 19.
10. *Maung Aung* v. *Maung Shwe Lin*, 73 IC 1039 : 1923 R 51.
11. *Chanda Singh* v. *Wasawa Singh*, 25 IC 144 : 202 PLR 1914.
12. Phipson, Ev., 6th Ed., 240.

in such cases, the transferor's intent, his declarations and conduct, which indicate his intent when dealing with the property, may be receivable. If a conveyance is made absolute upon its face, and the vendor continues to retain the possession of the property as before, this being *prima facie* evidence of fraud, a creditor impeaching such conveyance on the ground of fraud may be admitted to prove the declarations of the vendor thus retaining possession, in relation to the ownership or to the character of his possession of the property.[1]

Statement of Admission in Judgment.–A statement in a judgment or order as to what had taken place in court is conclusive and an aggrieved party should apply to the same judge for review.[2]

Recital in document.–Description in a mortgage-deed by the mortgagors of the land mortgaged as properties "in our sir and khas possession" may not be regarded as admissions by the mortgagees as the deeds were executed by the mortgagors, but they are certainly admissible, under Section 13 as assertions of title and when it is under these documents that the mortgagees claim, their probative value as against them and as against their lessees who claim under them is high.[3]

Effect of admission in documents.–In which the admission is made by the person against whom the admission is sought to be proved, and those in which the admission is made by a third person. In the former case, the admission of the document means admission of facts contained in the document, though the facts are not deposed to by any one and the truth of those statements is not in any way tested. But in the latter case, to admit the admission contained in the document against the party admitting the document would be prejudicial to him, and no provision of law makes such admission admissible against a person other than the person making it, unless such person can be said to be bound the admission.[4]

Denial of Admission.–Admission which is only a piece of evidence may be denied.[5]

Admissions must be taken as a whole.–In a suit for declaring Land Acquisition Proceedings null and void *locus standi* of the plaintiff was questioned, plaintiff relying on statement of Government Counsel admitting his title to land on date of notification under Section 4(1), Land Acquisition Act, but there was statement also asserting valid termination of plaintiff's interest by acquisition and that the acquisition was valid and in accordance with law. Admission has to be taken as a whole and if full effect is given to it, it will prove fatal to plaintiff's case even if it was sufficient to prove his title on the date of notification under Section 4 of Land Acquisition Act.[6]

19. Admissions by persons whose position must be proved as against party to suit.–Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such

1. For a discussion of the admissibility of such evidence, see Wigmore, § 1086.
2. *Timmalpathi* v.*Sakalchand*, (1951) 1 MLJ 244.
3. *Harihar P.I.* v.*Deo Narain Prasad*, 1956 SC 305 : 1956 SCJ 279.
4. (1966) 1 SCWR 974 : 68 Bom LR 488.
5. *Rao Saheb* v.*Ranganath Gopalrao Kawathakar*, 1971 SCD 366.
6. *Hakim Fazal* v. *State of West Bengal*, 1 LR (1969).

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.

Illustration

A undertakes to collect rents from *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 own rent to *B*.

COMMENTARY

Admissions by strangers.—The object of this section is not to lay down that certain statements are relevant and admissible, but to add to the category of persons whose statements may amount to admissions. A statement, in order to be admissible under this section, must satisfy the evidentiary requirement laid down in Section 17. When a statement falls within the terms of this section, it becomes by reason of Section 21, provable against, and not in favour of, the party against whom the position or liability of the maker of the statement is necessary to be proved in the suit.[1] The statements of persons who are strangers to the suit are, in general, not admissible as admissions. There are, however, exceptions to this general rule, and one such exception is mentioned in the present section. When the issue is substantially upon the mutual rights which, at the time of the admission, were respectively possessed by a party to the record and the person who made such admission, such evidence will, in general, be let in as would be legally admissible in an action between the party and the person making the admission.[2] An admission of the receipt of goods, made by a person for whom with regard to such goods a guarantee had been given by the defendant, is provable against the defendant.[3] In a suit by the principal against the agent and his surety, the settlement of accounts between the principal and the agent, after the termination of the agency, is admissible against the surety.[4] The admissions of a bankrupt before the act of bankruptcy are receivable in proof of the petitioning creditor's debts.[5] A statement made by a servant is admissible in evidence against his master under Section 19, both for the purpose of deciding whether he is a servant and also as regards his liability as such servant. "Occupying the position" of a servant does not involve, as an essential ingredient, acting in the course of his employment.[6] An agreement by party to marriage

1. For an exposition of the rule on which this section is founded, see *Appavu Chettiar* v.*Nanjappa Goundan*, 20 IC 792 : 25 MLJ 329.
2. See Taylor, § 759.
3. Stephen's Digest, Art. 17.
4. *Parmeshwara Pattar* v.*Viyathen Sreedevi*, 20 IC 637 ; but see *Rambhajan* v.*Sheo Parshad*, 1970 AWN 293 ; *Gopal Daji Sathe* v.*Gopal Bin Sonu Bait*, 28 B. 248.
5. Taylor § 759.
6. *M.E.Moses* v.*Shaik Bakridhone Chowdhury*, 39 CWN 736.

without ulterior motive made in 33 years old registered document proves marriage.[1]

It is true that an admission contained in a pleading is binding on the party. It is binding in the sense that after making the admission the party cannot be permitted to take up a stand different from the one taken in the pleading. This however, does not mean that an admission made by a party in the pleadings of a suit cannot be relied upon as a piece of admissible evidence in subsequent proceedings. But the party concerned may show that the admission was made under some misapprehension or that it did not really convey what this admission purports to convey.[2]

Case.–Before a document and the recitals therein alleged to have been made by an agent of the accused can be used against the accused in a criminal case such agency must be satisfactory proved.[3]

20. Admissions by persons expressly referred to by party to suit.–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.

COMMENTARY

Admission by referees.–If a man refers another upon any particular business to a third person, he is bound by what this third person says or does concerning it as much as if that had been said or done by himself.[4] Therefore, where a party refers another to a third person for information or an opinion on a given subject, the information or opinion so given is receivable against the referrer as an admission. It is immaterial whether the referee has, or has not, any peculiar knowledge on the subject, or whether the reference is made expressly, or by conduct evincing an intention to rely on the statement as correct.[5] It is not necessary that the reference should be on questions of fact within the knowledge of the referee.[6] The word "information" in Section 20 is not to be understood in the sense that the parties desired to know something which none of them had any knowledge of. Where there is a dispute as regards a certain question and the Court is in need of information regarding the truth on the point, any statement which the referee may make, though known to one or both of the parties, is nevertheless "information" within the meaning of Section 20 of the Evidence Act.[7] Thus, in an action against executors, the defendant having written to the plaintiff that if she wished

1. *Sivalingam* v.*Sakthivel*, AIR 1989 Mad. 252.
2. *S.C.Misra* v.*State of U.P.*, 1971 ALJ 1027.
3. *Kedarnath* v.*State of W.B.*, AIR 1954 SC 660.
4. *Per* Lord Ellenborough in *Williams* v. *Innes*, 1 Camp. 364.
5. Phipson, Ev., 6th Ed., 252.
6. *Akbari Begam* v.*Rahmat Husain*, 146 IC 84, 1933 A. 861 (FB).
7. *Akbari Begum* v.*Rahmat Husain*, 146 IC 84 (FB).

for further information as to the assets it could be obtained from a certain merchant the replies of the merchant were held receivable against the executors.[1] In an action for goods sold and delivered a statement by the defendant that he would pay for them if the plaintiff's carman would say he had delivered them, and the answer of the carman asserting the delivery, are evidence of that fact against the defendant.[2] And, where A agrees to admit a claim provided B will make an affidavit in support of it, B's affidavit is evidence against A.[3] The question being whether a horse in the defendant's possession was indentical with one lost by the plaintiff, and the latter having stated that if the former would swear the horse was his own he might keep it, the defendant's statement on oath that the horse was his was received as evidence against the plaintiff.[4] So, A and B having agreed to abide by the decision of a barrister on a disputed question title, the opinion so given is evidence against both.[5] An admission by a person is, however, not admissible, unless an express reference was made to him, and it relates strictly to the subject on which the reference was made.[6] The section does not apply where a master calls for a report from a servant regarding the conduct of another servant who is dismissed for misconduct, if there is nothing to indicate that in doing so the master intends to regard the servant's report as conclusive on the matter.[7]

Admissions by referees on matters of law.—In English law, admissions by referees on matters of law are as much provable as those on matters of fact[8] but the definition of an admission in Section 17 that an admission must relate to a matter of fact and not to a matter of law[9] would, it is apprehended, make such admissions inadmissible in India.

An admission by a referee is not conclusive, unless it operates as an estoppel, or amounts to an adjustment of the suit, or to an agreement to refer.—Admission by referees are relevant but not conclusive, unless they fall within the rule of estoppel enacted in Section 115 of the Act, or the reference amounts to an adjustment of a pending suit, or to an admission in pleadings. Thus, where the plaintiff and the defendant in a suit assigned a written statement which said "it has been settled between the parties that G shall hear our whole affair and that we shall accept any statement that he may make before the Court", and G made a statement on oath against the plaintiff, whereupon the Court dismissed the suit, it was held that the agreement operated as an adjustment of the suit and in any case, amounted to an admission made in the pleadings, and that the parties were bound by the agreement.[10] Where the parties to a suit agree that a referee should be appointed and the case should be decided according to whether statement the referee makes, the agreement is not in substance a reference to arbitra-

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1. *Williams* v. *Innes*, 1 Camp, 364, cited in Phipson, Ev., 6th Ed., 252.
2. *Daniel* v *Pitt*, 1 Camp. 366 (n), cited in Phipson, Ev., 6th Ed., 252.
3. *Llyod* v.*William*, 1 Esp. 178, cited in Phipson Ev., 6th Ed., 252.
4. *Garnet* v.*Ball*, 3 Stark 160 ; *Subray* v.*White*, 1 M & W. 435 cited in Phipson, Ev., 6th Ed., 252.
5. *Dowis Cooper*, 2 QB 256 ; *Price* v. *Hollis*, 1 M & S. 105, cited in Phipson, Ev., 6th. 252.
6. Jones, § 263.
7. *M.D.Cruza* v.*Secretary of State*, 40 CWN 865 : see also *S. Bhattacharjee* v.*Sentinel Assurance Co. Ltd.*, 1955 C 594 as to report a surveyor appointed by an assurance company.
8. Phipson, Ev., 6th Ed., 252.
9. See notes to Section 17.
10. *Abdul Rahman* v.*Kalloo Khan*, 153 IC 608 : 1935 O. 118 ; *Akbari Begam* v.*Rahnat Husain*, 146 IC 84 : 1933 A 861 : 56 A 39 (FB) ; *Gordhan Das* v.*Husaina*, 103 IC 34 : 1927 A 659 ; *Himanchal Singh* v.*Jatwar Singh*, 45 A. 710 : 80 IC 16 ; 1924 A 570 ; *Birendra Kishore Manikya Bahadur* v.*Padma Lochan Banikya*, 42 M 625 : 51 IC 827 : *Suraj Narain* v.*Beni Madho*, 1937 A 701 : 171 IC 697.

tion. The statement which the referee makes in pursuance of the agreement is an admission under this section and operates as an estoppel against the parties. The procedure of filing objections to such statement as if it were an award is therefore, inapplicable.[1] But a reference to an outside party to decide matters in dispute in a suit and the question of costs is not a reference to that party for information in reference to a matter in dispute and is a reference to arbitration.[2] An agreement by a defendant to a civil suit to be bound by whatever statement might be made by the plaintiff upon oath is binding on the defendant, even though it does not fall under the Oaths Act.[3] Similarly, an agreement to abide by the decision of the Court is binding on the parties.[4] An admission by a referee operates as an estoppel, where the parties have agreed to abide by it.[5] But where the reference to the referee neither amounts to an agreement to refer a pending suit to the referee, nor has the position of a party been altered by the referee's admission, the admission, though relevant, will not be conclusive.

Admissions by referees in criminal cases.—The rule which makes admissions by a referee admissible against the referrer applies to criminal cases as well. Thus, where the accused told a constable that his wife would make out a list of certain property, a list afterwards made out by her was held admissible against the husband.[6]

21. Proof of admissions against persons making them, and by or on their behalf.—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:-

(1) 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.

(2) 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.

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

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1. *Umrai Ali Khan* v.*Intizami Begam*, 1939 A 176 : 1939 ALJ 1 : 180 IC 364 ; see also *Baldeo Singh* v.*Niras Singh*, 222 IC 210.
2. *Chhabba Lal* v.*Kallu Lal*, 50 CWN 465 (PC).
3. *Mohammad Asghar Ali Khan* v.*Mohammad Imtiaz Ali*, 1898 AWN 200 ; *Bishunath Singh* v.*Jamunadas*, 1937 O 67 : 12 Luck. 349 ; *Akbari Begam* v.*Rahmat Husain*, 56 A 39 : 1923 A 861 (FB) ; *Kesho Ram* v. *Peare Lal*, 71 IC 761 : 1923 A 443 ; but see *Ramdeo* v.*Naipal* 1938 A 184 : 146 IC 569.
4. *Sita Ram* v.*Peare*, 47 A. 921 : 88 IC 611 : 1925 A 558.
5. *Akbari Begam* v.*Rahmat Husain*, 146 IC 84 : 1923 A 861 (FB).
6. *R.* v.*Mallory*, 13 QBD 33 ; Phipson, Ev., 6th Ed., 253.

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, clause (2).

(c) *A* is accused of a crime committed by him at Calcutta.
He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark 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, clause (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 offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and 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*.

COMMENTARY

An admission may be proved against, but not in favour of its maker.—Sections 17-20 define admissions; the present section makes admissions

relevant and provable.[1] The rule of law which respect to "self-regarding" evidence is that, when in the "self-serving" form, it is not, in general, receivable, but that, in the "self-harming" form, it is, with few exceptions, receivable and is usually considered proof of a satisfactory kind. As a general rule, a man shall not be allowed to make evidence for himself. But on the other hand, universal experience testifies that, as men consult their own interest and seek their own advantage, whatever they say or admit against their interest or advantage may, with tolerable safety, be taken to be true as against them, at least until the contrary appears.[2] The section, therefore, provides that 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 his representative in interest, except in the three cases mentioned in section.[3] An admission in one's own favour has no evidentiary value.[4] A self-serving statement of a party can be of no avail to that party. The mere fact that it was repeated by the opposite party would not make in his admission.[5] A recital in a will in favour of a party to it cannot, under this section, be proved by the party in whose favour it is or by the representative in interest of such party.[6] Neither the declarations of the donor in a deed of gift nor those of the donee are admissible against a stranger to prove the transfer of possession.[7] An entry in the body of a bond that nothing is due from the debtor is an admission in his favour and, therefore, not provable.[8] A mere allegation by a person in his application that he had made a prior application earlier would not by itself be evidence of the fact that such an application was given by him.[9] In a suit to enforce an equitable mortgage against an insolvent mortgagor and the official assignee, a statement by the mortgagee that he had told another person that the insolvent had deposited the title deeds with him as a security for the loan is inadmissible, being an admission in favour of the mortgagee.[10] A recital in a writ of attachment is inadmissible in favour of the maker of the recital,[11] and a statement to the rent payable, contained in the sale certificate of a holding granted to a landlord in execution of a decree against his tenant, is an admission in favour of the landlord and, therefore, not provable.[12] Where the landlord produced certain counterfoils of receipts to show that the tenancy was monthly and not annual, the Supreme Court observed that the entry in the counterfoil being admission in favour of the landlord himself, it was not admissible against the tenant.[13] The principal cannot prove his title to property by an admission of his agent in his favour.[14] A recital in a sale deed by a limited owner that the property was acquired

1. *Gulab Thakur* v.*Fadali*, 68 IC 566: 1921 N 153.
2. Best, § 518.
3. Section 21.
4. *Manilal Ratanchand Shah* v.*Nanubhai, Jesinghai*, 1947 B 394 : 49 BLR 84.
5. *Bans Narain* v.*Mst. Chandrani Kuer*, 1944 A 130 : 215 IC 138 : 1944 ALJ 121.
6. *Nalam Pattabhirama Rao* v.*Mandavilli Narayanamoorthy*, 100 IC 835 : 1926 PC 102; *Manglo Mal Sugno Mal* v.*Mst. Padibai*, 1936 S. 217.
7. *Mohammad Hyder* v.*Moti Lal*, 110 IC 26 : 1928 O 414.
8. *Gurditta Mal* v.*Nabi Baksh*, 93 IC 996 : 1926 L 381.
9. *Satyanarayana* v.*Ramineedi*, 1943 M 501 : 56 MLW 333.
10. *Miller* v.*Madho Das*, 19 A 76 : 23 IA 106 (PC).
11. *Mohurruddin Khan* v.*Sumera Giri*, 15 IC 540.
12. *Ramani Pershad Narain Singh* v.*Mahanth Adaiya Gossain*, 31 C 380.
13. *Idandas* v.*Anant Ramchandra*, 1982 SC 127.
14. *Maula Baksh* v.*Jafar Ali Khan*, 4 LLJ 437.

with the money of the estate is against the interest of the vendor and, therefore, provable as an admission.[1] An admission of the receipt of interest by a creditor will, when no question of limitation arises, be a statement against him; but where such payment is sought to be proved to save the claim from being time-barred, it will be a statement in favour of the creditor and, therefore, not provable.[2] Statements, which are admissions in favour of a party, cannot be considered in a prosecution against him for a criminal offence, although he can tender evidence at the trial in support of the part of the statement which is in his favour.[3] Admissions, which would expose a man to a criminal prosecution must be regarded as admissions against his own interest, though they may, as the result of unusual circumstances, be in his favour at some subsequent time.[4]

Recitals of boundaries.–See notes to Section 32(3) under the heading "recitals of boundaries of property in deeds not *inter partes*, whether admissible to prove ownership or possession of adjoining property" and notes to Section 13.

Confessions and Admissions contrasted.–An admission of a incriminating fact, however, grave is not by itself a 'confession'. In order to amount to a 'confession', a statement must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. A statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged, cannot amount to a confession.[5]

Thus, where a person prosecuted for the offence under Section 135 (a) of the Customs Act had stated before the Inspector of Customs, that he was not aware that the packages which were loaded in the truck were contraband and that they had not been loaded under his instructions, and had claimed to be innocent, these statements, even taken cumulatively did not amount to an admission of all the facts which constitute the said offence, and as such there was no 'confession' within the meaning of Section 24 and these statements were not barred from being admitted in evidence under that section but were admissible under Section 21 as admissions of incriminating facts.[6]

Confessions and admissions in criminal cases: statements in F.I.R. admissibility of.–It has been mentioned already that confessions are a species of admissions[7] and that a statement made by an accused person, which suggests any inference as to a fact in issue or a relevant fact, is admissible under Section 21. The section is, however, subject to exclusionary rules enacted in Sections 24-26 of the Act and Section 162 of the Code of Criminal Procedure. Therefore, where a statement amounts to a confession and is made under circumstances mentioned in Sections 24-26 of the Act, or where a statement, whether it amounts to a confession or not, is made to a police officer in the course of an investigation under Chaper XIV of the Code of Criminal Procedure, it will be inadmissible. If the statement does not fall under any of the exclusionary rules just mentioned, it will be admissible under the present section which makes all

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1. See *Ramayya* v. *Mahalakshmi*, 64 IC 481 : 1922 M 357.
2. *Amanulla Amma* v. *Narayanan Nair*, 51 M 549 : 111 IC 210 : 1928 M 509.
3. *Narayana Swami* v. *E.*, 17 P 15.
4. *Mahmood Khan* v. *E.*, 1942 S 106 : 202 IC 681 : ILR 1942 K 94 : 43 Cr LJ 888.
5. *Veera Ibrahim* v. *State of Maharashtra*, AIR 1976 SC 1167 paragraph 15. Relying upon *Pakala Narayana* v. *Emperor*, 66 IA 66 : 1939 PC 47 : 40 Cr LJ 364 ; *Palvinder Kaur* v. *State of Punjab*, 1953 SCR 94 : 1952 SC 354 : 1953 Cr LJ 151 ; *Om Prakash* v. *State of U.P.*, AIR 1960 SC 409 : 1960 Cr. LJ. 514.
6. *Veera Ibrahim* v. *State of Maharashtra*, AIR 1976 SC 1167 paragraphs 16,17,18,23.
7. See notes to Section 17 under the heading "distinction between admissions and confessions".

admissions, whether amounting to confessions or not, admissible. A statement made by a person to the police is admissible at his trial as an admission, if it does not amount to a confession,[1] and is not made in the course of an investigation under Chapter XIV of the Code of Criminal Procedure.[2] Where a person accused of murdering the deceased with a *bhala*, stated in his first information to the police long before the police got information of the alleged occurrence, that some un-known thief had cut a portion of his maize crop and he had assaulted that thief with a *bhala* and given him one blow with it, the statement was held to be admissible as an admission because it was neither a confession nor covered by Section 162 of the Code of Criminal Procedure.[3] An admission made in the course of a deposition,[4] or in an application,[5] is provable against its maker under the present section, when he is subsequently tried for an offence. A statement made before a Magistrate conducting enquiry under Section 176 of the Code of Criminal Procedure is admissible as an admission.[6] Evidence given by a Magistrate that the accused pointed out places connected with the commission of an offence is not evidence of a confession,[7] and will, it is presumed, be admissible if the word "confession" as used in Section 164 of the Code of Criminal Procedure is given the same meaning as has been given to it by the Privy Council in *Narayana Swami's* case.[8] It will make no difference if the pointing out was the result of any such inducement, threat or promise as is mentioned in Section 24. The result will, however, be otherwise if it be held that a Magistrate is precluded by Section 164 of the Code of Criminal Procedure from proving any statement of an accused that does not amount to a confession. If places are pointed out to a Magistrate in the course of investigation and the act of pointing out is accompanied by confessional statements which have not been recorded in the manner prescribed by Section 164, Cr. P. Code, the evidence of pointing out and the accompanying statements will be inadmissible,[9] See notes to Section 91 under the heading "whether oral evidence of a confession is admissible when the record of the confession is defective," notes to Section 24 under the heading "proof of a judicial confession," and notes to Section 8, 25 and 27 under the heading "pointing out places connected with the offence".

Accused prosecuted on the First Information Report made by him.—It is not confession but only admission which may be proved against him. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the court. Section 21 provides that admissions are relevant and may be proved as against

1. *Abdul Ghani* v. *E.*, 133 IC 55 ; 1931 L 763 ; 32 Cr LJ 985 ; *Akal Sahu* v. *E.*, 1948 P 62; See notes to Sections 25 and 26.
2. *Narayana Swami* v. *E.*, 1939 PC 47 ; *Akal Sahu* v. *E.*, 1948 P 62.
3. *Akal Sahu* v. *E.*, 1948 P 62 ; 230 IC 167 ; 48 Cr LJ 565 ; 26 P 49.
4. *E* v. *Wheeler*, 112 IC 50 ; 929 S 15 ; 29 Cr. LJ 962 ; *E.* v. *Ramnath Mahabir*, 50 B 111; 93 IC 690 ; 1926 B 151 ; 27 Cr. LJ 466; *E.* v. *Banarsi*, 46 A 254 ; 77 IC 829 ; 1924 A 381 ; 25 Cr. LJ 477; *Mohammad Khudabax* v. *E.*, 1949 N 303 ; 1949 NLJ 90 ; ILR 1949 N 355; 50 Cr. LJ 842.
5. *Ram Naresh* v. *E.*, 1939 ALJ 107 ; 1939 A 242 ; 181 IC 646 ; 40 Cr. LJ 559.
6. In re *Ramasami Reddiar*, 1953 M 138 ; 1953 Cr LJ 315 ; 1952, 2 MLJ 814.
7. See *Narayana Swami* v. *E.*, 1939 PC 47, where a confession has been defined.
8. *Narayana Swami* v. *E.*, 1939 PC 47 . *See* notes to Section 8.
9. *Abdul Rahim* v. *E.*, 1945 L 105.

a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved agaist him.[1]

An admission may be proved as against the person by whom or on whose behalf it is made against the representative in interest of such person.—The expression "as against the person who makes them" means as against the person *by or on whose behalf* they are made.[2] Thus, where an admission is made by the a referee,[3] or by the agent of a party, or by a person jointly interested with a party,[4] the admission is provable as against the party on whose behalf it is made.

The expression "representative in interest" includes all persons who are in privity with the maker of the admission or the person on whose behalf the admission was made. In the language of Section 18, the expression includes all persons who have derived their interest in the subject-matter from the person by whom or on whose behalf the admission was made.[5] A Hindu son in a coparcenary is not the representative in interest of his father.[6]

Relevancy of proof of statements made by accused persons before Custom Authorities: Sections 21 and 67.—In the case of smuggled gold, the accused persons made statements before the Custom Authorities which were not only signed by the lawyer of the accused but also by the accused themselves and in the trial they admitted that they had signed the statements though they said that they did not know the statements contained and they signed it on being asked by the lawyer.

It was held that as the statements before the signatures of the appellants which were admitted, they must be held to be proved by their admission and it was not further necessary to examine the lawyer who signed the statements along with the appellants.[7]

Previous statements to public officer.—A previous statement by a person before a public officer, that a certain deity had been installed by the public and signed by him, is evidence of an admission against him in a subsequent suit by him for a declaration that the deity is a family deity.[8]

Section 21-Effect of admission-Essentials of admission.—An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

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1. *Faddi* v. *State of Madhya Pradesh*, (1964) 2 SCWR 140 ; 1964 MLJ 519 ; 1964 SCD 779 ; (1964) 2 Cr. LJ 744.
2. Woodroffe, Ev., 9th Ed., 265.
3. Section 20.
4. Section 18.
5. See notes to Section 18.
6. *Jagmohan Lakshmi Chand* v. *Ranchoodas*, 1946 N 84 ; ILR 1945 N 892.
7. *Soni Vallabhdas Liladhar* v. *The Assistant Collector of Customs, Jamnagar*, 1965 (1) SCJ 208 ; 1965 (1) Cr. LJ 490 ; 1965 (3) SCR 854.
8. *Ramchandra* v. *Rajendra Narayan*, ILR (1956) Cut. 689.

"What a party himself admits to be true may reasonably be presumed to be so." No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained.[1]

In *N. C. Singhal* v. *Union of India*,[2] it was contended before the Supreme Court on the basis of an affidavit made on behalf of the Central Government in a previous writ petition, that certain posts, which were in question, could only be filled by promotion. The Supreme Court noticed that such a stand was taken on behalf of the Union of India, but also that the Court did not accept that stand. In this situation the Supreme Court held relying on,[3] that no argument could be founded or relief claimed, unless estoppel is urged, (or made out) on the basis of such stand of the Union of India in the earlier case, if it runs counter to the clear meaning of the relevant statutory rule.

Admission and previous statement for contradiction.—Admission is substantive evidence of the fact admitted, while a previous statement used to contradict a witness does not become substantive evidence, and merely serves the purpose of throwing doubt on the veracity of the witness.[4]

Admission Rebuttable.—An admission is not conclusive proof of the matter admitted, though it may in certain circumstances operate as an estoppel.[5]

Admission as to motive-Admissible under Section 21.—An admission as to the motive is clearly admissible under Section 21 of the Evidence Act.[6]

Statement to Police.—A person had given a signed statement to the Police on interrogation in a petition filed by his neglected wife. The question was whether it was admissible in a suit for maintenance filed by his wife. The court held that: Facts which establish the identity of an accused person are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in Court. The evidence of mere indentification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction made to him by a party if they are otherwise relevant and not excluded by statutory taboo.[7]

Admissions in intercepted correspondence between respondents in divorce proceedings.—Any intercepted correspondence between the respondents in divorce cases cannot be considered as evidence against the person to whom it is addressed.[8]

Letters of accused to be used as admission.—The letters, if true, were revealing, but were evidence only against themselves.[9]

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1. *Nagubai Ammal* v. *B. Shamma Rao*, 1956 SCR 451 ; 1956 SCA 959; 1956 SCJ 655.
2. *N.C. Singhal* v. *Union of India*, 1980 SC 1255 paras 11 and 12.
3. *P.C. Sethi* v. *Union of India*, (1975) 3 SCR 201 at page 210; AIR 1975 SC 2164 ; *J.K. Steel Ltd.* v.. *Union of India*, (1969) 2 SCR 481 at page 498 ; AIR 1970 SC 1173 ; and *Commissioner of Income-tax, Madras* v. *K. Srinivasan*, 1953 SCR 468 ; AIR 1953 SC 113.
4. *Bharat Singh* v. *Mst. Bhagirthi*, AIR 1966 SC 405.
5. *K.S. Srinivasan* v. *Union of India*, 1958 SCR 1295 ; 1958 SCA 544; 1958 SCR 1295 ;1958 SCJ 777.
6. *Belashwar Rai alias Nepali Master, etc.* v. *State of Bihar*, (1964) 1 Cr.LJ 564; (1963) 2 SCJ 128 , (1963) 3 SCR 433.
7. *N. Krishna Iyer* v. *Lakshmi Ammal*, (1971) KLT 182.
8. *Slade* v. *Slade*, 1946 O 78.
9. *Sardul Singh Caveeshar* v. *State of Bombay*, 1958 SCR 161 ; 1957 Cr. LJ 1325 ; (1957) 1 M.L.J (Cr.) 739 ; 1957 SCJ 780 : 1958 AWR (Sup.) 1 : 60 BLR 691.

Clause (1).—Statements falling within any of the eight clauses to Section 32 become admissible under that section, if the maker of the statement is dead or is not otherwise available as a witness. Where the statement is against the interest of the maker of the statement, it is, apart from Section 32, provable as an admission, even during the lifetime of the maker. According to Section 21 (1), a statement is admissible even in favour of its maker and during his lifetime if, on the death of its maker, it would be admissible under any one of the eight clauses to Section 32. Thus a statement made by a woman describing herself to be the wife of her husband is admissible in evidence and can be proved by her where it was made before her marriage with her husband was disputed.[1]

This exception has been considered in the commentary to Section 32 to which reference should be made. See notes to Section 32 (2) under the heading "statement admissible under this clause may amount to an admission in favour of its maker and may be admissible in his lifertime; road-cess returns" ; notes to Section 32, clauses (5) and (6), under the heading "declaration admissible in declarant's favour even in his life-time; Sections 32 and 21; statements in the affidavit or deposition of a living person", and notes to Section 32 (3) under the heading "statements falling within Section 32 (3) are admissible in the declarant's lifetime under Section 21".

Clause (2).—When the existence of state of mind or body is a fact in issue or relevant any fact may be proved which shows the existence of a state of mind or body.[2] The existence of a state of mind or body may be evidenced by the statement of the person whose state of mind or body is in question or relevant. Such statements are admissible and original evidence as part of the *res gestae* when made at the time the state of mind or body existed, whether they be in favour of the declarant or against him.[3] In English law, statements which refer to a relevant state of mind or body are admissible, even if they were made after the state of mind or body to which they refer had ceased to exist.[4] Under the Evidence Act, such statements are admissible as admissions when given in evidence against the declarant;[5] but when they are sought to be given in evidence in favour of the declarant, they must, under this section, be shown to have been accompanied by conduct rendering their falsehood improbable.[6] See notes to Sections 14 and 15 under the heading "circumstantial evidence of the existence of a mental condition; declarations out of Court".

A declaration in a will by a person as to his religion is admissible in evidence under Section 21 (2) and Section 14.[7]

Clause (3).—An admission merely, as such, is not admissible in favour of the person who made it, or on whose behalf it was made, or in favour of the representative in interest of such person. But if an admission becomes admissible in favour of the person who made it under some other section of the Act, it will not be rendered inadmissible by the rule enacted in the present section. Thus, entries in books of account regularly kept are admissible under Section 34, even if they amount to

1. *Mst. Bashiran* v. *Mohd Husain*, 1941 C 284 ; 193 IC 161.
2. Section 14.
3. See Phipson, Ev., 6th Ed., 61.
4. See Phipson Ev., 6th Ed., 63.
5. Section 21.
6. Section 21 (2).
7. *Leong Hone Waing* v. *Leon Ah Foon*, 121 IC 796 ; 1930 R 42.

admissions in one's own favour.[1] Similarly, assertions of right may become admissible in favour of the assertor under Section 13.[2] Declarations of predecessors in title may be receivable in favour of their successors, otherwise than as admissions, *e.g.*, as part of the *res-gestae*,[3] or as explanatory of relevant document,[4] or under Section 6 or 11,[5] or as acts of ownership[6] or as declarations by persons deceased.[7] Where a statement is admissible under Section 14 as showing any state of mind or body or bodily feeling, it cannot be excluded on the ground that it is an admission in favour of the declarant.[8] Similarly, a statement which amounts to an admission in favour of its maker may become admissible under Section 11 of the Act.[9]

Where the question was whether a certain property was held benami by one of the plaintiffs, the statement made by the person who was claimed to be the true owner of the property, and under whom the defendant claimed, was held to be admissible against them, notwithstanding the fact that the statement was not contemporaneously made but was made some 15 years after the purchase, as a statement made against his proprietary interest both under Sections 21 and 32 (3).[10] The principle relied upon by the Supreme Court for taking this view that while evidence of acts and declarations of parties done or made before or at the time of purchase or so immediately after it as to constitute a part of the transaction is admissible irrespective of whether they are in favour of or against the party making them, subsequent declarations are admissible only if they are against the interest of the party making them.[11]

Effect of admission.—The effect usually given to admissions proved against persons who make them is destructive and not constructive. Whether they are true or not does not matter. In effect they destroy the force of inconsistent statements made subsequently. An admission is not conclusive as to the truth of the matter stated therein. It can be shown to be erroneous or untrue so long as the person to whom it was made has not acted upon it to his detriment when it might become conclusive by way of estoppel.[12]

An admission made in ignorance of legal rights or under duress cannot bind the maker of the admission.[13]

Admission by accused.—Where the report is an admission by the accused of certain facts which have a bearing on the questions to be determined by the Court the

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1. *Rajbali Lal* v. *Partappur Co. Ltd.*, 1940 P 622; *Mukundram* v. *Dayaram*, 23 IC 893.
2. *See Raghunath* v. *Bindeshwari Nandan*, 82 IC 582; 1924 A 526; *Janendra Nath Dutt* v. *Nasea Dasi*, 83 IC 948; 1924 C 991; *Gyannessa* v. *Mobarkannessa*, 25 C 210.
3. Section 6; *Paschand* v. *Nixon*, 6 Luck 44; 128 IC 721, 1930 O 441; *See Harihar Prasad Singh* v. *Kesho Prasad Singh Bahadur*, 93 IC 454; 1925 P 68.
4. Section 8; *Paschand* v. *Nixon*, 6 Luck 44; 128 IC 721; 1930 O 441.
5. *See Harihar Prasad Singh* v. *Kesho Prasad Singh Bahadur*, 93 IC 454; 1925 P 68, *Sayeruddin Akonda* v. *Samiruddin Akond*, 72 IC 985; 1923 C 378.
6. Section 13.
7. Section 32; Phipson, Ev. 6th Ed., 238.
8. Norton, 152; *see* notes to Sections 14 and 15.
9. *See Harihar Prasad Singh* v. *Kesho Prasad Singh Bahadur*, 93 IC 454, 1925 P 68; *Rajhunath* v. *Bindeshwari Nandan*, 82 IC 582; 1924 A 526; *Sayaruddin Akonda* v. *Samiruddin Akond*, 72 IC 985, 1923 C 378, *Gyannessa* v. *Mobarakenssa*, 25 C 210; *Inderdeo Rai* v. *Deokaran Rai*, 1955 P 292.
10. *Bhim Singh* v. *Kan Singh*, 1980 SC 727 (Para 24 and 25).
11. Snells Equity, 24th Ed., P 153.
12. *Nagubai* v. *B. Shama Rao*, 1956 SCR 451; *see* also *K.S. Shrinivas* v. *Union of India*, 1958 SC 1295.
13. *Shri Krishan* v. *Kurukshetra University*, 1976 SC 376 (Para 9).

admission contained in the report is admissible in evidence under this Section and is provable against the accused.[1]

Sections 21 and 145.—A party producing documents can be permitted under this section to use them as substantive evidence in the case without drawing the attention of the opponent to the admission in cross-examination. The rule of fairness in Section 145 that if the witness is under cross-examination on oath he should be given an opportunity, if documents are to be used against them, to tender his explanation and to clear up the particular point of ambiguity or dispute should be also applied to parties who enter the witness box. But the omission to follow the procedure in the case of a party who is examined as a witness, does not make his admission which is otherwise relevant under this Section inadmissible.[2]

22. When oral admissions as to contents of documents are relevant.—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 document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

[3][**22-A. When oral admission as to contents of electronic records are relevant.**—Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.]

COMMENTARY

Admission as to contents of documents.—The contents of a document must be proved by the production of the document[4] unless secondary evidence of the contents becomes admissible under Section 65 of the Act. Oral admissions as to the contents are merely secondary evidence,[5] therefore, the present section, consistently with rule laid down in Sections 64 and 65, provide that oral admissions of the contents of a document are inadmissible, unless the party tendering such evidence succeeds in finding a case for the reception of secondary evidence under Section 65.[6] Written admissions of the contents of a document, however, are admissible whether the document is or is not produced.[7] Where the question is whether a document produced is genuine or a forgery, an admission of its genuineness or of its contents is, of course, provable under this section. In English law, a party's parol admissions are receivable to prove the contents of a document, without notice to produce, or without accounting for the absence of the original.[8] The English rule is obviously unsound and has been adversely commented upon.[9] The present section, though a departure from, is decidedly an improvement upon, the English rule.

23. Admission in civil cases, when relevant.—In civil cases no admission is relevant, if it is made either upon an express condition that

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1. *Sankaran* v. *State of Kerala*, ILL (1965) (1) 2 Ker 33.
2. *Seethamma* v. *Hanumantha*, 1959 (2) Andh WR 7.
3. **Inserted by Information Technology Act, 2000 (Act 21 of 2000), S. 92 and Sch. II (w.e.f. 17-10-2000).**
4. Sections 62 and 64.
5. Section 63 (5); *Shekh Ibrahim Valad* v. *Parvata Valad Hari*, 8 Bom HC 163, 165.
6. *See Shekh Ibrahim Valad* v. *Parvata Valad Hari*, 8 Bom HC 163.
7. Section 65 (b).
8. *Slatterie* v. *Pooley*, 6 M & W 664; Phipson, Ev., 6th Ed., 234.
9. *See* Taylor, §§ 411 and 412.

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 barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under Section 126.

COMMENTARY

Admissions without prejudice.—Confidential overtures of pacification and any other offers or propositions between litigating parties expressly or impliedly made without prejudice, are excluded on grounds of public policy. Without this protective rule it would often be difficult to take any steps towards an amicable compromise or adjustment. Lord Mansfield has observed that all men must be permitted to buy their peace without prejudice to them should the offer not succeed, such offers being made to stop litigation, without regard to the question whether anything is due or not. If, therefore, the defendant, on being sued for £ 100, should offer the plaintiff £ 20, and at the same time state that such offer was "without prejudice" this is not admissible in evidence, for it is irrelevant to the issue. It neither admits nor ascertains any debt, and is no more than saying that he would give £ 20 to be rid of the action.[1] The true reason for excluding from evidence such overtures and offers is that they do not ordinarily proceed from and imply a belief that the adversary's claim is well founded, but rather a belief that the further prosecution of that claim whether well founded or not, would in any event cause such annoyance as is preferably avoided by the payment of the sum offered. The offer implies merely a desire for peace, not a concession of wrong done,[2] and is, therefore, not an admission of liability at all.

The section is applicable to civil as well as to criminal cases.[3] It consists of two distinct parts. Under the first part, an admission is not admissible in evidence, if it is made on the express condition that it is not to be given in evidence. If the admission is not made upon such condition, but the Court can infer that the person making the admission and the party to whom the admission was made had agreed that the admission would not be given in evidence, the admission thus made will be inadmissible under the second part of the section. Where an admission is made upon a condition that it is not to be given in evidence, it is usual, though not necessary, to describe it as "without prejudice." Thus, where the plaintff, to save limitation, relied upon a post card written by the defendant "without prejudice," in which he promised to pay Rs. 30 and acknowledged his liability to pay any sum that may be due, the post card was held to be inadmissible in evidence under this section.[4] An offer made by the Government "without prejudice" to pay a certain amount for acquisition of land under the Land Acquisition Act is not admissible in evidence.[5] It has been held in an Oudh case that a letter written "without prejudice" is not admissible in evidence as

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1. Taylor, § 795.
2. Wigmore, § 1061.
3. *Abbas Peada* v. *Q. E.*, 25 C 736.
4. *Madhavrav Ganeshpant Oze* v. *Gulabbhai Lallubhai*, 23 B 177.
5. *Ranzor Singh* v. *Secy. of State*, 92 IC 319 ; 1926 L. 509.

it merely shows a desire on the part of the writer to have the privilege, and not an agreement on the part of the other party to respect the privilege,[1] but it is submitted that such letter would be inadmissible under the first part of the section, as it amounts to an admission upon an express condition that it is not to be given in evidence. An admission contained in a draft of a compromise deed filed in Court must be excluded where the document provides that the parties to it would be free to repudiate any condition of the proposed compromise by which, in their opinion, their rights were prejudicially affected.[2]

Negotiations for a compromise.—"An offer of compromise, the essence of which is that the party making it is willing to submit a sacrifice or to make a concession, will be rejected, though nothing at the time was expressly said respecting its confidential character, if it clearly appears to have been made under the faith of a pending treaty into which the party has been led by the confidence of an arrangement being effected".[3] Negotiations for a compromise and statements made in the course of such negotiations are inadmissible under Section 23, as such negotiations must be considered to have been conducted under an implied agreement that they would not be given in evidence.[4] Admissions made in a petition of compromise are inadmissible, if the compromise is subsequently set aside on the ground of want of authority of the agent of a party to compromise.[5] It should, however, be remembered that an admission is not inadmissible in evidence merely because it forms part of an offer to compromise. The important point which makes the admission admissible or inadmissible is the form of the statement, namely, whether it is hypothetical or absolute.[6] If an admission is made because it is a fact, the evidence to prove it is competent, whatever motive may have prompted the declaration. If A offers to B ten pounds in satisfaction of his claim of one hundred pounds, merely to prevent a suit,or purchase tranquillity, this implies no admission that any sum is due; and, therefore, testimony to prove the fact must be rejected, because it evinces nothing concerning the merits of the controversy. But if A admits a particular item in an account, or any other fact, meaning to make the admission as being true, this is good evidence, although the object of the conversation was to compromise an existing controversy. The question to be considered is what was the view and intention of the party in making the admission; whether it was to concede a fact hypothetically in order to effect a settlement or to declare a fact really to exist.[7] Where a person offers to accept a smaller amount as a matter of compromise, that offer is not an admission as to the proper amount due to him.[8] Where an admission is made neither on an express condition nor under an express or implied agreement that

1. *Lucknow Improvement Trust* v. *Jaitly & Co.*, 5 Luck 465 ; 124 IC 423 ; 1930 O 105.
2. *Surendra Prasad Lahiri* v. *Gobinda Das*, 48 CWN 15.
3. Taylor, § 795, citing Waldridge v. Kennison, (1794) 1 Esp. 144.
4. *Bhanja Ram Rai* v. E., 11 CWN XXVI (n) ; *Abbas Peada* v. *Q. E.*, 25 C 736.
5. *Ilahia*, v. *Makhan*, 83 PB 1877 ; *Wahid Bakhsh* v. *Lalta Pershad*, 73 IC 387; 1924 L 316 ; *Kuar Nageshar Sahai* v. *Shiam Bahadur*,1922 O 231; but see *Neamatun Nessa Bibi* v. *Golam Panchatan Kazi*, 45 IC 601 ; 27 CLJ 502.
6. Wigmore, § 1061.
7. Per Hosmer, CJ., in *Hartford Bridge Company* v. *Granger*, 4 Conn. 142, cited in Wigmore, 1061; *see Chandrika Prasada* v. *Bombay Baroda & Central India Railway Co.*, 1935 PC 59 : 154 IC 945 ; *Rampati Raut* v. *Hanuman Saran*, 76 IC 1049, 1923 P 303.
8. *Chandrika Prasada* v. *Bombay Baroda & Centra India Railway Co.*, 1935 PC 59 : 154 IC 945 ; *Harikrishna* v. *K C Gupta*, 1949 A 440 : 1949 AWRHC 2.

evidence of it will not be given, the admission will be admissible, even though it is made in the course of negotiations for a compromise.[1] Admissions made to a person to whom the parties went for a compromise are admissible, unless there was an express agreement that they were not to be given in evidence.[2] A compromise affecting property, not the subject of the suit, is admissible as an admission in a subsequent suit.[3]

Admissions before an arbitrator.—Admissions made before an arbitrator are admissible and not excluded under Section 23 of the Evidence Act,[4] unless they were made on the express condition, or under an agreement, that they would not be given in evidence.[5]

Explanation.—Professional communications made by a client to his legal adviser are, in general, protected from disclosure; but the protection does not extend to communications made in furtherance of any illegal purpose, or to any facts observed by the legal adviser showing that any crime or fraud has been committed since the commencement of his employment.[6] This rule which makes a legal adviser compellable to give evidence of certain facts is not, by reason of the explanation to Section 23, in any way affected by Section 23.

24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—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,[7] having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

COMMENTARY

Principal.—Sections 24 to 26 form a trio containing safegauards agaisnt accused persons being coerced or induced to confess guilt. Towards that end Section 24 makes a confession irrelevant in a criminal proceeding if it is made as a result of inducement, threat or promise from a person in authority, and is sufficient to give an accused person grounds to suppose that by making it he would gain any advantage or avoid any evil in reference to the proceedings against him.[8] In criminal cases, a confession made by the accused voluntarily is evidence agaisnt him of the facts stated. But a confession made

1. *Meajan Matbor* v. *Alimuddin Mea*, 44 C 130 : 34 IC 571.
2. *Bulaki Ram Amar Nath* v. *Bhagat Ram*, 95 IC 363 : 1926 L 548.
3. *Mahadeo Uraon* v. *Etwaria*, 43 IC 775 : 1917 P 181.
4. *Punjab Singh* v. *Ramautar Singh*, 52 IC 348 : 4 PLJ 676 ; *Gangaram Kanhyalal* v. *Pooran Gulab*, 1954 MB 58.
5. *Bulaki Ram Amar Nath* v. *Bhagat Ram*, 95 IC 363 : 1926 L 548.
6. Section 126.
7. For prohibition of such inducement etc., see Section 343 of the Code of Criminal Procedure, (1898 (Act 5 of 1898). See new Cr. P.C. 1973.
8. *Kanda Padayachi* v. *State of Tamil Nadu*, 1972 (1) SCJ 395, 397.

after suspicion has attached to, or a charge been preferred against him, and which has been induced by any promise or threat relating to the charge and made by, or with the sanction of a person in authority, is deemed not to be voluntary, and is inadmissible.[1] The principle upon which a confession induced by a promise or threat held by a person in authority is treated as inadmissible is that such confession is untrustworthy as testimony.[2] A confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and, therefore, it is rejected.[3] The ground of rejection of confessions which are not voluntary is the possibility of the prisoner having been induced by hope or fear to criminate himself falsely.[4] This possibility arises wherever an innocent person is placed in such a position that the untrue acknowledgment of guilt is, at the time, the more promising of two alternatives between which he is obliged to choose; that is, he chooses any risk that may be in falsely acknwledging guilt, in preference to some worse alternative associated with silence.[5] The reports show that many confessions are induced by improper means; and that innocent people often accuse themselves falsely is known to the reader of any book on evidence.[6] The rule which excludes confessions, not shown to have been made voluntarily, is a rule of policy,[7] the reason is not that the law presumes such confessions to be untrue, but that, owing to the danger of receiving them, the law deems it better to reject them;[8] not because the law is afraid of having truth elicited, but because the law is jealous of not having the truth.[9] Another and more sensible reason for the rule is that the admission of such confessions would naturally lead the inferior agents of the police, while seeking to obtain a character for activity and zeal, to harass and oppress unfortunate prisoners in the hope of wringing from them a reluctant confession.[10]

Ingredients of Section 24.—Under Section 24 of the Evidence Act, a confession made by an accused person is irrelevant in criminal proceeding, if it appears to the Court,

1. that the making of the confession was caused by any inducement, threat or promise,
2. that the said threat, inducement or promise had reference to the charge against the accused person,
3. that it proceeded from a person in authority, and
4. that it was sufficient to give the accused person grounds which would appear to him reasonable for supposing that he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

The crucial word is "appears" and the proper meaning of the word is "seems". The word imports a lesser degree of probability than proof. The test of proof under Section 3 of the Act is that there is such a high degree of probability that a prudent man ought to

1. Phipson, Ev.,7th Ed., 255.
2. Wigmore, § 822 ; *Sukhan* v. *E.*, 10 L 383 : 115 IC 6 : 1929 L, 344 : 30 Cr LJ 414 (FB).
3. Per Eyre, CB, in Warickshall's Case (1783) 1 Lea, 263.
4. Phipson,Ev., 7th Ed., 256.
5. Wigmore, § 822.
6. Per Jardine,J.,in *Q.E.* v. *Dada Ana*, 15 B. 452, 461.
7. Taylor, § 872, *Ibrahim* v. *E.*, 23 IC 678 : 1914 PC 155 : 15 Cr. LJ 326 : 18 CWN 705.
8. Taylor, § 872.
9. Per Williams,J., in *R.* v. *Mansfield*, (1881) 14 Cox. CC 639.
10. Taylor, § 874.

act on the assumption that the thing is true. But under Section 24 of the Act the stringent rule as to proof is waived or relaxed and a lesser degree of assurance is laid down as the criterion. Even so, Section 24 does not warrant a court in basing its opinion on pure surmise, and it must base its opinion on evidence and circumstances.

In this case the conviction was based mainly on the confession made by the accused in departmental inquiry conducted by a Secretary to the Government. The Supreme Court held that the Secretary's statement that if the accused did not disclose the truth, the matter would be placed in the hands of the Police did not amount to a 'threat'.[1]

In Veera Ibrahim v. *State of Maharashtra*,[2] The Supreme Court restated the position thus:

"To attract the prohibition enacted in Section 24,....these facts must be established.

(i) that the statement in question is a confession;
(ii) that such confession has been made by an accused person;
(iii) that it has been made *to* person in authority;
(iv) that the confession has been obtained by reason of any inducement, threat or promise proceeding from a person in authority;
(v) such inducement, threat or promise, must have reference to the charge against the accused person;
(vi) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which could appear to him reasonable, for supposing that by making a confession he would gain any advantage or avoid any evil of a temporal nature in reference to proceedings against him.

"...It is now well settled that a statement in order to amount to a 'confession' must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of an incriminating fact, howsoever grave, is not by itself an admission or statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged, cannot amount to a confession.[3]

"....the statement made....before the Inspector of Customs...contained exculpatory matter....the incriminating facts admitted do not even if taken cumulatively amount to admission of all the facts which constitute offence...the statement...was not a 'confession' within the meaning of Section 24.."

"Secondly, it has not been shown that the Customs Officer—though a person in authority—had offered any inducement or held out any threat or promise...while it may be conceded that a person summoned by an Officer of Customs to make a statement under Section 108 of the Customs Act, is under compulsion of law to state the truth, the compulsion thereunder, assuming it amounts to a threat does not proceed 'from a person in authority' within the contemplation of Section 24 but emanates from law."

"Thirdly, the mere fact that the Inspector of Customs had, before recording the

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1. *Pyare Lal Bhargava* v. *State of Rajasthan*, 1962 (2) Cr LJ 178.
2. AIR 1976 SC 1167, (paras 14, 15, 16, 17, 18, 19, 21, 22, 23).
3. See *Pakala Narayana* v. *Emperor*, 66 IA 66 : 1939 PC 47 : Cr LJ 364 ; *Palvinder Kaur*, v. *State of Punjab*, 1953 SCR 94 : 1952 SC 36 : 1953 Cr LJ 154 ; *Om Prakash* v. *State of U.P.*, 1960 SC 409 : 1960 Cr LJ 514.

statement, warned the deponent of the possibility of his prosecution for perjury in case he did not make the statement truthfully, cannot be construed as a threat held out by the officer which could have reasonably caused the person making the statement to suppose that he would by making that statement, gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." ".....the statement was not barred under Section 24 .... The statement was clearly admissible under Section 21 .... as an admission of incriminating facts."[1]

Meaning of the word "voluntary" – The word 'voluntary', used in respect of a confession, means a confession not caused by inducement, threat or promise; and does not mean a confession made willingly, as all confessions made in consequence of inducement, threat or promise are voluntary in the latter sense.[2] A confession advised by the police is not voluntary.[3]

Tests for determining whether a confession is voluntary – Whether confessional statement was voluntarily made or not is essentially a question of fact.[4] In ascertaining the voluntary nature of the statement, different tests will have to be applied to different sets of facts. But in the very nature of things, there can be no rigidity about them. What test is best applicable to given set of facts is for the judge to decide.[5]

Whether the confession was voluntary – There was no evidence to show that any threat, promise or inducement was offered. The accused was not questioned continuously but at occasions. The statement of the accused should be held to be voluntary. The fact that 2 or 3 hours had intervened between the accused being brought to the house of the Mukhia and the making of the confession did not affect the voluntary and true nature of the confession.[6]

If the jail in which an accused has been ordered to be kept before the confession is recorded is such that the police have access to it, and the accused says the opportunity was fully utilized to coerce and threaten him, then, in the absence of anything to show that the assertion is false, it must be held that the confession is not voluntary. The accused is not required to prove his assertion affirmatively in such circumstances.[7]

The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, must be considered before deciding whether the Court is satisfied that in its opinion the impression caused by the inducement, threat or promise (if any) has been fully removed.[8]

If the circumstances threw any doubt on the voluntary character of a confession the confession must be rejected – If an accused has been kept in a lock up to which the police has easy access that circumstances throws a grave doubt on the voluntary character of the confession.[9]

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1 *Veera Ibrahim* v. *State of Maharashtra*, AIR 1976 SC 1167 (paras 14, 15, 16, 17, 18, 19, 20, 21, 22, 23).

2 *Fateh Chand* v. *E*, 86 IC 1001: 1925 A 606: 26 Cr LJ 937; *R* v. *Vision*, (1918) 1 KB 531; *Ibrahim* v. *E*, 23 IC 678: 1914 PC 155: 15 Cr LJ 326; 18 CWN 705.

3 *Ram Sarup Singh* v. *E*, 167 IC 162: 1937 C 39: 38 Cr LJ 339; *Venkata Narayana* v. *E*, 1938 MWN 24.

4 See *Shankar* v. *State of T.N.*, (1994) 4 SCC 478: 1994 Cri LJ 3071 relied on AIR 1957 SC 216: 1957 Cri LJ 481: AIR 1974 SC 799: AIR 1978 SC 1770.

5 Uggappa Shetty, In re (1970) 1 Mys LJ 149.

6 *Ratan Gond* v. *The State of Bihar*, 1959 SCR 1336: 1959 Cr LJ 198.

7 *Aher Raja Khima* v. *State of Saurashtra*, 1956 Cr LJ 426: 1956 SCJ 243.

8 *Vali Ibo* v. *State*, 1963 Guj LR 1052.

9 *Tulsiram Kanu* v. *The State*, 1954 Cr LJ 225.

Involuntary confessions.—An involuntary confession is one which is not the result of the free will of the maker of it, so where a confession is made as a result of the harassment and continous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involunatry.[1] As confession caused by inducement to withhold criminal prosecution is voluntary.[2]

A non-voluntary confession must be rejected.—If a confession is rejected as being not voluntary, the question whether it is true, or whether it is corroborated by other evidence or whether the confession of a co-accused lends it assurance, does not at all arise. In such a case, a Court has to keep the confession entirely out of consideration, and see whether the other evidence is sufficient by itself for conviction and if it is not, the accused must be acquitted.[3]

Mere allegations of inducement are not sufficient to displace the voluntary character.—The principle is well settled that a confession is admissible provided it is free and voluntary but it does not mean that a mere bald assertion by the accused that he was treatened or tutored, or that an inducement was offered to him, can be accepted as true without anything more. The sugestion must be rejected when there is no material whatsoever to hold that the prisoner was threatened or beaten, and the story of tutoring is, on the face of it incredible.[4]

The test to be applied to a confession for the purpose of judging whether it is 'true'.—For the purpose of deciding whether a confession could be relied upon as being 'true', the Court must carefully examine its contents, and must then compare them with the other prosecution evidence and apply to them the test of probability.[5]

> '....In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing that without the aid of the confession he would not be prepared to accept' (Para 5) as cited, only if on such consideration on the evidence available, other than the confession a conviction can safely be based then the confession could be used to support that belief or conclusion. (Para 6).[6]

Is the confession true?—When the manner of causing death or the circumstances in which the death was caused as described in a confession is improbable or unnatural such improbability or unnaturalness is a factor which the Court must bear in mind when considering the question whether the confession can be accepted as true and reliable. But if the corroborative evidence on record clearly supports the description given in the confession, the unusual or unnatural character of the circumstances described in the confession loses its significance, and the confession has to be accepted as true, in the absence of anything else which shows to be false.[7]

Confession contradicted by medical evidence.—It has been pointed out that confessions are not always true and they must be checked, more particularly in murder cases, in the light of the whole evidence on the record in order to see if they carry conviction. The Court should attach great importance, for instance to the existence of

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1. *Amrut* v. *State of Bombay*, ILR 1960 B 664 ; *Sevantilal* v. *State of Maharashtra*, 1979 SC 705 (Paras 6 and 7).
2. *Abraham Varghese* v. *State of Kerala*, ILR (1964) 2 Ker. 312.
3. *Nathu* v. *State of Uttar Pradesh*, 1956 Cr LJ 152.
4. *Hemraj* v. *State of Ajmer*, 1954 Cr. LJ 1313 : 1954 SCJ 449.
5. *Sarwan Singh Rattan Singh* v. *State of Punjab*, 1957 SCJ 699 : 1957 Cr. LJ 1014.
6. *Chandrakant Chimanlal Desai* v. *State of Gujarat*, (1992) 1 SCC 473.
7. *Ram Chandra* v. *State of Uttar Pradesh*, 1957 Cr. LJ 559.

contradictions between confessions and medical testimony.[1]

The test of the admissibility of a confession is its voluntariness and not its truth — A confession which is voluntary is admissible in evidence, even if it be false. On the contrary, a confession which is not voluntary is not admissible, however true it may be.[2] The question whether a confession is voluntary is a question of fact; so is the question whether a confession true. These two questions are entirely separate from each other; the one affects the admissibility; the other the value of the confession. A confession that is voluntary is not necessarily true; and conversely a confession that is true may not be voluntary.[3]

Motive for confession — The law does not require the motive for a confession to be elicited. The only requirement laid down by the law is that the confession should be free from the blemishes of compulsion, inducement, threat or promise. If the confession is not tainted by any of these vitiating factors the court is entitled to presume that it is voluntary.[4]

An involuntary confession is admissible in civil proceedings — Under Section 24 an involuntary confession is inadmissible in criminal proceedings; such confession will, in civil proceedings, be, therefore, admissible against its maker or his representative in interest as an admission;[5] though, of course, its weight will be affected by the fact that it was made in consequence of an improper inducement or threat.

Burden of proving the voluntary or involuntary character of a confession — Notwithstanding some earlier decisions to the contrary,[6] the present day rule in England is that it lies upon the prosecution to establish, and not upon the accused to negative, the voluntariness of a confession.[7] In *R.* v. *Thompson*, Cave, J., put his judgment on the ground that it is the duty of the prosecution to prove in case of doubt that the prisoner's statement was free and voluntary, but in the text books the rule has been stated without this qualification.[8] In this country, however, the rule is otherwise. It has been held that in the case of judicial confession properly recorded under Section 164 or Section 364 of the Criminal Procedure Code, there is, under Section 80 of the Evidence Act, a presumption of its having been made voluntarily,[9] but the correctness of this view is open to question.[10] When a Magistrate records a confession under Section 164,

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1 46 Cr LJ 575 PC; See *Manguli Devi* v. *State*, AIR 1989 SC 483.

2 *Kasimuddin* v. *E*, 62 C 312: 154 IC 273: 1934 C 853: 35 Cr LJ 485; *E.* v. *Panchkari Dutt*, 2 C 67: 86 IC 414: 1025 C 587: 26 Cr LJ 782; *E* v. *Bhagi Vedu*, 4 Cr LJ 332; *Sarju* v. *E*. 1935 A 882: 156 IC 357: 36 Cr LJ 925: *Mahabir Biswas* v. *State of W. Bengal*, (1995) 2 SCC 25 p. 28.

3 *Kasimuddin* v. *E*, 62 C. 312: 154 IC 273: 1934 C 853: 35 Cr LJ 485.

4 *Sukla Misra* v. *State*, AIR 1951 Orissa 71.

5 *Q.E.* v. *Tribhovan Manekchand*, 9 B 131, 134.

6 Eg., *R.* v. *Williams*, 3 Russ Cr. 497.

7 Phipson, Ev., 7th Ed., 256; *R* v. *Thompson*, (1893) 2 QB 12; *R* v. *Rose*, 18 Cox 717; *Ibrahim* v. *R.*, (1914) AC 599, 610-611; *R.* v. *Warringham*, (1851) 2 Den. Cr C. 447: Taylor, 872; *Ibrahim* v. *E*., 23 IC 678: 15 Cr LJ 326: 18 CWN 705 (PC).

8 See Phipson Ev., 7th Ed., 256; Taylor, 872; Roscoe, Cr. Ev., 12th Ed., 49.

9 *Bukshan* v. *E*., 1936 L 247: 16 L 912: 161 IC 339: 37 Cr LJ 432; *Neyeb Shahana* v. *E*., 61 C 399: 152 IC 44: 1934 C 636: 35 Cr LJ 1479; *Pharho* v. *E*., 141 IC 392: 1932 S 201: 33 Cr LJ 147; *E* v. *Panchkari Dutt*, 52 C 67; 86 IC 414: 1925 C 587:26 Cr LJ 782: see *Durga* v. *E*., 132 IC 70: 32 Cr LJ 830; *Raj Bahadur* v. *E*., 98 IC 106: 1927 O 17: 27 Cr LJ 1255, *Nar Singh* v. *E*., 73 IC 257: 1922 O 302: 24 Cr LJ 561; *Q.E.* v. *Basvanta*, 25 B 196; *Sukhana Sheela* v. *E.E.*, 1949 N 405: ILR 1949 N 301: 1949 NLJ 354: 51 Cr LJ 224; *Queen E.*, v. *Thakurdas Malo*, 1943 C 625: ILR (1943) IC 487.

10 *E.*, v. *Thakurdas Malo*, 1943 C 625: ILR (1943) IC 487; *Hem Raj Devilal* v. *State*, 1954 SC 462.

Cr. P. Code, he has to certify that he believes the confession to have been made voluntarily. But when the admissibility of a confession is attacked in Court, the Court has to be satisfied that the confession was made voluntarily. Thus while the recording Magistrate may be quite satisfied that the confession was voluntary, the Court before which it is sought to be admittedf may find that the confession was in fact, not voluntary, and that the recording Magistrate was wrong in his belief. Though there may be a presumption under Section 80 that the Magistrate believed the confession to be voluntary, there cannot, it is submitted, be the further presumption under that section that the confession was in fact voluntary. It is, therefore, difficult to comprehend how a presumption about the voluntariness of a confession can be raised under Section 80. On general principles, however, whether the confession is a judicial confession or an extra-judicial confession, the onus is on the accused to show that the confession is inadmissible under Section 24. Section 24-26 are exceptions to the general rule that a confession is admissible against its maker as an admission. Where, therefore, the question is whether a confession is inadmissible, the burden of showing that it falls within one or more of these exceptions is upon the accused[1] as it is for the party, who relies on an exception, to show that his case comes within the exception. There is no presumption that a confession was made under pressure.[2] On the other hand a confession must be presumed to be made voluntarily unless the contrary is proved.[3] But as will be seen in the next paragraph, the onus of showing that a confession was not voluntary is comparatively light, for strict proof of inducement, threat or promise is not necessary. Where, therefore, there is doubt as to the voluntariness of a confession, the *onus* will be on the prosecution to dispel that doubt;[4] and, if the doubt is not removed by the posecution, the benefit of it will be given to the accused and the confession rejected.[5] The initial burden of throwing some sort of doubt on the volunatriness of a confession is, however, on the accused person, whether the confession is judicial or extra-judicial; and he must discharge this burden, if he wishes to question the admissibility of the confession.[6] Where there is no independent evidence of the circumstances under which a confession was recorded, nor is there any allegation by the accused that the confession was the result of inducement or threat, the confession cannot be said to be inadmissible.[7] Confession made to police at the time when he was under arrest that he had committed murder is clearly inadimissile in evidence.[8]

Though the prosecution is not called upon in every case to give evidence that the extra-judicial confession was a voluntary one, yet if there is anything to arouse suspicion, there must be evidence to show that the confession is a free and voluntary act.[9]

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1. *Raggha* v. *E.*, 89 IC 903, 910 : 1925 A 627 : 26 Cr LJ 1431, per Mukerji,J : *E.* v. *Kabili Katoni*, 47 IC 811 : 19 Cr LJ 959 : In re *Boya Chinna Papanna*, 1942 M. 49 : 1941 MWN 929 ; but see *Bakshan* v. *E.*, 1936 L 247 ; *Krishna* v. *State*, 1952 RLW 103.
2. In re Boya China Papanna, 1942 M 49 : 198 IC 295 : 43 Cr LJ 346 : 54 MLW 327 : *Nathu Ram* v. *State*, 1951 HP 1 : 52 Cr LJ 50.
3. See Section 80 ; *Sudama Sheoba* v. *K.E.*,1949 N 405 : ILR 1949 N 301 : 1949 NLJ 354 : 51 Cr LJ 224.
4. *Mor Phalai* v. *E.*, 1933 S 409 ; *E.* v. *Panjal and others*, 1929 S 245 ; *Ashootosh Dutt* v. *E.*, 68 IC 413 : 23 Cr LJ 573 : 1921 C 458 ; *Nathu Ram* v. *State*, 1951 HP 1 : 52 Cr LJ 50.
5. *Rahman* v. *E.*, 119 IC 420 : 1930 L. 88 : 30 Cr LJ 1080 ; *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 514 : 1925 C 587 : 26 Cr LJ 782 ; *Neki* v. *E.*, 76 IC 180 : 1924 L 624 : 25 Cr LJ 116.
6. In re *Boya Chinna Papanna*, 1942 M 49.
7. In re *Karumuri China Mallayya*, 1948 M 324 : 1947 2 MLJ 359 : 60 MLW 693 : 1947 MLW 663 : 49 Cr LJ 385.
8. *Yash Pal* v. *State of U.P.*, 1988 ALJ 85 (DB).
9. *Abu* v. *E.*,1948 O 81 : 49 Cr LJ 43 : 22 Luck. 492.

Burden to establish that confession was voluntary is on the prosecution.–Effect of prolonged custody.–The prolonged custody immediately preceding the making of the confession is sufficient, unless it is properly explained, to stamp the confession as involuntary. It is the duty of the prosecution to prove that the confession made was voluntary.[1]

Nature of the onus.–It should, however, be remebered that though the initial onus is open the accused to show that the confession is inadmissible by reason of its having been made in consequence of an improper inducement having been held by a person in authority, the *onus* is not a heavy one and strict proof of inducement is not required by the terms of the section. All that the section requires to make a confession inadmissible is that the "making of the confession *appears* to the Court to have been caused by any inducement threat or promise". The use of the word "appears" indicates a lesser degree of probability than would have been necessary if "proof" had been required. A Court might perhaps, in a particular case, fairly hesitate to say that it was *proved* that the confession had been unlawfully obtained, yet it might be in a position to say that such appeared to it to have been the case.[1a] Section 24 does not require the same cogency of evidence as is necessary to establish a fact. It merely provides that if it appears to the Court that a confession was induced by threat or promise proceeding from a person in authority in relation to the charge against the accused, it shall be inadmissible in evidence. If circumstances create a probability in the mind of the Court that the confession was improperly obtained, it must be excluded from evidence.[2] Anything, ranging from the barest suspicion to positive evidence, may be sufficient to exclude the confession.[3] It is idle to expect the accused to prove the inducement, threat or promise, for in most cases such proof cannot be available.[4] The section does not require positive proof of improper inducement to justify the rejection of a confession.[5] Therefore, well grounded conjecture, reasonably based upon circumstances disclosed in the evidence, is sufficient to bring the confession within the rule of exclusion enacted by section 24.[6] The word "appears" is important in importing judicial discretion in the matter of admitting or rejecting a confession.[7] It is not possible for a Court to say that the making of a confession appears to it have been caused by any inducement, threat or promise, except upon evidence before it. The inference may be suggested by the confession itself, or by the evidence for the prosecution, or by the evidence adduced by the accused person, or by the surrounding circumstances which the Court is always bound to take

1. *Natha* v. *State of U.P.*, 1956 Cr LJ 152.

1a. *E.* v. *Thakurdas Malo*, 1943 C 625 : ILR (1943) IC 487 ; *The King* v. *Saw Min*, 1939 R 219 : 182 IC 705 : *Nayeb Shahana* v. *E.*, ¢ ¹ C 399 ; 152 IC 44 : 1934 C 636 : 35 Cr LJ 1479 ; *E.* v. *Panchkari Dutt*, 52 C 67 ; 86 IC 44 : 1925 C 587 : 26 Cr LJ 782 ; *Q. E.* v. *Basvanta*, 25 B 168.

2. *Nazir* v. *E.*, 55 A 91 : 1.3 IC 67 : 1933 A 31 : 34 Cr LJ 489 ; see also *Raggha* v. *E.*, 89 IC 903 : 1925 A 627 : 26 Cr LJ 1431 ; *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr LJ 782 ; *Mohsena Khatun* v. *E.*, 43 CWN 893.

3. *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr LJ 782 ; *Raggha* v. *E.*, 89 IC 903 ; 1925 A 627 : 26 Cr LJ 1431 ; *Mohsena Khatun* v. *E.*, 43 CWN 893.

4. *E.* v. *Panchkari Dutt*, 52 C 67 ; *Raggha* v. *E.*, 89 IC 903 : 1925 A 627 : 26 Cr LJ 1431 ; *Bhukhin* v. *E.*, 1948 N 344 : ILR 1948 N 147 : 49 Cr. LJ 561 : 1948 NLJ 489 ; *Ahmad* v. *Government of Mysore*, ILR 1951 Mys. 239.

5. *Bhukhin* v. *E.*, 1948 N 344 ; *Jangir Singh* v. *State*, 1953 Pepsu 19.

6. *Nayeb Shahana* v. *E.*, 61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr. LJ 1479 ; *E.* v. *Panchkari Dutt*, 52 C 67 ; In re *Krishna Iyer*, 1935 M 479 : 157 IC 297 : 36 Cr. LJ 1107 ; *Bhukhin* v. *E.*, 1948 N 344 ; *E.* v. *Jamuna Singh*, 1947 P 305 : 25 P 612.

7. *E.* v. *Narayan Raghunath Patki*, 32 B 111.

into consideration; but the conclusion cannot be reached on surmise or conjecture.[1] In deciding whether a confession is to be admitted in evidence it is necessary to examine not only the statement made by the prisoner as to how he came to make the confession, but all the circumstances of the case.[2] The reason put forward by the accused for excluding the confession does not preclude the Court from considering whether there are other grounds of exclusion. But the fact that the accused put forward false and not very probable allegations of ill-treatment by the police cannot be ignored, when considering the question whether he had been properly treated in the matter.[3] It is very difficult to lay down a hard and fast rule to the sufficiency of the circumstances which would make a confession irrelevant under the provisions of this section. Reported decisions afford very little help in this direction.[4] On the one hand, to expect the accused to give direct evidence of the existence of inducement, threat or promise, is to expect the impossible from him;[5] and, on the other, it is impossible to hold a confession to be involuntary on mere surmise or conjecture,[6] or on a mere possibility of its having been improperly obtained.[7] Surrounding circumstances, therefore, are ordinarily the only material from which the inference of a confession being voluntary or involuntary has to be drawn.[8] Where a confession by an illiterate woman was full and detailed and the facts had been started in natural and proper sequence, containing the entire prosecution case and everything necessary to prove the charge, it was held that it was impossible for her to make a complete and coherent statement, which she did unless she was tutored by someone familiar with the requirements of law, and that therefore the confession was not voluntary.[9] However, it has been held that the fact that a confession is more elaborate than necessary, or that it contains more particulars than are required at the particular stage, does not necessarily show that the confession was not voluntary,[10] or that it was voluntary.[11] Where the accused immediately after making the confession alleges before the recording Magistrate that he has been coerced by the police to make the confession, this fact cannot but go against the prosecution.[12] Reported decisions show that in determining this question the Courts take into consideration the following circumstances, among others :—

(i) the character and duration of the custody,[13] and, if the confession was made

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1. *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr. LJ 514 ; *E.* v. *Dewan Kahar*, 72 IC 961 : 1923 P 13 : 4 Cr. LJ 497 ; see *Hashmat Khan* v. *E.*, 15 L 856 ; 152 IC 998 : 1934 L 417 : 36 Cr. LJ 211.
2. *Partap Singh* v. *E.*, 6 L 415 ; see also *Raj Bahadur Singh* v. *E.*, 98 IC 106 : 1927 O 17.
3. *Bhabananda Banerjee* v. *E.*, 146 IC 186 : 1933 C 747 : 34 Cr. LJ 1222.
4. *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr. LJ 782
5. *Raggha* v. *E.*, 89 IC 903 : 1925 A 627 ; 26 Cr. LJ 1431, per Mukerji, J. ; *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr. LJ 782.
6. *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr. LJ 514.
7. *Hashmat Khan* v. *E.*, 15 L 856 : 152 IC 998 : 1934 L 417 : 36 Cr. LJ 211.
8. See *E.* v. *Anant Kumar Bannerji*, 60 IC 417 : 22 Cr. LJ 225.
9. *Bhukhin* v. *E.*, 1948 N 344 : ILR 1948 N 147 : 49 Cr. LJ 561 : 1948 NLJ 489 ; but see *Medda Peda Brahmayya*, In re, 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 511 Cr. LJ 8.
10. *Medda Peda Brahmayya*, In re, 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 51 Cr. LJ 8.
11. *Muthuswami*, v. *State of Madras*, 1954 SC 4.
12. *Abdul Subhan* v. *E.*, 1940 A 46.
13. *E.* v. *Bhagwandas Bisesar*, 1941 B 50 : *Abdul Subhan* v. *E.*, 1940 A 46 ; *Dhaman Hiranand* v. *E.*, 1937 S 251 : 171 IC 737 ; *Bhabanand Bannerji* v. *E.*, 146 IC 186 ; 1933 C 747 : 34 Cr. LJ 1222 ; *E.* v. *Attursing*, 138 IC 618 : 1932 S. 64 : 33 Cr. LJ 650 ; *E.* v. *Karu Gwala*, 101 IC 479 ; 1927 P 429 : 28 Cr. LJ 447 ; *E.* v. *Panchkari Datt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr. LJ 782 ; *Rusna Teli* v. *E.*, 54 IC 881 : 21 Cr.

before a Magistrate, the further fact whether the confessor expected to be transferred to judicial custody after making the confession.[1] The mere fact of a person being in custody cannot, however, raise a presumption that the confession was made by inducement threat or promise;[2]

(ii) legal or other advice which was available to the confessor before or at the time the confession was made;

(iii) the nature and *quantum* of proof which was available against the confessor before he confessed;

(iv) the fact that confession was retracted, the lapse of time before it was retracted, and the reasons given by the confessor for making and retracting the confession;

(v) the person to whom the confession was made and the place and time of the making of the confession; and

(vi) the terms of the confession[3] and its consistency or otherwise with the other evidence in the case.

Appears to the Court.—The word "appears" indicates a lesser degree of probability than the word "proof" as defined in section 3 of the Act. It was designedly used by the Legislature in the interest of the accused who is often in custody. In such cases, it is well nigh impossible for him to adduce positive proof in support of inducement, promise or threat offered to him by the police.[4]

The position is that confession other than what may be called police-confessions are admissible subject to their being excluded by the "appearance" of vitiating circumstances mentioned in Section 24. A magisterial confession can be proved only by the record of that confession and that the record cannot go in against the accused at the trial, unless it is one that is made in substantial compliance with the provisions of Section 164, Cr. P. Code, including the fair belief of the recording Magistrate as to the voluntary character of the confession, arrived at on a judicial approach. But once the record goes in, it is for the accused to make out or for the Court to find the appearance of vitiating circumstances mentioned in Section 24 in order to exclude it. It is also to be noticed that even in the matter of finding whether or not there has been substantial compliance with the terms of section 164 prosecution has the initial advantage of relying on the presumption in Section 80, Evidence Act and of the remedying provisions of Section 533, Cr. P. Code."[5]

The question of admissibility of a confession is a question for the judge; but the question of its weight is a question for the jury.—The question whether a confession does or does not fall within the rule of exclusion enacted in section 24, being a question of admissibility is, like all other questions of the admissibility of evidence, a question

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LJ 177 ; *Mobarak Ali* v. *E.*, 53 IC 929 : 20 Cr. LJ 833 ; *Q. E.* v. *Narayan*, 25 B 543 ; *Kirpa* v. *State*, 1952 HP 68 : 1952 Cr. LJ 1495 ; *Haidar* v. *Crown*, 1937 PLR 663 (2) ; *Bhukhin* v. *E.*, 1948 N 344 : ILR 1948 N 147.

1. *Raggha* v. *E.*, 89 IC 903 : 1925 A 627 : 26 Cr. LJ 1431, per Mukerji, J.
2. *Dadi Lodhi* v. *E.*, 95 IC 59 : 1926 N 368 : 27 Cr. LJ 731.
3. *E.* v. *Bhagwandas Bisesar*, 1941 B 50 ; *Mst. Parwati* v. *E.*, 1936 N 88, confession excluded where it stated that it was made under threat ; *Abdul Subhasn* v. *E.*, 1940 A 46 : 186 IC 192 ; *Bhukhin* v. *E.*, 1948 N 344 : ILR 1948 N 147 : 49 Cr. LJ 561 : 1948 NLJ 489 ; *Medda Peda Brahmayya*, In re, 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 51 Cr. LJ 8.
4. *Boya Chinna* v. *Emp.*, 43 Cr. LJ 346.
5. *Bala Majhi* v. *Orissa*, 53 Cr. LJ 1743 (FB).

for the Judge and not for the jury; but, when the confession is held by the Judge to be admissible, the question what weight should be attached to it is a matter for the jury.[1] The Judge must decide the question of the admissibility of a confession as a preliminary issue.[2] In deciding whether they should accept a confession held by the Judge to be admissible, the jury would naturally be guided to a large extent by their own opinion on the question whether the confession was voluntary or not.[3] It is a misdirection to ask the jury to take the voluntariness of a confession as decided and then to consider its truth quite apart from the question of its voluntariness, as it amounts to asking them to attain a mental detachment which is impracticable and perhaps impossible.[4]

Section 24 of the Evidence Act lays down that a confession caused by inducement, threat or promise is irrelevant in criminal proceedings under certain circumstances. Under that section a confession would be irrelevant if the following conditions were satisfied :

(1) It should appear to the court to have been caused by any inducement threat or promise;
(2) The said threat, inducement or promise must have reference to the charge against the accused person;
(3) It shall produce from a person in authority; and
(4) The court shall be of the opinion that the said inducement, threat or promise is sufficient to give the accused person grounds which would appear to him reasonable in supposing that he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The threat, inducement or promise must proceed from a person in authority and it is a question of fact in each case whether the person concerned is a man of authority or not. While the opinion is that of the court the criterion is the reasonable belief of the accused. The section, therefore, makes it clear that it is the duty of the court to place itself in the position of the accused and to form an opinion as to the state of his mind in the circumstances of a case.[5]

Conditions of inadmissibility of a confession essentials of the rule of exclusion.—It has been pointed out already that section 24 is an exception to the general rule that a confession is admissible as an admission against its maker, and that the onus of showing that a particular statement falls within the terms of section 24 is on the accused. To bring a statement within the rule of exclusion, the accused has to show:—

(i) that the statement amounts to a confession;

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1. *Kishori Kishore Mishra* v. *E.*, 1935 C 308 : 156 IC 396 : 36 Cr. LJ 921 ; *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr. LJ 485 ; *Nayeb Shahana* v. *E.*, 61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr. LJ 1479 ; *Baldeo Bin* v. *E.*, 142 IC 639 : 1933 C 187 : 34 Cr. LJ 369 ; *Khiro Mandal* v. *E.*, 57 C 649 : 1929 C 726 ; *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr. LJ 782 ; *E.* v. *Kesari Dayal Kanji*, 2 IC 517 : 10 Cr. LJ 65 ; see also *Ibrahim* v. *E.*, 23 IC 678 : 1914 PC 155 : 115 Cr LJ 326 : 18 CWN 705.
2. *Nayeb Shahana* v. *E.*, 61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr LJ 1479 ; *Fateh Chand* v. *E.*, 86 IC 1001 : 1925 A 606 : 26 Cr. LJ 937 ; *Nga Ba* v. *E.*, 3 IC 767 : 18 Cr. LJ 383 ; *E.* v. *Bhagi Vedu*, 4 Cr. LJ 332 ; see also *Pharho Shahwali* v. *E.*, 141 IC 392 : 1932 S 201 : 34 Cr. LJ 147.
3. *Kishori Kishore Mishra* v. *E.*, 1935 C 308 : 156 IC 396 : 36 Cr. LJ 921 ; *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 ; 36 Cr. LJ 485 ; *Baldeo Bin* v. *E.*, 142 IC 639 : 1933 C 187 : 34 Cr. LJ 369 ; see also *Mobarak Ali* v. *E.*, 53 IC 929 : 20 Cr. LJ 833.
4. *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr. LJ 485 ; *Kishori Kishore Mishra* v. *E.*, 1935 C 308 : 156 IC 396 : 36 Cr. LJ 921.
5. *Pyare Lal Bhargava* v. *The State of Rajasthan*, 1963 (Sup.) 1 SCR 689 ; 1963 ALJ 459, 1963 (2) Cr LJ 178.

(ii) that it was made by him at a time when his position was that of an accused person;

(iii) that the statement was caused by some inducement, threat or promise;

(iv) that the inducement, threat or promise was held out by a person in authority; and

(v) that the inducement, threat or promise had reference to the charge and gave him reasonable grounds for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The accused has to show that the statement objected to fulfil all the requirements mentioned above. If the statement lacks any one or more of these requirements, it will not be within the rule of exclusion, will be admissible.

Condition (i) of inadmissibility: only such statements are inadmissible as amount to confessions.—It has been noticed already that a confession, being a species of admissions, is admissible under the general rule governing the admissibility of admissions, unless the confession is shown to have been made in the circumstances mentioned in sections 24 to 26.[1] Sections 24 to 26 are exceptions to the general rule that a confession is admissible as an admission against its maker; and, as has been pointed out in an earlier part of the commentary to this section, it is for the accused who relies upon any of the exceptions mentioned in sections 24 to 26 to show that his case falls within one of those exception.[2] Now, sections 24 to 26 exclude from evidence only such statements as amount to confessions; and, therefore, if a statement does not amount to a confession none of these three sections will be applicable and the statement will be admissible under section 21, provided that it satisfies the other requirements of an "admission" and was not made to a police officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure.[3] The rule being as just stated, the question what is a confession is of considerable importance as it is on the determination of this question that the admissibility of a statement made by the accused to a person in authority in consequence of some threat or promise, or to a Police Officer, or at a time when he was in the custody of a Police Officer, will depend. The Act contains no definition of the word "confession"; but the author of the Act has defined it as "an admission, made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime".[4] This definition had been generally accepted in India,[5] and on the strength of it Courts had, in several cases, held statements merely suggesting an inference of guilt, but not containing any direct acknowledgement of guilt to be confession.[6] But the Privy Council has disapproved of this definition of confession and has held that

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1. See notes to Section 17 under the heading "importance of the distinction between admissions and confessions".
2. *See* notes under the heading "burden of proving the voluntary or involuntary character of a confession" supra.
3. *Narayana Swami* v. *E*, 1939 PC 17.
4. Steph, Dig. Art. 21.
5. *E.* v. *Nga San Win*, 6 R 140 ; 147 IC 60 ; 1933 R 326 : 35 Cr LJ 248 ; *Khuban* v. *E.*, 120 IC 257 : 1930 A 29 ; 31 Cr LJ 26 ; *Hakiman* v. *K.E.*, 20 PR 1905 Cr.; *Q.E.* v. *Nana*, 14 B 260, 263 (FB); *Ilahi Baksh* v. *E.*, 16 PR 1886 Cr. : *Q. E.* v. *Babu Lal*, 6 A 509, 539 (FB) ; *E.* v. *Pandharinath*, 6 B 34, 37.
6. *Smith* v. *E.*, 43 IC 605 : 19 Cr. LJ 189 ; *Pan Gang* v. *E.*, 42 IC 1002 : 19 Cr LJ 42 ; *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713 ; *Mi Ein Tha* v. *E.*, 4 IC 1028 : 11 Cr LJ 153 ; *Farid* v. *K.E.*, 16 PR 1906 Cr. ; *Hakiman* v. *K.E.*, 20 PR 1905 Cr. : *Q. E.* v. *Babu Lal*, 6 A 509 (FB).

the word "confession" cannot be construed as meaning a statement by an accused "suggesting the inference that he committed" the crime. A confession must in terms admit the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact even a conclusively incriminating fact, is not of itself a confession[1]. But the confession need not be confession of the offence charged."[2]

Meaning of confession.[3]—The expression "confession" is not defined. The Judicial Committee in *Pakala Narayanaswami* v. *Emperor*, 66 Ind. App. (A.I.R. 1929 P.C. 47) has defined the same expression thus :

> "A confession is a statement made by an accused which must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence."

A scrutiny of the provisions of sections 17 to 30 of the Evidence Act discloses that statement is a genus, admission is the species and confession' is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt. The dictionary meaning of the word "statement" is the act of stating, reciting or presenting verbally or on paper." The term "statement" therefore includes both oral and written statement. Is it also a necessary ingredient of the term that it shall be communicated to another? The dictionary meaning of the term does not warrant any such extension; or the reason of the rule underlying the doctrine of admission or confession demands it.[4]

A statement made by an accused person is a "confession" within the meaning of that term as used in the Evidence Act, only if the statement in terms admits the commission of a crime or of the facts which constitute a crime, by himself.

A statement made by an accused person is not a "confession" within the meaning of the Act, and cannot be used as a confession.

1. if, read as a whole, it is of an exculpatory character and suggests that the death of the deceased was caused by accident or by some other circumstance unconnected with his own-actions; or
2. if, it does not contain a direct admission in terms of the commission of an offence; a statement is not a confession merely because the Court considers that it can infer from the statement an admission of the commission of an offence; or
3. if the statement merely contains an admission of an incriminatory circumstance not amounting to admission of a crime, however grave, it, may be.[5]

It is only when the statement of the accused can be read as a plenary admission of guilt in straight and clear terms that it can be taken as a confession of the commission of a crime; and then only could it be used for the purpose of resting a conviction upon it.[6]

A confession is an acknowledgement in express words, by the accused in a criminal

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1. *Narayana Swami* v. *E.*, 193 PC 47 ; *Gona Ram* v. *E.*, 1945 B 152 ; *Allahwarayo* v. *E.*, ILR (1939) K 800 : 1940 S. 53; *Muhamad Bakhsh* v. *E.*, 1941 S. 129 ; *Behera Tanti* v. *State*, 1950 Orissa 202 : 51 Cr LJ 1493 ; *Anwarul Hasan* v. *State*, 1953 A 142 : 1953 Cr LJ 385.
2. *Ali Gohar* v. *E.*, 1941 S. 134.
3. *See* also notes to sections 17, 25 and 26.
4. *Sahoo* v. *State of Uttar Pradesh*, 1965 (2) SCWR 464, 1965 (2) SCA 292.
5. *Palvinder Kaur* v. *State of Punjab*, 1953 SCR 64 ; 1952 SCJ 545 : 1953 Cr LJ 154.
6. *Om Prakash* v. *State of Uttar Pradesh*, 1960 (2) Cr LJ 544.

case, or the truth of the guilty fact charged or of some essential part of it. It is to this class of statement only that the present principle of exclusion applies. In this sense, therefore, there are, in particular, three things which fall without the meaning of the term "confession" and are thus not affected in any way by the present rule, namely, (i) guilty conduct, (ii) exculpatory statements, and (iii) acknowledgments of subordinate facts, colourless with reference to actual guilt.[1]

Communication to another is not an essential ingredient of the concept of confession.—Four P. Ws. had seen the appellant going out of the house at about 6 a.m. on that day soliloquying that he had finished S and there by finished the daily quarrels. It was held that—communication to another is not a necessary ingredient of the concept of "confession", and that a statement, whether communicated or not, admitting guilt is a confession of guilt.[2]

Mere conduct is not a confession.— A confession being merely a species of admissions and having been defined by section 17 as an "oral or documentary" statement, it follows that mere conduct is not a confession.[3] The conduct of an accused person, *e.g.*, fleeing from arrest, concealing the traces of crime, fabricating evidence, suppressing testimony and other behaviour indicative of a guilty conscience falls without the principle of the rule enacted in section 24. The principle underlying section 24 rests on the theory that the trustworthiness of the accused's verbal utterances is destroyed or weakened by circumstances supplying a motive for false assertion. Therefore, that which is not an assertion, in some form or other, cannot be within the scope of such a principle, its probative use being not testimonial but circumstantial.[4] An assertion may, however, be made otherwise than by word of mouth or writing,[5] *e.g.*, by a nod or a gesture. Even of a confession made by a nod, gesture, act or conduct be not an "oral or documentary" statement within the meaning of section 17,[6] it seems that, on principle, a confession made in this manner would be inadmissible where, if it had been made by word of mouth or writing, it would have been inadmissible under Sections 24 to 26.[7] To amount to a confession, the act or conduct must amount to an assertion. Thus, where the accused, who was not shown to understand English, was asked in broken English whether he was responsible for an act of rape, and the accused nodded his head and *salamed* in reply, it was held that the conduct did not amount to an oral confession.[8] It has been held in an Allahabad case that the making of a counterfeit coin by an accused person in the presence of a Police Officer, being neither an "oral" nor "documentary" statement, is not a confession to the Police Officer and is not, therefore, inadmissible under sections 25 and 26.[9] Giving a specimen of one's writing on a blank paper for

1. Wigmore, § 821.
2. *Sahoo* v. *State of U.P.*, 1965 (2) SCWR 464 : 1965 (2) SCA 292.
3. *See* notes to section 17 under the heading "definition of an admission : admissions by conduct".
4. Wigmore, § 821 ; *see* notes to section 17 under the heading "definition of an admission; admissions by conduct".
5. *E.* v. *Nag Kyaing*, 3 R 656 ; 94 IC 706 : 1926 R 112 : 27 Cr LJ 658 ; see *Barindra Kumar Ghose* v. *E.*, 37 C 467 : 7 IC 359 : 11 Cr LJ 453.
6. See *Brij Nandan* v. *E.*, 133 IC 154 : 1931 A 9 ; 32 Cr LJ 1006.
7. See *Pan Gang* v. *E.*, 42 IG 1002 ; 19 Cr LJ 42 ; *Barindra Kumar Ghose* v. *E.*, 37 C 467 : 7 IC 359 : 11 Cr LJ 453 : *Q. E.* v. *Nana*, 14 B 1260 (FB).
8. See *E.* v. *Soopi*, 120 IC 539 : 1930 L 84 : 31 Cr LJ 141.
9. *Brij Nandan* v. *E.*, 133 IC 154 ; 1931 A 9 ; 32 Cr LJ 1006. It is submitted that such an act amounts to an assertion that the accused can make a counterfeit coin, though such assertion does not necessarily amount to a confession of his having made the counterfeit coins with which he is charged.

comparison of handwriting is neither a confession nor a statement.[1] See also notes to section 17.

Exculpatory statements are not confessions.—A confession being an admission made by a person stating that he committed the crime, exculpatory statements denying guilt are not confessions and, therefore, not within the present rule of exclusion. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed.[2] Thus, a statement in which the accused admits the killing but asserts that the killing was done in self-defence is not a confession; nor a statement showing an *alibi* nor a statement denying the larceny but admitting the possession and accounting for it.[3] A statement in which the accused admits merely witnessing the perpetration of a crime but denies having participated in it and, on the other hand, alleges having protested against it,[4] or in which he says that the crime was committed by other and not by him,[5] or in which he states that the articles belonging to the murdered man were given to him by another person,[6] or in which he puts forward an *alibi*,[7] or in which he tries to bring the case within the general exceptions contained in Sections 96 to 105 of the Penal Code,[8] or in which he, being charged with theft, says that he removed the thing in joke,[9] is not a confession. Such exculpatory statements are ordinarily given in evidence by the prosecution as circumstantial evidence of guilty consciousness by showing them to be false.[10] In a Punjab case, however, where the accused, on being questioned whether the stolen camel and the suspected thief were in his house, denied their presence but the suspected thief and the stolen camel were found in the house, it was held that, as the statement of the accused was being relied on by the prosecution as evidence of guilt knowledge, it was a confession and therefore, in admissible.[11] Though, as seen above, an exculpatory statement is not a confession, there are a series of decisions in which statements of an exculpatory or explanatory tenour but containing important and damaging admissions by the accused have been held to be confessions coming within the rule of exclusion.[12] Thus, it has been ruled in several decisions that where the possession of an article raises an inference of guilt against the accused by reason of its being the subject of theft or connected with the commission of the offence on being the

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1. *E.* v. *Ramroa Mangesh Burde*, 56 B 304 : 138 IC 708 ; 1932 B 406 : 33 Cr LJ 666.
2. *Palvinder Kaur* v. *State*, 1952 SC 354 : 1952 SCJ 545: ILR 1953 Punj. 107 : 1953 SCR 94 : *Narayanaswami* v. *E.*, 1939 PC 47 : *Adhik Lal* v. *E.*, 1942 P 156, *E.* v. *Bhagi*, 1941 O 359 : 194 IC 236 : 42 Cr LJ 539 ; *Muhammad Bakhsh* v. *E.*, 1941 S 120.
3. Wigmore, § 821 ; *Gopal* v. *Crown*, 1950 HP 18 : 51 Cr LJ 786.
4. *Q.E.* v. *Jagrup*, 7 A 646.
5. *E.* v. *Kangal Mali*, 41 C 601: 26 IC 161: 15 Cr LJ 713: see *Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.
6. *Q.E.* v. *Meher Ali Mullick*, 15 C 599; see *Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.
7. *See Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.
8. *Gopal* v. *Crown*, 1950 HP 18:51 Cr LJ 786.
9. *Mst Ram Sakhia* v. *E.*, 1934 P 651: 153 IC 922.
10. Wigmore, § 821; *E. Sher Mahomed*, 46 B 961: 75 IC 70: 1923 B 65: 24 Cr LJ 870; *E.* v. *Kangal Mali* 41 C 601: 26 IC 161: 15 Cr LJ 713; *Q.E. Meher Ali Mullick*, 15 C 589; see also *Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.
11. *Farid* v. *K.E.*, 16 PR 1906 Cr.
12. *E.* v. *Anandrao Gangaram Phanse*, 49 B 642: 89 IC 1036; 1925 B 529: 26 Cr LJ 1478; *E. Sher Mahomed*, 46 B 961: 75 IC 70: 1923 B 65: 24 Cr LJ 870; *E. Gunna*, 59 IC 324: 22 Cr LJ 68; *Smith* v. *E.*, 43 IC 605: 19 Cr LJ 189; *Pan Gang* v. *E.*, 42 IC 1002: 19 Cr LJ 42; *Mi Ein Tha* v. *E.*, 4 IC 1028: 11 Cr LJ 153: *Hakiman* v. *K.E.*, 20 PR 1905 Cr: *Q.E.* v. *Javecharam*, 19 B 363; *Q.E.* v. *Nana*, 14 B 260 (FB); *E.* v. *Pandharinath*, 6 B 34; but see *Narayana Swami* v. *E.*, 1939 PC 47.

evidence of the commission of the offence, a statement by the accused admitting the possession of that article would be a confession.[1] A statement in which the accused claimed the ownership of a box which was found under the seat of a railway compartment in which he was travelling and which was found to contain opium and cocaine was held to amount to a confession.[2] On the same principle a statement by the accused admitting his having received the incriminating article from another person has been held to amount to a confession.[3] A promise to restore stolen property is a confession.[4] A statement by a person charged with murder that he burned the clothes of the murdered man and would show the place where he did so is a confession.[5] It has, however, been held that a statement by the accused that an article found in his possession and proved to be stolen, is his, is not a confession.[6] A statement by the accused that the article produced by him belonged to the murdered man is an incriminating admission.[7] An admission of being present at the time and the place of murder is a confession.[8] See notes to Sections, 17, 25 and 26.

The cases digested in the proceeding paragraph in which statements containing admissions of incriminating facts have been held to be confessions, must now, in view of the Privy Council decision in *Narayana Swami's* case,[9] be held to have been wrongly decided. The Privy Council in that case has ruled that a statement in order to amount to a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession *e.g.*, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Therefore, statements which fall short of a confession as defined by the Privy Council will, it is submitted, be not excluded by the present section even if those statements were made in consequence of some inducement, threat or promise held out by a person in authority.[10] The statement will, however, be inadmissible, whether it amounts to a confession or not, if it was made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure.[11]

Confession—Self exculpatory statement.—A statement that contains self-exculpatory matter (case of self-defence) does not amount to confession, if the exculpatory statements is of some fact, which if true, would negative the offence alleged to be confessed.[12]

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1. See *Mohammed* v. *E.*, 1934 L 695; but see *Narayana Swami* v. *E.*, 1939 PC 47.
2. *Mi Ein Tha* v. *E.*, 4 IC 1028: 11 Cr LJ 153: but see *Narayana Swami* v. *E.*, 1939 PC 47.
3. *E. Sher Mahomed*, 46 B 961: 75 IC 70: 1923 B 65: 24 Cr LJ 870; *Q.E.* v. *Javecharam*, 19 B 363; *E.* v. *Pandharinath*, 6 B 34; see, however, Q.E. *Meher Ali Mullick*, 15 C 589: but see *Narayana Swami* v. *E.*, 1939 PC 47.
4. *Farid* v. *K.E.*, 16 PR 1906 Cr.
5. *Shivabhai Becharbhai* v. *E.*, 50 B 683: 97 IC 660: 1926 B 513: 27 Cr LJ 1140; see *Pan Gang* v. *E.*, 42 IC 1002: 19 Cr LJ 42.
6. *E.* v. *Mahomed Ebrahim*, 5 Bom LR 312.
7. *Shua Din* v. *The Crown*, 5 LLJ 128.
8. *E* v. *Gunna*, 59 IC 324: 22 Cr LJ 68; but see *Allahwarayo* v. *E.*, II.R (1939) K 800, and the next paragraph.
9. *Narayana Swami* v. *E.*, 1939 PC 47; followed in *Palvinder Kaur* v. *State*, 1952 SC 354; 1952 SCJ 545: II.R 1953 Punj 107: 1953 SCR 94.
10. This will be contrary to the English rule, as to which see Steph. Digest Articles, 21 & 22, 9th Ed. Archibold's Criminal Pleading, Evidence and Practice, 29th Ed., 388.
11. *Narayana Swami* v. *E.*, 1939 PC 47.
12. *Pati Soura* v. *State*, (1970) 36 Cut LT 774.

A statement that contains self-exculpatory matter cannot amount to confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. A statement which when read as a whole is of an exculpatory character and in which the prisoner denies his guilt is not a confession and cannot be used in evidence to prove his guilt.[1]

Use of a confession which is partly inculpatory and partly exculpatory.—An admission must be used as a whole, or not at all. It is not open to the Court to split it up and use an admission as to a fact in corroboration of the prosecution case, and to ignore an explanation given in the course of the same statement as to the admitted fact.[2]

It is not open to the Court to accept only the inculpatory part of the statement of an accused and at the same time to reject the exculpatory or explanatory part as inherently false and incredible.[3]

In *Bhagwan Singh* v. *State of Haryana*,[4] reliance was placed on *Hamant* v. *State of M.P.*, 1952 SCR 1091: 1952 SC 343; and *Palvinder Kaur* v. *State of Punjab*, 1953 SCR 94: 1952 SC 354, for the proposition that the statement of an accused should either be accepted as a whole or not at all, and that it was not permissible to accept the inculpatory parts while rejecting the exculpatory parts of such a statement. The Supreme Court did not accept the contention. It observed: "The law on the point has however been laid down by this Court in *Nishi Kant Jha* v. *State of Bihar*, 1962 (2) SCR 1033: 1969 SC 422, in which the two cases have been considered. After referring to Taylor's Law of Evidence and Roscoes' Criminal Evidence, this Court has held that it is permissible to believe report of a confessional statement, and to disbelieve another, and that it is enough if the whole of the confession is tendered in evidence so that it may be open to the Court to reject the exculpatory part and to take inculpatory part into consideration if there is other evidence to prove its correctness.

Confessional Statement—Exculpatory part inherently, improbable and contradicted by other evidence—Inculpatory part can be accepted.— The question involved in the appeal was, whether the statement of the appellant recorded by a village Mukhiya before he was handed over to the police was admissible in evidence, and if so, whether the Court could reject a part thereof and rely on the remainder along with other evidence adduced to hold him guilty of an offence he was charged with. The Supreme Court held that the proposition stated so widely cannot be accepted. In this case the exculpatory part of the statement is not only inherently improbable but is contradicted by the other evidence. There being enough evidence to reject the exculpatory part of the statement of the appellent, the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.[5]

Where the statement of an accused covers two distinct and separate matters.— When a statement of an accused covers two distinct and separate matters, it is open to

1. *Kanaiyalal Chimanlal* v. *State of Gujarat*, 1970 Cr LJ 54 (Guj).
2. *Hanumant Govind Nargundkar* v. *State of Madhya Pradesh*, 1953 Cr LJ 129: 1952 SCJ 509: 1952 SCR 1091.
3. *Palvinder Kaur* v. *State* of Punjab, 1953 SCR 94 : 1952 SCJ 545 ; 1953 Cr LJ 154; *Vijendrajit Goel* v. *State of Bombay*, 1953 Cr LJ 1097.
4. 1976 SC 1797: 1976 Cr LJ 1379; *Kesheram* v. *State of Assam*, 1978 SC 1096 para (7) 41 (1), *Mohan Lal* v. *Ajit Singh*, 1978 SC 1183 (para 22).
5. *Nishi Kant Jha* v. *The State of Bihar*, (1969) 1 SCJ 844: 1969 Cr LJ 671.

the Court to accept an admission as to one matter, even though his explanation as to another incriminating circumstance is rejected because of its improbability. The rule as to taking a statement as a whole does not apply to such a case.[1]

Acknowledgment of subordinate facts.—An acknowledgment of a subordinate fact not directly involving guilt, or in other words, not essential to the crime charged, is not a confession, because the supposed ground of untrustworthiness of confessions is that a strong motive impels the accused to expose and declare his guilt as the price of purchasing immunity from present pain or subsequent punishment, and thus, by hypothesis, there must be some quality of guilt in the fact acknowledged. Confessions are, thus, only one species of admissions: and all other admissions than those which directly touch the fact of guilt are without the scope of the peculiar rules affecting the use of confessions.[2] Thus, a mere admission of presence at the time and place of the crime is not a confession,[3] nor, in a prosecution for bigamy, an admission of the first marriage, nor, in a prosecution for defamation, an admission of the newspaper's ownership; nor, in a prosecution for embezzlement, an admission of the receipt of money.[4] An admission always suggests an inference as to a fact in issue or a relevant fact[5] and it is settled by case law beyond question that every admission is not a confession coming within the rule of exclusion enacted by Sections 24, 16.[6] The correct test to determine whether a statement is a mere admission or whether it amounts to a confession is to examine the statement as a whole, apart from and detached from the other facts proved or to be proved in the case, and to see whether the statement amounts to an admission of guilt or of substantially all the facts which constitute the offence. If it does, it is a confession; if it does not, it is not.[7] It is only when an accused person speaks with an *animus confitendi* that his utterance becomes a confession. The admission of a fact, or of a bundle of facts, from which guilt is directly deducible, or which within and of themselves import guilt, may be denominated a confession; but not so the admission of a particular act or acts or circumstances which may or may not involve guilt, and which is dependent for such result upon other facts of circumstances to be established.[8] A confession is a direct acknowledgment of guilt on the part of the accused: and by the very force of the definition excludes an admission which of itself as applied in criminal law, is a statement by the accused, direct or implied, of facts pertinent to the issue and tending in connection with proof of other facts, to prove his guilt, but of itself is insufficient to authorize a conviction.[9] It is only when the utterance was made with an *animus confitendi* that it would become a confession. If, therefore, the declaration was

1. *Karnail Singh* v. *State of Punjab*, 1954 SCJ 269: 1954 Cr LJ 580.
2. Wigmore, § 821.
3. Wigmore, § 821; *Allahwarayo* v. *E.*, 1940 S 53 : ILR (1939) K 800; but see *E.* v. *Gunna*, 59 IC 324: 22 Cr LJ 68.
4. Wigmore, § 821, footnote (4).
5. Section 17.
6. *Ambar Ali* v. *E.*, 1929 C 539; *Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.; *E.* v. *Daber Pershad*, 6 C 530; *Q.E.* v. *Macdonald*, 10 BLR App. 2.
7. See *Q.E.* v. *Jagrup*, 7 A 646; *Ilahi Bakhsh* v. *E.*, 16 PR 1886 Cr.; *E.* v. *Mahomed Ebrahim*, 5 Bom LR 312; *Narayana Swami* v. *E.*, 1939 PC 47; but see *Karam Din* v. *E.*, 115 IC 1: 1929 L 338: 30 Cr LJ 565.
8. Per Wolverton, J. in *State* v. *Porter*, 32 Or 135, cited in Wigmore, § 821; *Karu* v. *E.*, ILR 1937 N 524: 1937 N 254; *Narayana Swami* v. *E.*, 17 P 15; per Bum, J., in *E.* v. *Ramanuja Ayyangar*, 58 M 642: 1935 M 523.
9. Per Holloway, J., in *State* v. *Guie*, 56 Mont. 485, cited in Wigmore, § 821; see, however, *Barindra Kumar Ghose* v. *E.*, 37 C 467: 7 IC 359 11 Cr LJ 453.

made neither with an intention to confess, nor does it amount to an admission of facts from which guilt is directly deducible, the declaration would not be a confession.[1] An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, *e.g.*, an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.[2] See notes to Sections 17, 25 and 26.

Pointing out places in consequence of inducement.—See notes to Section 21 under the heading "confessions and admissions in criminal cases", notes to Section 25 and Section 3 under the heading "pointing out places connected with the offence."

Confession "plenary" and "not plenary".— "A plenary" confession is when a self-deserving statement is such as, if believed, to be conclusive against the person making it, at least on the physical facts of the matter to which it relates, as where a party accused of murder says "I murdered' or I killed' the deceased. In such cases the proof is in the nature of direct evidence..... A confession 'not plenary' is, where the truth of the self-deserving statement is not absolutely inconsistent with the existence of a state of facts different from that which it indicates; but only gives rise to presumptive inference of their truth and is, therefore, in the nature of circumstantial evidence."[3]

Judicial and extra-judicial confessions.— Confessions may be divided into two classes, namely, judicial and extra-judicial. Judicial confessions are those which are made before the Magistrate, or in Court, in the due course of legal proceedings,[4] *e.g.*, confessions recorded under Sections 164, 364 and 342 of the Code of Criminal Procedure. They are pleas of guilt on arrangement if made freely by a person in a fit state to plead.[5] A confession which is neither made to a Magistrate nor in the course of legal proceedings is described as an extra-judicial confession. It is a free and voluntary confession of guilt made by a person accused of a crime in the course of conversation with persons other than a Judge or magistrate seized of the charge against him.[6]

Condition (ii) of inadmissibility: confessor must be an accused person.— The word 'accused' in Sections 24 to 27 is objectival and describes the person to whom they are meant to apply, and it is not a condition of the applicability of these sections that an accusation of an offence must necessarily be in existence at the very time when that person made the confession or statement sought to be proved.[7] It has been held by Shah, J., in *E* v. *Cunna*[7] that "Section 24 would apply even if the person who is said to have made the confession was not an accused person at the time that he made the confession."[8] And in another case the Patna High Court has observed that when a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence and thus becomes an accused for purposes of Section 24.[9] It is, however, submitted that the proposition cannot be stated so widely. Since the section

1. See observations of Wolverton, J., quoted in Wigmore, § 821.
2. *Narayana Swami* v. *E.*, 1939 PC 47.
3. Best, § 524.
4. Taylor, § 866.
5. *Bala Majhi* v. *State*, 1951 Orissa 168 (FB).
6. *Ibid.* see also : *Madan Gopal Kakkad* v. *Naval Dubey* JT (1992) 3 SC 270.
7. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504: (1960) 2 SCA 371.
8. *E.* v. *Gunna*, 59 IC 324: 22 Cr LJ 68; See also *Rudruppa* v. *Govt. of Mysore*, 11 Mys L 438; *E.* v. *Bhagwandas Bisesar*, 1941 B 50; *Surjan Singh* v. *E.*, 230 IC 431: 48 Cr LJ 651: See *Ram Lal* v. *E.*, 1942 O 246.
9. *Santokhi Beldar* v. *E.*, 12 P 241: 142 IC 474: 1933 P 149: 34 Cr LJ 349.

makes a confession inadmissible only if it was "caused by any inducement, threat or promise *having reference to the charge against the accused person*, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the *accused person* grounds which would appear to him to be reasonable for supposing that by making it he would gain any advantage or avoid any evil of temporal nature *in reference to the proceedings against him*," it is clear that there must be some sort of proceeding pending, and some charge against him under investigation, at the time he made the confession.[1] Of course, it is not necessary that the confessor should have been actually in custody or formally charged or complained or informed against; it is sufficient that, at the time the confession was made, criminal proceedings were in prospect.[2] Nor is it necessary that he should have been accused of the precise offence confessed.[3]

A person to whom pardon is proposed to be tendered or is tendered under Section 337, Cr.P. Code, is in the position of an accused person;[4] and, therefore, if Section 25 stood alone, statement made by such person would be inadmissible against him at his subsequent trial for the offence; but, as it is the provisions of the present section are controlled by the provisions of Section 339, Cr.P.Code, which makes such confessional statements admissible. Cases are, however, conceivable where, in addition to the inducement of the pardon, there is some other such influence as is mentioned in Section 24 at work and prompting the confession, and where such is the case, the confession would be inadmissible.[5] Where a confession is made to a Court by an accused person, not at the request of anyone on behalf of the prosecution, but on cross-examination in another case in which he gave evidence as an approver to whom a promise of pardon had been given, the confession cannot be taken as one made under the influence of the promise of pardon which he had received.[6]

An accused person cannot be examined on oath[7] and where this statutory prohibition has been disregarded, the statement made by the accused would be inadmissible.[8] But if the person making a confession in a deposition on oath was, at the time of making it, not an accused person, the confession would be admissible against him at his subsequent trial for the offence confessed,[9] unless he claimed privilege against self-crimination under Section 132 of the Evidence Act.[10] Where an officer of the Education De-

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1. See *Muthukumarasamami Pillai* v. *E.*, 35 M 397, 535: 14 IC 896: 13 Cr LJ 352; *Rajkumar Singh* v. *E.*, 111 IC 721: 1928 P 473: 29 Cr LJ 913.
2. *Smith* v. *E.*, 43 IC 605: 19 Cr LJ 189; *Kartar Singh* v. *State*, 1952 Pepsu 98: 1952 Cr LJ 1090.
3. See *Ali Gohar* v. *E.*, 1941 S 134: In re *Kamashki Naidu*, 1943 M 89.
4. See *Kundan Lal* v. *E.*, 131 IC 625: 1931 L 353: 32 Cr LJ 785.
5. Per Shah, J., in *E.* v. *Gunna*, 59 IC 324: 22 Cr LJ 68; *Ram Nath* v. *E.*, 9 L 608: 108 IC 514: 1928 L 320: 29 Cr LJ 413: See also *Anup Singh* v. *E.*, 146 IC 677; 1933 L 910: 35 Cr LJ 168; *Indar Pal* v. *E.*, 1936 L 409: 37 Cr LJ 732: 162 IC 969.
6. *Jagat Singh* v. *E.*, 165 IC 795: 33 Cr LJ 84.
7. Section 342, Cr P. Code, Section 5 of the Oaths Act.
8. *R.* v. *Wilson*, (1817) Holt NP 597; *R.* v. *Haworth*, (1830) 4 C & P 256; *R.* v. *Webb*, (1831) 4 C & P 564; *R.* v. *Tubby*, (1833) 5 C & P 530; *R.* v. *Lewis*, 6 C & P 162; *R.* v. *Rivers*, (1835) 7 C & P 177; *R.* v. *Wheeler*, 8 C & P 250; *R.* v. *Wheater*, (1838) 2 Moody Cr C 45; 1842 Joy, Confessions 62: Wigmore §. 849: *E.* v. *Kazi Dawood Kazi*, 50 B 56: 93 IC 225: 1926 B 144: 27 Cr LJ 433; but See In re *Pariti Narayana Murti*, 1942 M 654: 203 IC 479: 44 Cr LJ 72. But now under the recently amended Code of Criminal Procedure an accused person can be examined on oath when he appears as a witness for the defence.
9. *R.* v. *Chidley*, 8 Cox 365; *R.* v. *Tubby*, 5 C & P 530; *R.* v. *Bird*, 19 Cox 180; *Kalu* v. *E.*, ILR 1937 N 524: 168 IC 976: 38 Cr LJ 648.
10. Joy, Confessions, 62 See notes to Section 132.

partment had administered oath to the accused who was the Principal of a School and was charged with embezzlement of its funds, before recording his confessional statement, although that officer was not empowered to administer any oath, the Supreme Court observed: "This circumstance by itself would amount to a concealed threat, because if the statement was found to be false the appellant may have entertained a genuine belief that he might be prosecuted.....Such a statement was, therefore, clearly inadmissible under Section 24....."[1] The confession would, however, be clearly inadmissible, if the confessor was asked to make a statement on oath as a witness under Section 164 Cr.P.Code, on the understanding that he would be made an approver or a witness in the case or that he would not be prosecuted. Such cases are clearly within the rule of exclusion enacted in Section 24. Since an accused person cannot be examined on oath, a confession made by him under Section 164, Cr.P.Code, under the obligation of an oath would, on the principle of the English cases cited above, be inadmissible against him.[2] But a voluntary statement made by an accused person, which does not amount to a confession, is admissible against its maker, as there is nothing in Section 164 Cr.P.Code, to prevent a magistrate from recording the statement of an accused person, even if it is not a confession.[3] A person proceeded against under Section 109 of the Code of Criminal Procedure is not prosecuted for any offence, so the statement made by him is not a confession.[4]

Person under surveillance making a statement.— Arrest is a mode of formally taking a person in Police custody, but a person may be in the custody of the police in other ways. What amounts to arrest is laid down by the legislature in express terms in Section 46 of the Code of Criminal procedure, whereas the words 'in custody' which are to be found in certain sections of the Evidence Act only denote surveillance or restriction on the movements of the person concerned, which may be complete as, for instance, in the case of an arrested person, or may be partial. The concept of being in custody cannot, therefore, be equated with the concept of a formal arrest and there is a difference between the two. Whereafter the statements recorded by the Customs authorities due to the night fall the accused are put up before a Magistrate only next morning, it cannot be said that accused were arrested and as such any statement made by them cannot be said to be in violation of Section 24[5] A statement by accused, before arrest and investigation, to a Magistrate which is exculpatory but contains features which are in the nature of admissions, may be relied upon against the accused.[6]

Condition (iii) of inadmissibility: confession must be involuntary; nature of inducement, threat or promise—The principle underlying Section 24 is that a confession made in the circumstances mentioned in that section is untrustworthy. When a prisoner is placed in such a situation that an untrue confession of guilt has become the

1. *Brijbasi Lal* v. State of M.I ., 1979 SC 1080 (para 10).
2. *See E.* v. *Kazi Dawood Kazi* 50 B 56: 93 IC 225: 1926 B 144: 27 Cr LJ 433 (a statement taken on oath by a coroner).
3. *Laiji Dusadh* v. *E.*, 6 P 747: 106 IC 698 : 1928 P. 162: 29 Cr.LJ 106; *Jehangir Ardeshir Cama*, v. E., 106 IC 100; 1927 B 501: 28 Cr LJ 512; *Abdul Rahim* v. *E.*, 88 IC 1055: 1925 C 926: 26 Cr LJ 1279; *Ghulam Muhammad Khan* v. *E.*, 4 P. 327: 86 IC 814: 1925 P. 536: 26 Cr LJ 878; *Madan Guru* v. *E.*, 73 IC 963: 24 Cr LJ 723; *Superintendent & Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singha Roy*, 49 C 167: 62 IC 578: 1922 C 342: 22 Cr LJ 562.
4. *Rex* v. *Ram Dayal*, 1950 A 134: 51 Cr LJ 436: 1949 ALJ 413.
5. *Harban Singh Sardar* v. *State*, 71 Bom LR 599: 1970 Cr LJ 325.
6. In re *Y. Narasimha*, (1965) 2 Andh WR 344.

more desirable of two alternatives between which he is obliged to choose, a confession made by him becomes untrustworthy. The essential features of the situation are, first, the fact that an alternative is presented between present silence and confession of guilt, and, secondly, the relative advantage of this confession over silence. Thus, where a promise of pardon is the inducement for a confession, its effect is to make the freedom which will accompany false confession more attractive at the moment than the restraint which attends silence; and, where a mob's threat of hanging has induced a confession, the alternative of present safety proves naturally more attractive than immediate death. Thus, in both cases–a promise and a threat–the confession is untrustworthy, because it has been associated with an attraction too strong to resist.[1] The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat–a promise of forgiveness if disclosure is made and threat of prosecution if it is not.[2] A promise is alway attached to the confession-alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantages of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession, against the threatened harm.[3] It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. The Act, therefore, provides that the inducement, threat or promise must be such as has reference to the charge, and furnishes, in the opinion of the Court, reasonable grounds to the accused to suppose that by making a confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. "It may be laid down as a general rule", says Taylor, 'that in order to exclude a confession, the inducement, whether it assumes the shape of a promise, a threat or mere advice, must relate to the actual charge and be such as is calculated to influence the prisoner's mind with respect to his escape from the charge.'[4] "It does not turn upon what may have been the precise words used, but in such case, whatever the words used may be, it is for the Judge to consider, before he admits or rejects the evidence, whether the words used were such as to convey to the mind of the person addressed an intimation that it will be better for him to confess that he committed the crime, or worse for him if he does not.[5] It has been observed by the Calcutta High Court that in scrutinizing a case from the point of view of Section 24 the Court has to perform a three fold function; (i) it has, as a Court, to determine the sufficiency of the inducement threat or promise as affording certain grounds; (ii) it has to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a supposition that he would gain any advantage or avoid any evil; and (iii) it has to judge as a Court if the confession appears to have been caused in consequence of the inducement, threat or promise.[6]

1. Wigmore, § 824.
2. *See* Woodroffe Ev., 9th Ed. 284.
3. Wigmore, § 824
4. Taylor, § 824.
5. *Per* Erle, J., in *R.* v. *Garner*, 2 C & K 920, 925; *see* also Phipson, Ev. 7th Ed., 257.
6. *E* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr LJ 782.

Inducement may not be express but may be implied.—The inducement need not be express but may be implied from the conduct of the person in authority, the declarations of the prisoner or the circumstances of the case; nor need it be made directly to the prisoner; it is sufficient if it may reasonably be presumed to have come to his knowledge, provided, of course, it appears to have induced the confession.[1] A perfectly innocent expression coupled with the acts or conduct of the person in authority and the surrounding circumstances may amount to an inducement to confess.[2]

The confession must be the result of inducement.—The threat or promise and the confession must be related to each other as cause and effect. Where threat is held out, but the confession is made deliberately and uninfluenced by the threat, the confession will be admissible.[3] Fear alone, without threats will not exclude a confession;[4] nor mere expectation, without promise of pardon.[5] A bare possibility of an inducement having been offered is not a sufficient ground for holding that a confession is irrelevant. It is only when it appears to the Court that the confessin has been made as a result of some inducement that it becomes inadmissible.[6]

Inducement to confess one crime does not invalidate a confession as to another crime.—An inducement to confess as to one crime will not invalidate a confession as to different crime, unless both are parts of the same transaction.[7]

Confession need not be made to the person in authority holding out the inducement, nor need inducement be held out directly to the prisoner himself.—It is not necessary that the confession should be made to the person in authority holding out the inducement: a confession made to another person, but in consequence of inducement held out by a person in authority, is equally inadmissible. It is not necessary that inducement should be directly held out to the prisoner himself; it will equally have the effect of excluding the confession, if there is good reason to believe that it has come to his knowledge, and has influenced his conduct.[8]

Confession caused by physical violence or threat of physical violence; rack, whip, lynching and "sweat box"—The practice of putting the accused to torture was familiar to Roman Law, and, in England, the rack was occasionally employed down to the reign of Charles I. But in 1628, on the trial of Felton for the murder of the Duke of Buckingham, the Judges unanimously resolved that "no punishment as torture by the rack was known or allowed by our law",[9] and no attempt has since been made to receive this astrocious practice. The practice of extorting confessions, however, still continues on the continent,[10] while the various modes of obtaining confession in India are too notorious to need comment and are well known to any one familiar with the methods of police investigation in this country.

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1. Phipson, Ev., 7th Ed., 257-8.
2. *E.* v. *Panchkari Dutt*, 52 C 67.
3. *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr LJ 1478.
4. *R.* v. *Rome*, 137 CCC Sess. Pap. 220 ; Phipson, Ev., 7th Ed., 258.
5. See notes to this section under the heading "promise of pardon, or cesation or withdrawal of prosecution; promise not to prosecute"
6. Hashmat Khan v. E., 1934 L 417 : 152 IC 998 : 115 L 356.
7. Phipson, Ev., 7th Ed., 258 ; *See* also *Sardara* v. *E.*, 46 A 236 : 81 IC 604 : 1924 A 220 : 25 Cr LJ 956 (FB) ; *Q.E.* v. *Ganga Charan*, 11 A 79.
8. Taylor, § 885.
9. *R.* v. *Felton*, (1628) 3 How Tr. 371.
10. Taylor § 887.

The decision in Felton's case cited above paved the way for the common law doctrine in England that all confessions must be voluntary; and it is unquestioned today that a confession obtained by physical violence or threat of physical violence is not receivable in evidence.[1]

A threat of corporal violence is the clearest case of an inducement that excludes the confession. To escape the disagreeable consequences of silence—whip, gallows or rack—the threatened person naturally prefers to utter what his tormentors desire to hear—a confession. He trusts to chance to enable him to repudiate his untrue avowal and vindicate his innocence or perhaps, under the violent pain of the rack, he thinks of nothing but the present relief from agony which his confession will gain him.[2]

That a confession obtained by the rack or a threat of the rack is inadmissible cannot be questioned. Confessions obtained from slaves under the whip or a threat of the whip have always been excluded, and so are confessions made in fear of mob. The "sweat box" of the police, so far as it may signify direct physical intimation by starvation or therwise, also invalidates a confession.[3]

Confession obtained by "third degree" methods; "sweat box"; continuous and searching interrogation by a person in authority.—The terms "third degree" and a "sweat box" originally signified the use of some form of violence; in that sense, a confession so obtained was and is inadmissible. But journalistic exaggeration has in common usage misapplied the terms to any process of simple interrogation of the arrested person, while in seclusion, by an official other than the Judge.[4] In England where a confession made to a Police Officer is not admissible by reason of its having been made to a Police Officer, it has been held that a confession made by the accused in consequence of continuous interrogation by the police is inadmissible, as such confession cannot be considered to be voluntary,[5] though the better opinion is that such confessions are, in strict law, admissible, provided there was no promise or threat used.[6] In India, this question is hardly likely to arise, inasmuch as a confession made in consequence of continuous interrogation by the police will be inadmissible on the ground that the confession was made to a Police Officer.[7] But, if in consequence of interrogation by a person in authority, a confession is made by the accused before his arrest to some person other than a Police Officer, or, after the arrest, called in question and, it is submitted, that here, as in England, the factor express or implied promise or threat by the interrogator. It has, however, been held by the Calcutta High Court that a confession made by the accused when he was in charge of a police constable and was being subjected to continued questioning by the investigating officer cannot be deemed to be voluntary, and is excluded by Section 24, even if the confession was repeated to, and recorded by a Magistrate

1. Taylor § 887; see *Gokul Singh* v. *E.*, 35 IC 527; 17 Cr LJ 351.
2. Wigmore : § 833; *Sanatan Badchat* v. *State*, 1953 Orissa 149; ILR 1952 Cut 620; 1953 Cr LJ 1008.
3. Wigmore, § 833.
4. Wigmore, § 851.
5. *R.* v. *Gavin* (1885) 15 Cox 856; *see* also *Ibrahim* v. *E.*, 23 IC 678 : 1914 PC 155 : 15 Cr LJ 326; *Public Prosecutor* v. *Munigan*, 1941 M 359.
6. *Rogers* v. *Hawken*, 19 Cox 122; *R* v. *Gardner*, (1915) 85 LJKB 206; *Ibrahim* v. *R.*, (1914) AC 599, 611-14 ; Phipson, Ev. 7th Ed., 258.
7. Sections 25-26.

the same night.[1]

Explaining Section 171-A of the Sea Customs Act is no threat.—Section 24 of the Indian Evidence Act, 1872, contemplates that the threat referred to therein must emanate from the person in authority. Therefore, where a person in authority before recording the confession of an accused merely explains to him the provisions of Section 171-A of the Sea Customs Act, 1878, the confession is not hit by the provisions of Section 24 of the Indian Evidence Act as it cannot be said to have been obtained by a threat within the meaning of Section 24. Further, in merely explaining the provisions of Section 171-A of the Sea Customs Act to the accused making the confession there is no threat given by the person in authority recording the confession which could have raised any hope in the mind of the accused or lead him to suppose that he was to gain any advantage in reference to the proceeding against him relating to the offence of smuggling.[2]

Promise of pardon, or of cessation or withdrawal of prosecution; promise not to prosecute.—A promise of pardon is visually made conditional upon the furnishing of evidence for the State.[3] Whether the confessing prisoner fulfils his engagement or not, it is obvious that such a confession, made as it is on the faith of a complete immunity from everything but the moral and social consequences of acknowleged guilt, is untrustworthy.[4] Consequently, it has never been questioned that a confession made in consequence of a promise of pardon held out by a person in authority is inadmissible.[5] To exclude the confession, it must be shown that a hope of pardon was held out by some one in authority, and the prisoner acted upon the hope so held out. The mere fact that a prisoner makes a confession with a view, and in the hope of being permitted to turn State's evidence is not sufficient to exclude the confession as evidence against him.[6] In accordance with this rule, it has been held that a confession is not inadmissible merely because the accused entertains hope that he will get pardon, unless the hope is directly inspired by some one in authority, or by some one else with the consent of the person in authority.[7] A mistaken belief by the accused that he will get some advantage will not avoid a confession unless that belief is brought about by a person in authority.[8] A confession will be admissible if it was made by the accused in a race for pardon, but there was no promise of pardon held out by any one in

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1. *E.* v. *Pramatha Nath Bagchi*, 55 IC 282 ; 21 Cr LJ 266 ; *see* also *Public Prosecutor* v. *Munigan*, 1941 M 359 ; *E.* v. *Taduturu Peligadu*, 50 LW 435 : 1940 M 12 ; *Mobarak Ali* v. E., 53 IC 929 : 20 Cr LJ 833 ; *Shoran* v. *Crown*, 19 L 794 ; *Papiah* v. *E.*, 1940 M 136.
2. *Laxman Padma Bhagat* v. *State*, 67 Bom. LR 317.
3. Section 337, Cr. P. Code
4. Wigmore, § 834.
5. *Fateh Chand* v. *E.*, 86 IC 1001 : 1925 A 606 : 26 Cr LJ 937 ; *E.* v. *Tara*, 45 A 633 : 74 IC 529 : 1924 A 72 : 24 Cr LJ 785 ; *E.* v. *Anant Kumar Banerji*, 60 IC 417 : 22 Cr LJ 225 ; *E.* v. *Asghar Ali*, 2 A 260 ; *Queen* v. *Radhanath Dosadh*, 8 WR 53 Cr ; *see* also *Khetal* v. *E.*, 73 IC 62 :45 A 300 : 1923 A 352 : 24 Cr LJ 526.
6. *R. Berigan*, (1841) Ir Cir R 177 ; *R* v. *Blackburn*, (1853) 6 Cox CC 339 ; *R* v. *Boswell*, (1842) C & Marsh 584 ; *R.* v. *McHugh*, (1857) 7 Cox CC 483.
7. *Ram Singh* v. *E.*, 1943 O 269 ; *E.* v. *Sher Singh*, 143 IC 499 : 1933 L 388 : 34 Cr LJ 598 ; *Nanak Chand* v. *E.*, 133 IC 545 : 1932 L 73 : 32 Cr LJ 1036 ; *Samiuddin* v. *E.*, 109 IC 225 : 1928 C 500 : 29 Cr LJ 497 ; *E.* v. *Hari Piari*, 49 A 51 : 97 IC 44 : 1926 A 737 : 27 Cr LJ 1068 ; *Amrit Lal* v. *E.*, 1933 L 987 ; *see* also *Nilmadhab Chowdhry* v. *E.*, 5 P 171 : 96 IC 509 : 1926 P 279 : 27 Cr LJ 957.
8. *Public Prosecutor* v. *Chandaya Shetty*, 1929 M 62 ; *Amrit Lal* v. *E.*, 1933 L 987.

authority.[1] But a confession, made by a prisoner who had read a proclamation by the Government offering a pardon to an accomplice who gave evidence and induced by it, is inadmissible.[2]

As against his fellow associates in crime, a person to whom pardon has been tendered is a competent witness; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such person.[3] A confessional statement may also be given in evidence against the pardoned accomplice himself if he is subsequently tried for the offence on forfeiture of the pardon[4] the rule in Section 24 of the Evidence Act being to that extent controlled by Section 339 of the Cr.P.Code. Cases are, however, conceivable where, in addition to the inducement of the pardon, there is some other such influence as is mentioned in Section 24 at work and prompting the confession, and where such is the case, the confession will be inadmissible against its maker at his subsequent trial.[5] See notes to this section under the heading "condition (ii) of inadmissability; confessor must be an accused person."

Promise of not prosecuting or saving the offender, or of cessation or withdrawal of prosecution; promise to release or abstain from arrest; threat to arrest.—It is conclusively established that a promise that "there will be no prosecution" excludes the confession.[6] Thus, if a person in authority says to the prisoner, "If you will give me back my rings, I will forgive you,"[7] or "I only want my money, and if you give me that, you may go to the devil,"[8] the confession will be inadmissible. Where a superior clerk in the post office said to the wife of a postman who was in custody for opening and detaining a letter, "do not be frightened; I hope not'ing will happen to your husband beyond the loss of his situation," the prisoner's subsequent confession was rejected, it appearing that the wife might have communicated to him the substance of this statement.[9] Expressions such as "you will get off if you confess."[10] I will take steps to get you off if you confess,[11] "I will try to save you."[12] "If you do not tell all you know about it, of course, we can do nothing for you"[13] "I will be favourable to you."[14] "you will be released",[15] "nothing will happen to you",[16] "you need not be afraid",[17] "speak the truth, we shall get you released",[18] have been held to imply an inducement sufficient to vitiate a confession made in consequence.

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1. *Rahmat* v. *E.*, 113 IC 65 : 30 Cr LJ 49.
2. *R.* v. *Boswell*, (1842) C & Marsh 584.
3. Section 133.
4. Section 339, Cr. P. Code ; *Rambharose* v. *E.*, 1944 N 105 (FB).
5. Per Shah, J., in *E.* v. *Cunna*, 59 IC 324 : 22 Cr LJ 68.
6. Broughton's Case, (1910) 6 Cr App 8.
7. Stantan's Case, (1911) 6 Cr App 198.
8. *R.* v. *Jones*, (1809) R & R 152.
9. *R.* v. *Harding* (1842) 1 Arm M & O 340.
10. *Queen* v. *Ramdhun Singh, etc.*, 1 WR 24 Cr.
11. *E.* v. *Ramu Birapa*, 3 B 12.
12. *Bhagabaticharan Patra* v. *E.*, 60 C 719 : 145 IC 962 : 1933 C 644 : 34 Cr LJ 1187.
13. *R.* v. *Partridge*, (1836) C & P 551.
14. Cass Case, (1784) 1 Leach Cr L. 3rd Ed., 328 (note).
15. *Dinanath Sundraji Ravte* v. *E.*, 45 B 1086 : 60 IC 1006 : 1921 B 70 : 22 Cr LJ 318.
16. 5 NWP 86.
17. *E.* v. *Lakshmudu* 1941 MWN 956.
18. *Ram Adhin* v. *E.*, 1948 A 101 : 1947 ALJ 560 : 49 Cr LJ 46.

A promise of immunity from prosecution,[1] or of cessation or withdrawal of prosecution[2] usually excludes a confession induced by the promise. Thus, where the confession was made by the prisoner on his being told by a Magistrate "if you speak the truth, we would consult the head constable and arrange," the confession was rejected.[3] On the same principle, a promise to release or abstain from arrest if the prisoner confessed, and a threat to arrest if he did not, have been held to invalidate confessions made in consequence of the promise or threat. Thus, a confession made in consequence of *sahib* telling the accused that he would be released if he told the truth, has been held to be inadmissible.[4] Similarly, a confession was rejected where it was made in consequence of a person in authority telling the prisoner that she would have her liberty if she confessed.[5] A confession obtained by a person in authority saying to the accused "unless you give a more satisfactory account, I will take you before a Magistrate",[6] or "the watch has been found, and if you do not tell me who your partner was, I will commit you to prison",[7] or "you had better pay the money than go to jail",[8] or "if you don't tell the truth, I will send for the constable to take you",[9] or "if you don't tell me, I will give you in charge of the police till you tell me,[10] has been held to be inadmissible, as it was made in consequence of a threat to arrest.

Inducement that the sentence would be lighter.—In America it has been held that the inducement of a lighter punishment is sufficient to vitiate a confession,[11] and the rule in England seems to be the same. Thus, expressions such as "you will not be hung",[12] "if you are guilty, do confess; it will perhaps save your neck; you will have to go to prison"[13] have been held to involve sufficient inducement to invalidate a confession. A confession made in consequence of a promise of recommendation to mercy would be inadmissible,[14] and, in the words of Gould, J., "the slightest hopes of mercy..." are sufficient to invalidate a confession.[15]

Inducement involved in the expression "you had better confess" or "you had better tell the truth".—The expression "you had better confess" or "you had better tell the truth" and other equivalent expressions are both in America and England deemed to involve a threat or promise, and confessions made in consequence of such expressions have been excluded.[16] The correctness of this view has been questioned by Professor Wigmore,[17] but, as is remarked by Kelly, C.B.,[18] the expression "you

1. *Bishoo Manjee*, 9 WR 16 Cr ; see *R.* v. *Mansfield*, (1881) 14 Cox Cr 639.
2. Wigmore, § 836.
3. *Thandraya Mudaly* v. *E.*, 26 M 38.
4. *Dinanath Sundraji* v. *E.*, 45 B 1086 : 60 IC 1006 : ;1921 B 70 : 22 Cr LJ 318.
5. *R.* v. *Simpson*, (1834) 1 MCC 410.
6. *R* v. *Thompson*, (1783) 1 Lea, CC 291 : *R* v. *Luckhurst*, (1853) 23 LJ MC 18 ; *R* v. *Richards*, (1832) 1 M & Rob. 177 ; *R.* v. *Walsh*, (1843) Ir. Cir. R. 866.
7. *R* v. *Parrat*, (1831) 4 C & P 387 ; *R* v. *Upchurch*, (1836) 1 MCC 465.
8. *Reg.* v. *Navroji Dadabhai*, 9 Bom. HCR 358.
9. *R.* v. *Hearn*, 1 Car & M 18.
10. *R.* v. *Luckhurst*, (1853) 23 LJ MC 18.
11. *See* the cases cited in footnote (1) to § 838, Wigmore,
12. *R.* v. *Windson*, 4 F & P 366.
13. *R.* v. *Upchurch*, 1 MC & CS 465.
14. Wigmore, § 836.
15. Cass. Case, (1784) 1 Leach Cr. L 3rd Ed., 328 (note).
16. Wigmore,§ 838 and § 832 ; Taylor, § 884.
17. Wigmore, § 838.
18. LR 11 CCR 96.

had better" has acquired a technical meaning and is understood by the prisoners in the sense that it would be better for them if they confessed and worse if they did not. Consequently, expressions such as "it would be better for you if you tell and worse if you did not."[1] "you had better split and not suffer for all of them",[2] "you had better not add a lie to the crime of theft",[3] "it will be best for you, if you tell how it was transacted",[4] "it will be the right thing for you to make a clean breast of it"[5] "you may as well tell me",[6] "if you do not tell, it will be the worse for you",[7] "the truth has come out, you had better say what you know",[8] and "I will let you go if you tell the truth, otherwise I will take you to the police",[9] have been held to vitiate confessions caused thereby. The expression "you had better tell the truth", is tantamount to "you had better confess", and confessions caused in consequence have been excluded.[10] The question whether the words uttered amount to an inducement or threat depends on the surrounding circumstances. The words "speak the truth" may,[11] or may not,[12] in the circumstances of a case amount to a threat. Merely asking an accused person to admit does not vitiate the confession.[13]

Statement obtained on oath.—A confessional statement made on oath by an accused person before the Assistant Registrar of Co-operative Societies, in an enquiry held by him in regard to certain forged cheques, is not necessarily inadmissible. The administration of an oath cannot be said to be tantamount to a threat to the person under oath that if he does not speak the truth he will be punished. But see notes to this section under the heading "Condition (ii) of inadmissibility; confessor must be an accused person."[14]

Inducement outside the terms of Section 24.—If a confession is not voluntary in the wider sense of the term, *ex hypothesi* the person who made it did not do so with the desire to tell the truth. This fact in itself introduces an element of suspicion. Insuch circumstances if facts are proved which suggest that an inducement of some kind, although outside the terms of Section 24, was in fact given, the Court may well refuse to accept the confession as true.[15] The accused was arrested by a village *chaukidar* and tied by both hands to a cattle peg. The *chaukidar* had to go to the police station and, therefore, left the accused in charge of a private person. The accused was feeling pain and wanted to sleep and, therefore, asked her custodian to release her.

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1. *R.* v. *Simpson*, (1834) 1 Moody Cr. C. 410.
2. *R.* v. *Thomas*, (1834) 6 C & P 353.
3. *R.* v. *Shepherd*, (1836) 7 C & P 579.
4. *R.* v. *Warringham*, (1851) 2 Den. Cr.. C. 447.
5. *R.* v. *Thompson*, (1893) 2 QB 12, 18; *E.* v. *Attursingh*, 138 IC 618; 1932 S. 64; 33 Cr LJ 650.
6. *R.* v. *Croydon*, (1846) 2 Cox. Cr. 567.
7. *R.* v. *Coley*, (1868) 10 Cox. Cr. 536.
8. *Kunja Subudhi* v. *E.*, 8 P 289; 116 IC 770; 1929 P 275; 30 Cr LJ 675.
9. *Ganga Prosad Gupta* v. *E.*, 1945 C 360.
10. See *R.* v. *Garner*, (1848) 1 Den. CC 329; *R.* v. *Fennel*, (1881) 7 QBD 147; for Indian cases see *Hashmat Khan* v. *E.*, 15 L 856; 152 IC 998; 1934 L 417; 36 Cr. LJ 211; *Q. E.* v. *Uzeer*, 10 C 775; *Reg* v. *Navroji Dadabhai*, 9 Bom. HCR 358.
11. *Mar Phalai* v. *E.* 1933 S. 409.
12. *Kuttiappa Chetty* v. *E.*, 1929 MWN 791.
13. *Public Prosecutor* v. *Radhakrishnayya*, 1943 M 710.
14. In re, *Pariti Narayana Murti*, 1942 M 654; 203 IC 479; 44 Cr LJ 72.
15. *Kalijiban Bhattcharjee* v. *E.*, 63 C 1053; 1936 C 316: 163 IC 41; 63 CLJ 232.

He then released one of her hands and asked her to speak the truth. She then made a confession. Held, that though no inducement, threat or promise was expressly offered to the accused, the accused must in the circumstances have plainly been afraid of being tied up by both hands again; and although that would not be within the letter of Section 24 of the Evidence Act, the confession could not be regarded as voluntary and could have little weight.[1]

Production of Document as Result of Inducement.—Documents belonging to the accused which were evidence of a tax fraud were produced by him as a result of being read to him an extract from Hansard containing the promise stating that when the person committing fraud fully discloses the past frauds, the Board of Inland Revenue will not institute criminal proceeding, but will accept a pecuniary settlement—Held that the document were inadmissible against him as they were produced as a result of inducement of promise. The accused's conviction for having conspired to cheat and defraud the Government was accordingly reversed.[2]

Condition (iv) of inadmissiblity: the inducement, threat or promise must have been held by a person in authority.—When does a confession become inadmissible.— Confession should be made by an accused to a person in authority—The same should appear to the Court that it has been obtained by reason of any inducement, threat or promise from a person in authority, that such inducement, threat or promise must have reference to the charges against the accused, that such inducement, threat, promise must be such as to make the accused believe either to gain any advantage or avoid any evil in reference to the proceedings against him.[3] Formerly, in England, the rule governing the admissibility of confessions was stated to be that a confession was admissible only if it was voluntary. It was, therefore, held in some old cases that since a confession made in consequence of an inducement or threat could not be deemed to be voluntary, the confession was inadmissible, whether the inducement or threat was held by a person in authority or by a person not in authority.[4] but since the decision of Baron Parke, in *R* v. *Moor*.[5] the modern rule has been that in order to exclude the confession the inducement must be shown to have been held out by a person in authority; and this rule is adopted by the Indian Evidence Act. The reason of the rule is that, as the authority possessed by the persons who make or sanction the inducement is calculated both to animate the prisoner's hopes of favour on the one hand, and on the other, to inspire him with awe, and in such degree to overcome the powers of his mind, the law assumes the possibility of his making an untrue admission. A further and more sensible reason for the rule is that the admission of such evidence would lead the inferior agents of the police, while seeking to obtain a character for activity and zeal, to harass and oppress unfortunate prisoners, in the hope of wringing from them a reluctant confession.[6] But though the Act, like the modern English rule, uses the expression "person in authority", it nowhere defines it, and it seems that English decisions deciding whether a person is or not a "person in authority" will be

1. *E.* v. *Mst. Jagia*, 1938 P 308 ; 1938 PWN 293 ; 19 PLJ 268 ; 174 IC 524 ; 17 P 369 ; 39 Cr LJ 428.
2. *R.* v. *Barker*, 1941 3 All. ER 33 ; 1941, 2 KB 381.
3. *Percy Rustomji Basta* v. *State of Maharashtra*, (1971) Cr. LJ 933.
4. *R.* v. *Dunn*, (1831) 4 C. & P. 543 ; *R.* v. *Slaughter*, (1831) 4 C. & P. 544; *see* also *R.* v. *Kingston*, (1830) 4 C. & P. 387.
5. (1852) 2 Den. 526.
6. Taylor, § 874.

in point.[1] The expression "person in authority" should be interpreted liberally, and too narrow a meaning should not be placed on it.[2] The test would seem to be whether the person had authority to interfere in the matter, and any concern or interest in it would appear to be sufficient to give him authority.[3] Therefore, all person engaged in the arrest, detention, examination or prosecution of the accused would be regarded as persons in authority.[4] But a person who has no power to interfere in the matter is not a person in authority.[5] Thus a Magistrate, whether acting in the case[6] or not,[7] the Magistrate's clerk[8] a coroner,[9] a police constable,[10] a police patel,[11] a Food Grain Inspector,[12] and an Excise Officer in excise cases[13] are person in authority.

A constable or other officer having the accused in custody,[14] is a person in authority, as is perhaps a private person arresting in cases of felony[15] but it is doubtful whether a private person, to whose temporary custody the accused has been comitted by a constable would be a person in authority. In some cases such person has been held to possess sufficient authority[16] and in other, not.[17] Private persons armed with guns sent by police to find the accused and arrest him were held to be persons in authority.[18] A village headman is a person in authority.[19] *Lambardars, Zildars* and *ilaqadars* are a part of the investigation machinery in the Punjab and are therefore, persons in authority.[20] Similarly, a village *mukhia* is a person in authority.[21] A *panch*

1. See *Devendra Bhattacharya* v. *E.*, 101 IC 881 ; 1927 P. 257 ; 28 Cr LJ 497 ; *Reg* v. *Navroji Dadabhai*, 9 Bom HCR 358, 368.
2. *Smith* v. *E.*, 43 IC 605 ; 19 Cr LJ 189 ; *Nazir Jharudar* v. *E.*, 9 CWN 474.
3. *Bhojo* v. *E.*, 152 IC 1032 ; 1934 S. 172 ; 36 Cr LJ 223 ; *E.* v. *Attur Singh*, 138 IC 618 ; 1932 S. 64 ; 33 Cr LJ 650 ; *E.* v. *Kutab Bux*, 57 C 488 ; 126 IC 547 ; 1930 C 633 ; *E.* v. *Ganesh Chandra Goldar*, 50 C 127 ; 74 IC 264 ; 1923 C 458 ; 24 Cr L;J 760 ; *Smith* v. *E.*, 43 IC 605 ; 19 Cr LJ 189 ; *Loung* v. *E.*, 37 IC 42 ; 18 Cr LJ 58 ; *Fakira Appaya* v. *E.*, 40 B 220 ; 33 IC 309 ; 17 Cr LJ 133 ; *Reg.* v. *Navroji Dadabhai*, 9 Bom. HCR 358, 368.
4. Phipson, Ev. 7th Ed., 257 ; *Santokhi Beldar* v. *E.*, 12 P 241 ; 142 IC 474 ; 1933 P. 149 ; 34 Cr LJ 349.
5. *Santokhi Beldar* v. *E.*, 12 P 241 ; 142 IC 474 : 1933 P 149 ; 34 Cr LJ 349.
6. *Devendra Bhattacharya* v. *E.*, 101 IC 881 ; 1927 P 257 ; 28 Cr LJ 497 ; *Thandraya Mudaly* v. *E.*, 26 M 38 ; *Q. E* v. *Uzeer*, 10 C 775 ; E. v. Asghar ali, 2 A 260 ; *Q.E.* v. *Ramdhun Singh etc*, 1 WR 24 Cr.; See also *Hasmat Khan* v. *E.*, 15 L 856 ; 152 IC 993 ; 1934 L. 417 ; 36 Cr. LJ 211..
7. *R.* v. *Gillis*, 11 Cox 69 ; *R.* v. *Clewes* 4 C.& P. 221.
8. *R.* v. *Drew*, 8, C.& P 140.
9. Phipson, Ev., 7th Ed., 257.
10. 5 N WP 86.
11. *Fakira Appaya* v. *E.*, 40 B 220 ; 33 IC 309 ; 17 Cr LJ 133 ; *E.* v. *Rama Birapa*, 3 B 12.
12. *Abu*, v. *E.*, 1948 O 81 ; 49 Cr LJ 43 ; 22 Luck 492.
13. So assumed in *Rokun Ali* v. *E.*, 45 IC 284 ; 19 Cr LJ 524 ; *Batasi Moni Dasi* v. *E.*, 53 C 706 ; 98 IC 401 ; 1926 C 1163 ; 27 Cr LJ 1329.
14. *R.* v. *Shephard*, 7 C. & P. 579 ; *R.* v. *Gillis*, 11 Cox 69.
15. Phipson, Ev., 7th Ed., 257.
16. *R.* v. *Enoch*, 5 C. & P. 539 ; *R.* v. *Windson*, 4 F. & F. 363.
17. *R.* v. *Sleeman, Dears* CC 249 ; *R.* v. *Vernon*, 12 Cox. 153.
18. *Qutba* v. *Crown*, 1954 FC 197.
19. *Zeta* v. *E.*, 37 IC 314 : 8 Cr. LJ 106 ; *Nga Kya Thin* v. *E.*, 26 IC 129 : 15 Cr. LJ 681 ; *Mst. Umrai* v. *E.*, 6 OWN 947.
20. *Hashmat Khan* v. *E.*, 15 L 856 ; 152 IC 998 ; 1934 L. 417 ; 36 Cr. LJ 211 ; *Mustafa* v. *E.*, 35 PLR 359 ; *Muhammad Yar* v. *E.*, 81 IC 555 ; 1922 L. 263 : 25 Cr. LJ 939 ; *Karm Singh* v. *E.*, 26 PR 1916 Cr. : 34 IC 642 : 17 Cr LJ 226 ; *Mutsaddi* v. *E.*, 12 IC 642 : 12 Cr. LJ 554 ; see also *Zeta* v. *E.*, 37 IC 314 : 18 Cr. LJ 106 ; *Ghulam Muhammad* v. *E.*, 114 IC 719 : 1929 L. 558 : 30 Cr LJ 375 ; A lambardar in U.P. is not a person in authority, Jiwan v. E., 1936 A. 470.
21. *E.* v. *Hari Piari*, 49 A. 57 : 97 IC 44 : 1926 A. 737 : 27 Cr LJ 1068 ; but see *Bhojo* v. *E.*, 152 IC 1032 : 1934 S. 172 : 36 Cr. LJ 223 ; *Ram Adhin* v. *E.*, 1948 A. 101 : 1947 ALJ 560 : 49 Cr. LJ 46.

will be a person in authority if he takes part in the inquiry;[1] but the members of a *panchayat*, while sitting merely to consider whether a person should be ex-communicated for committing a murder, are not persons in authority.[2] The president of a Village Vigilance Committee is a person in authority.[3] Where *Zamindar* joins the investigation by the direction of the police he will be a person in authority but not otherwise.[4] Head of a Mutha in Balliguda sub-division in Orissa was held to be a person in authority.[5] A *Ziladar* under a big estate is a person in authority,[6] but a *tahsildar* of a *raj* having no interest in the prosecution of the accused, is not a person in authority.[7] A co villager exercising no influence or authority, is not a person in authority.[8] An *inamkhor*, even if occupying a semi-official position, is not a person in authority.[9]

A prosecutor is a person in authority[10]; and so is his wife,[11] or attorney[12] and, in some circumstances, any relation of his.[13] The chairman of a company where the company is the prosecutor,[14] and the wife of the partner of a firm where the offence concerns the partnership,[15] are persons in authority.

The complainant, on whose complaint cognizance of an offence is taken, is a person in authority and so, it is submitted, will be a person against whom an offence is committed, whether he be the complainant in the case or not.[16] Since, under Section 59 of the Criminal Procedure Code, a private person may arrest without a warrant, a person who sees a non-bailable and cognizable offence being committed may put himself in the position of a person in authority in respect of such offender, even though he himself is not in any way concerned with the offence.[17] The master and mistress of the prisoner would be persons in authority where the offence committed is in respect of the person or property of either of them, but not otherwise.[18] The relations and neighbours of the master or the prosecutor may be persons in authority.[19] A servant of

1. *Kunja Subudhi* v. *E.*, 8 P 289 : 116 IC 770 : 1929 P 275 : 30 Cr LJ 675 ; *Ganesh Chandra Goldar* v. *E.*, 50 C 127 : 74 IC 264 : 1923 C 458 ; 24 Cr LJ 760 : *E.* v. *Aushi Bibi*, 33 IC 828 : 17 Cr LJ 188 ; *E.* v. *Jasha Bewa*, 11 CWN 904 ; *Nazir Jharudar* v. *E.*, 9 CWN 474 ; but see *Mulimayandi Thevan* v. *E.*, 76 IC 829 : 1924 M 230 : 25 Cr LJ 269 ; *E.* v. *Philip Juze Fernand*, 4 Bom LR 785.
2. *E.* v. *Mohan Lal*, 4 A 46.
3. *Sathalawadan* v. *E.*, 1939 MWN 341 : 1939 M 515 : 49 MLW 522.
4. *Nawat Kamal* v. *E.*, 138 IC 614 : 1932 S 55 : 33 Cr LJ 641 ; *Loung* v. *E.*, 37 IC 42 : 18 Cr LJ 58 ; but see *Jiwan* v. *E.*, 1936 A 470 : 163 IC 661 : 37 Cr LJ 852(2) ; *Bhakta Bhusan Pramanik* v. *E.*, 63 IC 1089 ; 1936 C 227.
5. *Sanatan Badchat* v. State, 1953 Orissa 149 : 1953 Cr LJ 1008 : ILR 1952 Cut 620.
6. *Taule* v. *E.*, 5 Luck 91 : 117 IC 737 : 1929 O 272 : 30 Cr LJ 829 ; *RamAdhin* v. *E.*, 1948 A 101 ; *Mohammad* v. *E.*, 1936 L 264 : 164 IC 891 : 37 Cr LJ 1026.
7. *Santokhi Beldar* v. *E.*, 12 P 241 : 142 IC 474 : 1933 P 149 : 34 Cr LJ 349.
8. *E.* v. *Kutab Bux*, 57 C 488 : 126 IC 547 : 1930 C 633 ; *Loung* v. *E.*, 37 IC 42 : 18 Cr LJ 58.
9. *Ghulam Muhammad* v. *E.*, 114 IC 719 : 1929 L 558 : 30 Cr LJ 375.
10. *R.* v. *Jenkins, Russ. & Ry.*, 492 ; *Ashotosh Dutt* v. *E.*, 68 IC 413 : 23 Cr LJ 573 ; *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189 ; *Gunga Prosad Gupta* v. *E.*, 1945 C 360.
11. *Smith* v. *E.*, 43 IC 605 ; 19 Cr LJ 189 ; *R.* v. *Upchurch*, 1 Moo CC 465 ; as to the husband of the prosecutrix; see *R.* v. *Laughter*, 2 C & K 225.
12. *R.* v. *Croydon*, 2 Cox 67 ; *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189.
13. *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189.
14. *R.* v. *Thompson*, (1893) 2 QB 12.
15. *R.* v. *Warringham*, 2 Den 447 n.
16. See Wigmore, § 830.
17. See *R.* v. *Paratt*, (1831) 4 C & P 570.
18. *R.* v. *Moore*, 2 Den 522.
19. See Taylor, § 873 ; as to neighbours of the accused : see *E.* v. *Kutab Bux* 57 C 488 : 126 IC 547 : 1930 C 633.

the landlord of the accused possessing considerable authority in the village, may be a person in authority.[1] Where goods were stolen from a regiment, it was held that a Military Officer, representing the department in which the theft was committed, was a person in authority.[2] The travelling auditor of a railway company was held to be a person in authority, where the accused was a booking clerk charged with an offence of embezzling railway money.[3] An inspector of post offices, investigating a postal complaint, is a person in authority.[4] The head of a branch office of a company, in which the accused is employed as a clerk, is a person in authority in respect of an offence committed against the employing company.[5] The captain of a ship, merely as such, is not a person in authority with regard to the crew,[6] unless he has taken or threatened to take part in the prosecution.[7] In England, it is doubtful whether the captain of a goal or a surgeon is a person in authority.[8] In India, a medical attendant has been held not to be a person in authority.[9] A neighbour of the accused, merely as such, is not a person in authority;[10] nor a clerk of a vakil not in any way connected with the charge.[11] The person holding out an inducement must in fact be a person in authority. Mere belief by the accused that the person holding out the inducement is a person in authority will not make the confession irrelevant.[12]

A confession' is hit by this section if it is really made to a Police Officer. Whether it is really a confession, or whether it was really made to a police officer within the meaning of this section are questions to be decided on the facts and circumstances of each case. A confession may fall outside the orbit of this section notwithstanding the presence of a police officer at the time when it was made if it is established that it was not made to him but to someone else who was not a police officer. The section rests upon the principle that it is dangerous to depend upon a confession made to a police officer.[13]

Sections 24 and 25—Customs Officers not Police Officers.—Statement before them admissible if not procured by inducement, threat or promise.

Customs Officers and Police Officers.—Confessional statements made before Customs Officers are undoubtedly admissible in evidence.[14]

The Customs Officers are not Police Officers and statements made to them are not inadmissible under Section 25. Section 24 would however apply, for customs authorities must be taken to be persons in authority and the statements would be inadmissible in a criminal trial if it is proved that they were caused by inducement, threat

1. *Mohammad* v. *E.*, 1936 L 264 : 164 IC 891 : 37 Cr LJ 1026 ; *Ram Adhin* v. *E.*, 1948 A 101 : 1947 A LJ 560 : 49 Cr LJ 56.
2. *Smith* v. *E.*, 43 IC 605 : 19 Cr LJ 189.
3. *Reg.* v. *Navroji Dadabhai*, 9 Bom HCR 358.
4. See *Bhagabaticharan Patra* v. *E.*, 60 C 719 : 145 IC 962 : 1933 C 644 : 34 Cr LJ 1187.
5. *E.* v. *Attursingh*, 138 IC 618 : 1932 S 64 : 33 Cr LJ 650 : 26 SLR 191.
6. *R.* v. *Moore*, 2 Den 526.
7. *R.* v. *Parratt*, (1831) 4 C.P. 570, so explained in *R.* v. *Moore*, 2 Den 526.
8. Phipson, Ev., 7th Ed., 257.
9. *E.* v. *Muhammadbuksh Karimbuksh*, 4 Cr LJ 49.
10. *E.* v. *Kutab Bux*, 57 C 488 : 126 IC 547 : 1930 C 633.
11. *E.* v. *Ram Avadh*, 88 IC 514 : 1925 O 597 : 26 Cr LJ 1154.
12. *Bhojo* v. *E.*, 152 IC 1032 : 29 SLR 1 : 1934 S 172 : 36 Cr LJ 223 ; but see *Gunga Prasad Gupta* v. *E.*, 1945 C 360.
13. In re *Zahirabi*, 1966 MLJ (Cr) 313.
14. *State of Maharashtra* v. *P.K. Pathak*, 1980 SC 1224 (Para 10).

or promise.[1]

Any Court or authority intending to act upon inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, the Supreme Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or Customs Act etc., the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated.[1a] (para 33).

Explaining Section 195 I.P.C. no threat.—When an enquiry is being conducted under Section 108 of the Customs Act and a statement is given by a person against whom the enquiry is being held, it is not a statement made by a person 'accused of an offence' so as to attract the bar of Section 24 of the Evidence Act. In such a case the mere fact that the customs officer who recorded the statement explained the provisions of Section 195, I.P. Code and informed the person against the enquiry is being held that he was bound to tell the truth and that he is liable to be prosecuted if he made a false statement, would not attract the bar of Section 24 of the Evidence Act.[2]

Confessional statements made before Coroners.—A statement made by the accused voluntarily before a Coroner, and without claiming any privilege against self-crimination under Section 132, Evidence Act, is admissible against him,[3] whether on oath or not. But if the Coroner finds that the person making the statement is suspected of the commission of the offence, it is the duty of the Coroner to warn him that he need not make a statement. It is contrary to all principles of criminal law to put a suspected person on oath without giving him this warning; and, therefore, where a confession is made by a person before the Coroner, without such warning being given and under the compulsion of oath, it will be inadmissible against him.[4]

Deposition by the accused in extradition proceedings.—Evidence given voluntarily by the accused on his own behalf in extradition, proceedings in a foreign country, without claiming any privilege against self-crimination, is admissible against him, as an admission on his trial in India.[5]

The person holding out inducement must actually possess authority.—Mere belief by the accused that the person holding out the inducement is a person in authority is not sufficient to exclude the confession; the person must actually possess authority.[6] But where a person, not possessing authority in fact, assumes authority and the accused, erroneously believing that he is possessed of that authority, makes a confession in consequence of an inducement held out by such person, it has

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1. *Soni Vallabhadas Liladhar* v. *The Assistant Collector of Customs*, (1965) Cr LJ 490 : (1965) 1 SCJ 208 : 66 BLR 282.
1a. *K.T.M.S. Mohd.* v. *UOI*, JT (1992) 3 SC 129.
2. *Percy Rustomji Basta* v. *State of Maharashtra*, AIR 1971 SC 1087.
3. See *E.* v. *Azimkhan Zainkhan*, 110 IC 107 : 1928 B 52(2) : 29 Cr LJ 651 ; 30 Bom LR 84 ; *E.* v. *Ramnath Mahabir*, 50 B 111 : 93 IC 690 : 1926 B 151 : 27 Cr LJ 466 : 28 Bom LR 111 ; *See* also In re *Ramaswami Reddiar*, 1953 M 138 : 1953 Cr LJ 315 : 1952, 2 MLJ 814 at the stage of enquiry under Section 176 Cr PC
4. *E.* v. *Kazi Dawood Kazi*, 50 B 56 : 93 IC 225 : 1926 B 144 : 27 Cr LJ 433 : 28 Bom LR 79 ; but see *In re Parit Narayana Murti*, 1942 M 654.
5. *E.* v. *Wheeler*, 112 IC 50 : 1929 S. 15 : 29 Cr LJ 962 : 22 SLR 458.
6. *E.* v. *Kutab Bux*, 57 C 488 : 126 IC 547 : 1930 C 633 ; *E.* v. *Girish Chandra Goldar*, 50 C 127 : 74 IC 264 : 1923 C 458 : 24 Cr LJ 760.

been suggested in England that the confession, would be inadmissible[1] and there are observations in an Indian case which support that result,[2] but the point has not actually been decided in England or in India. A promise or threat made by an indifferent person, who has officiously interfered without any kind of authority, will not, of course, exclude the confession.[3] If the inducement is not actually offered by the person in authority, but is held out by anyone else in the presence of the person in authority, and the latter, by his silence, has sanctioned it, the confession made in consequence will be as inadmissible as if the inducement had been held out by the person in authority himself.[4] A confession made to, but not induced by, a person in authority is admissible,[5] and conversely, a confession induced by, though not made to, such person will be rejected.[6]

Condition (v) of inadmissibility, sufficiency and character of the inducement.—The inducement, threat or promise must, in order to render a confession inadmissible, be such as, in the opinion of the Court, gave sufficient grounds to the accused to suppose that he would gain any advantage or avoid any evil of a temporal nature.[7] The sufficiency or insufficiency of the grounds for such a supposition is for the Court to judge.[8] In this sense, therefore, the Court has a "discretion" in receiving or rejecting a confession,[9] and no fixed rules can be laid down for the government of this discretion. Where the lower Court has rightly or wrongly excluded a confession from evidence, it cannot be taken into consideration in revision.[10]

Advantage to be gained or evil to be avoided must be of a temporal nature: confessions induced by religious or moral exhortations are admissible.—As the reason of the inadmissibility of confessions is founded on the presumption that confessions made under certain conditions are untrustworthy, it follows that confessions induced by spiritual or moral exhortations should not, on principle, be inadmissible, as such exhortations do not lead to falsehood but to truth. Confessions have, therefore, been received in evidence, although induced by spiritual exhortations, whether of a clergyman or of any other person.[11] The reason of the rule is thus stated by an authority on the law of confession:—"It seems difficult to imagine that a man under spiritual convictions and the influence of religious impressions would, therefore, confess himself guilty of a crime of which he was not guilty; or that a man under a strong sense of his spiritual relations with God could hope to please God by a falsehood: that a confidence created between him and his pastor, or the 'being thrown off his guard' by his confidence, should induce him not to confess (that it might

1. Taylor, § 874.
2. *Nazir Jharudar* v. *E.*, 9 CWN 474 ; but see *E.* v. *Kutab Bux*, 57 C 488 : 126 IC 547 : 1930 C 633.
3. Taylor, § 877.
4. Taylor, § 873.
5. *R.*, v. *Gibbons*, 1 C & P 97 ; *R.* v. *Tyler*, 1 C & P 129 ; *R.* v. *Godinho*, 7 Cr App R 12, 14 ; Phipson, Ev., 7th Ed., 257 ; *Rahim Baksh* v. *Crown*, PLD 1952 FC 1.
6. *R.* v. *Boswell*, (1842) C & M 584 ; *R.* v. *Blackburn*, 6 Cox 333 ; Phipson, Ev., 7th Ed. 257 ; *Bulaqi* v. *E.*, 9 L 671 : 112 IC 347 : 1928 L 476 : 29 Cr LJ 1019.
7. Section 24.
8. *E.* v. *Attursingh*, 138 IC 618 : 1932 S. 64 : 33 Cr LJ 650 ; *E.* v. *Panchkari Dutt*, 52 C 67 : 86 IC 414 : 1925 C 587 : 26 Cr LJ 782 : 29 CWN 300 ; *Reg.* v. *Navroji Dadabhai*, 9 Bom HCR 358, 367.
9. See *E.* v. *Narayan Raghunath Patki*, 33 B 111.
10. *Billu* v. *E.*, 126 IC 53 : 1930 S. 168 : 31 Cr LJ 947 : 24 SLR 338.
11. Taylor, § 879.

naturally do if he were guilty) but induce him to confess falsely. Such spiritual conviction or spiritual exhortations, seem from the nature of religion, the most likely of all motives to produce truth. They are, therefore of a class entirely different from those that exclude confessions. A confession is excluded because the motive which induces it is calculated to produce untruth, because it is likely to lead to falsehood. If temporal hopes exist, they may lead to falsehood. Spiritual hopes can lead to nothing but truth."[1] The Indian Evidence Act recognizes this rule by enacting that the inducement, threat or promise must be such as gives the accused person grounds for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The use of exhortations invoking the terrors of punishment predicted by theological beliefs cannot, therefore, bring a confession within the rule of exclusion. Consequently confessions induced by expressions such as "kneel down and tell me the truth in the presence of the Almighty,"[2] "don't run your soul into more sin, but tell the truth,"[3] "don't add sin to sin by attempting to dissemble with God".[4] have been held to be admissible.

Confession obtained by saying "It is good to speak the truth. Fear from God and tell the correct thing was similarly held to be admissible as one obtained by moral exhortation, and not inducement.[5]

A confession caused by moral exhortations, stands on the same footing as a confession caused by religious exhortations; and, therefore, confessions induced by moral persuasions such as "I hope you will tell, because Mrs. G. can ill-afford to lose the money,"[6] "if you have committed a fault, do not add to it by saying what is untrue,"[7] "be sure to tell the truth,"[8] "you had better, as good boys, tell the truth,"[9] have been received in evidence. A mere moral exhortation to speak the truth should not vitiate a confession, since the worst it can evoke is the truth and there is thus no risk of accepting a false confession.[10] But an exhortation to speak the truth may involve in it an inducement that the accused will escape the penalties of the law by making the confession; and where that is the case, the confession will be excluded.[11] There is a subtle but important distinction between mere moral advice or exhortation to speak the truth and the veiled promise or threat involved in the expression "you had better tell the truth," and this distinction should be borne in mind while applying the rule to a particular case.[12] See notes to this section under the heading "inducement involved in the expression `you had better confess' or `you had better tell the truth'."

The advantage to be gained or the evil to be avoided must be of a temporal nature and must have reference to the proceedings.—The advantage to be gained or

1. (1842) Joy, Confessions. 51.
2. *R.* v. *Wild*, (1835) 1 MCC 452.
3. *R.* v. *Sleemon, Dears*, 269.
4. *R.* v. *Gilham*, 1 MCC 186.
5. *Chaman Lal* v. *State of J. & K.*, 1976 Cr LJ 1310 para 32.
6. *R.* v. *Lloyd*, 6 C & P 393.
7. *R.* v. *Jarvis*, LR 1 CCR 96.
8. *R.* v. *Court*, 7 C & P 486.
9. *R.* v. *Reeve*, LR 1 CCR 362.
10. Wigmore, § 832; *See* also the observations of *Erle, J., R.* v. *Moore*, 2 Den CC 522, 523; *E.* v. *Akhileshwar Prasad*, 4 P 646 : 89 IC 961 : 1925 P 772 : 26 Cr LJ 1441.
11. *Yeshodi* v. *E.*, 99 IC 858 : 1927 N 43 : 28 Cr LJ 186 ; *E.* v. *Akhileshwar Prasad*, 4 P 646 : 89 IC 961 : 1925 P 772 : 26 Cr LJ 1441.
12. See *Yeshodi* v. *E.*, 99 IC 858 : 1927 N 43 : 28 Cr LJ 186.

the evil to be avoided must have reference to the proceedings against the confessor. Therefore, a promise of some merely collateral benefit or boon, as for instance, a promise to give the prisoner some spirits or to strike off his handcuffs, or to let him see his wife, or perhaps (where the confessor is a female) to abstain from an examination of her person, will not be deemed such an inducement as will authorize the rejection of a confession made in consequence.[1] But a confession caused by a threat to put the accused's women folk to trouble has been held to be inadmissible.[2] A confession caused by the promise of a reward of money should not be inadmissible,[3] unless the promise of reward contains an express or implied promise of immunity from prosecution. A confession caused by a threat of ex-communication is not inadmissible, as the threat has no reference to the proceedings against the confessor.[4]

Confession and plea of guilty.—A plea of guilty is more than a confession which admits that, the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.

The same standard must be applied to determine whether a guilty plea is voluntarily made. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.

Several constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a criminal trial. First is the privilege against compulsory self-incrimination. Second is the right to trial by jury. Third, is the right to confront one's accusers.

Court cannot presume a waiver of these three important rights from a silent record.[5]

General observations relating to the proof, admissibility and value of confessions.—Where a confession is given in evidence against a prisoner, three questions arise for determination:—(i) Has it been proved that the prisoner made the statement attributed to him; (ii) is the statement admissible; and (iii) what is the evidentiary value of the statement? Questions (ii) and (iii) do not arise if the first question be answered in the negative; and question (iii) does not arise if question (i) be answered in the affirmative and question (ii) in the negative.[6]

Proof of a confession Sections 24 to 27.—A confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapons the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section 26 of the Evidence Act, the entire confessional statement in all its parts including the admission of minor incriminating facts must also be excluded unless proof of it is permitted by some other section such as Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admission of

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1. Taylor, §§ 880, 881.
2. *E.* v. *Anant Kumar Banerji*, 60 IC 417 : 22 Cr LJ 225 : 32 CLJ 204.
3. Wigmore, § 835.
4. *E* v. *Mohan Lal*, 4 A 46.
5. *Edward Bovkin Jr.* v. *State of Alabama*, (1969) 23 Law Ed., 2nd 274, AIR 1970 USSC 10.
6. *Bhojo* v. *E.*, 152 IC 1032 : 1934 S. 172 : 36 Cr LJ 223 : 29 SLR 1.

incriminating facts in a confessional statement is permitted.[1]

Proof of an extra-judicial confession.—A confession may be extra-judicial or judicial;[2] and, if the former, it may be contained in a document made by the prisoner, or by someone else who heard the statement, or it may be merely oral. If an extra-judicial confession is contained in a document made by the prisoner or by someone else who heard the statement, the document must be produced, or its non-production accounted for, to make secondary evidence of the contents of the document admissible.[3] It should, however, be remembered that an extra-judicial confession is not a matter required by law to be reduced into writing within the meaning of Section 91; and, therefore, oral evidence of the confession is technically admissible, without the document being produced, if the witness proving the confession deposes not from his recollection of the terms of the document but from an independent recollection of what he heard the prisoner say. The document containing the record of what the prisoner stated is not in such cases substantive evidence, and can only be used either to refresh the witness's memory[4] or to corroborate[5] or to contradict[6] the witness's oral testimony in Court. If a document containing the record of an extra-judicial confession is not produced, or its non-production is not satisfactorily accounted for, the Court will not, ordinarily, accept oral proof of the confession as sufficient even if such proof be technically admissible, and will be justified to presume against the prosecution.[7]

Evidence of oral confessions of guilt ought to be received with great caution. Not only does considerable danger of mistakes arise from the misapprehension or malice of witnesses, the misuse of words, the failure of the party to express his own meaning and the infirmity of memory, but the zeal which generally prevails to detect offenders, especially in cases of aggravated guilt, and the strong disposition which is often displayed by persons engaged in pursuit of evidence to magnify slight grounds of suspicion into sufficient proof,—together with the character of the witnesses, who are sometimes necessarily called in cases of secret and atrocious crime—all tend to impair the value of this kind of evidence, and sometimes lead to its rejection, where, in civil actions, it would have been received.[8] "Words may easily be misunderstood by an honest man. They may easily be misconstrued by a knave. What was spoken metaphorically may be apprehended literally. What was spoken ludicrously may be apprehended seriously. A participle, a tense, a mood, an emphasis may make the whole difference between guilt and innocence".[9] Where an oral confession is sought to be proved against a prisoner, the actual words uttered by him should be given;[10] a mere

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1. *Aghnoo Nagesia* v. *State of Bihar*, 1966 Cr LJ 100 : 1966 (1) SCJ 193 : 1966 (1) SCR 134 : AIR 1966 SC 119.
2. See notes to this section under the heading "judicial and extra-judicial confessions".
3. Sections 64 and 63.
4. Section 159.
5. Section 157.
6. Sections 155 and 145.
7. Section 144, Ill. (a).
8. Taylor, § 862.
9. Macaulay, History of England, Volume I, Ch. 5, p. 583.
10. *Sultan* v. *E.*, 151 IC 984 : 1934 S. 119 : 36 Cr. LJ 62 ; *Allah Ditta* v. *E.*, 148 IC 205 : 1934 L 8 : 35 Cr LJ 623 ; *Des Raj* v. *E.*, 111 IC 449 : 1928 L 858 : 29 Cr. LJ 865 ; *see* also *Nur Ali* v. *E.*, 5 L 140 : 81 IC 530 : 1924 L 498 : 25 Cr. LJ 914.

general statement that a prisoner confessed is insufficient.[1] Since it is difficult to ascertain the exact words used, oral extra-judicial confessions do not carry much weight.[2] Where the extrajudicial confession alleged to have been made orally to a fellow under trial prisoner was sought to be relied upon, the Supreme Court rejected it with the observation "Evidence of the witness does not reproduce the words used by each accused. It is the witnesse's *ipse dixit* that is being deposed to.....And who is that witness.....an undertrial prisoner awaiting trial for dacoity. We fail to see how these young boys should confide in this person suspected of dacoity. The most objectionable part of this concocted evidence is as to how the investigating officer came to know that the three accused made an extra-judicial confession to another undertrial in Jail.[3] A general statement by a witness that a number of persons admitted having committed a crime is valueless, without some indication as to which of the persons made the admission in question and without some particulars of what was actually said.[4] Where the accused was asked whether he had stolen the mare and was arrested while riding it and he replied in the affirmative, it was held that, the question being a composite one, the answer to it in the affirmative did not constitute a confession of the fact that he had stolen the mare.[5] If a witness is in a position to depose to the substance of the statement made by the prisoner, the Court may hold the confession to be proved.[6] The evidence in proof of a confession should be closely scrutinized, as such evidence is often received through paid informers, treacherous associates, angry victims, and overzealous officers of the law.[7] Where the court was satisfied that the witness to whom the extra-judicial confession was made was a close friend of the accused and that his evidence was reliable, convincing, and trustworthy, the fact that the Investigating officer was said to have obtained the signatures of the witness on his statement made to that officer in the course of investigation into the crime, which was a violation of Section 162 of the Code of Criminal Procedure, did not render his evidence inadmissible on that ground.That provision does not say that the evidence of a witness given in court becomes inadmissible if it is found that the statement of the witness recorded in the course of investigation was signed by the witness at the instance of the Investigating officer. It merely puts the court on caution and may necessitate indepth scrutiny of the evidence.[8] In the Punjab *lambardars* and *Zaildars* are interested to give evidence for the police,[9] and, therefore, proof of a confession through such agency should be received with due caution.[10] Where the story of a confession is not told by a witness until after a fortnight of the occurrence, his evidence as to the confession should not be accepted.[11] It would

1. *Public Prosecutor* v. *Pasala Venkata Reddi*, 1945 M 202 ; *Nur Ali* v. *E.*, 5 L 140 : 81 IC 530 : 1924 L 498 : 25 Cr. LJ 914.
2. *Des Raj* v. *E.*, 111 IC 449 : 1928 L 858 : 29 Cr. LJ 865 ; *Kandhai* v. *State*, 1953 VP 38 ; *Abdul Salam* v. *State*, 1954 J. & K. 1 : 1953 Cr LJ 1865.
3. *Heramba Brahma* v. *State of Assam*, 1982 SC 1595.
4. *Sajjan Singh* v. *E.*, 6 L 437 : 90 IC 145 : 1925 L 418 : 26 Cr LJ 1489.
5. See *Hasni* v. *E.*,103 IC 847 : 1927 L 650 : 28 Cr LJ 767.
6. *Nur Ali* v. *E.*,5 L 140 : 81 IC 530 : 1924 L 498 : 25 Cr LJ 914.
7. Wigmore, § 866 ; see also Taylor, § 862.
8. *State of U.P.* v. *M.K. Anthony*, 1985 SC 48 (para 9).
9. *Rahman* v. *E.*,110 IC 674 : 29 Cr. LJ 738 ; see *Kundan* v. *E.*,9 L 133 : 104 IC 253 : 1928 L 49 : 28 Cr LJ 813.
10. *Des Raj* v. *E.*,111 IC 449 : 1928 L 858 : 29 Cr.LJ 865.
11. *See Nuru Bhagat* v. *E.*,1 P 630 : 71 IC 219 : 1922 P 582 : 24 Cr.LJ 91.

be dangerous in the extreme to act on a confession put into the mouth of the accused by a witness who had a strong motive for implicating someone else in the murder.[1]

Extra Judicial Confession: Confession if oral must be assessed carefully – Voluntary nature of confession must also be considered before it can be acted upon.[2]

Extra Judicial confession in writing – If it be reduced to writing, the rule is that the Court may act upon it even if it be resiled from, if, in its opinion, its general trend is substantiated by some evidence which would tally with what is contained in it.[3]

Extra Judicial confession - May be relied upon, if proved - Actual words not necessary – An extra judicial confession if voluntary, can be relied upon by the court along with other evidence. The value of the evidence as to the confession, just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible. But it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given.[4]

Evidentiary Value of Extra-judicial confession – An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that it is voluntary, it does not appear to be the result of inducement, threat or promise and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors. such as, the person to whom the confession is made, the time and place of making it, the circumstances in what it is made and finally the actual words used.[5]

Weight of retracted extra-judicial confession – An extra judicial confession is often a very weak piece of evidence. There may be circumstances in which it may be of more probative value than it usually is. The first disability is that whenever there is an extra judicial confession by the time it comes to the Court one is not in a position to know in what actual words the accused had spoken. As far as the actual wording goes, the longer and the more complicated the story of the confession the greater such danger and naturally the less the value of the extra judicial confession. Where the extra judicial confession is somewhat reliable, there being an independent corroboration, if it is retracted, it cannot be rated too high.[6] Extra-judicial confession must be judged in the background of attending circumstances and it must be considered if the same is voluntary and true and free from suspicion. There should be cogent evidence on record about the attending circumstances as well as the exact words used by the accused to judge whether the extra judicial confession was not only true but also voluntary. Even accepting the extra judicial confession which has been retracted, it is a very weak piece of evidence and has to be corroborated by other evidence on record.[7]

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1 *Harold White* v. *The King*, 1945 MWN 620 (PC).
2 Veerl, In re 1969 Mad LW (Cri) 231: 1970 Cr LJ 1020.
3 *Angnu* v. *State*, 1960 All. LJ 28.
4 *Mulk Raj* v. *The State of U.P.*, 1959 Cr LJ 1219.
5 *Thimma and Thimma Raju* v. *State of Mysore*, 1970 SCC (Cr) 320.
6 *State of Madhya Pradesh* v. *Mst Gangabai*, 1971 MPLJ 829.
7 *State* v. *Dwari Behera*, 1976 Cr LJ 262 (para 10); *Madi Ganga* v. *State of Orissa*, 1981 SC 1165; 1981 Cr LJ 625: *Shankar* v. *State of T.N.*, (1994) 4 SCC 478: 1994 Cri LJ 3071: (1994) 2 Crimes 1 : (1994) 2 Andh LT (Cr) 429.

Proof of a judicial confession; oral confessions to Magistrates.—A confession made in the course of a trial or inquiry is a matter required by a law to be reduced into writing[1]; oral evidence of such confession is, therefore, inadmissible except to the limited extent mentioned in Section 533, Cr. P.Code.[2] There was considerable divergence of authority on the question whether a confession made to a Magistrate in the course of police investigation may be proved by the Magistrate's oral evidence, where he made no record of the confession or did not purport to make the record in the manner prescribed by Section 164 of the Code of Criminal Procedure. The Privy Council decision in *Nazir Ahmed's Case*[3] now definitely decides that where the Magistrate neither acts nor purports to act under Section 164 and nothing is tendered in evidence as recorded or purporting to be recorded under that section, oral evidence of the Magistrate is not admissible. If a confession has been properly recorded under Section 164 of the Code of Criminal Procedure, the production of the document containing the record of the confession under Section 80 of the Act was made by prisoner.[4] The production of a certified copy of the confession, does not, however, establish the identity of the maker of the confession.[5] If any of the provisions of Sections 164 and 364 of the Code of Criminal Procedure is not complied with by the Magistrate recording the confession, the Court shall take evidence that the prisoner duly made the statement recorded.[6] Where there is nothing on the record to show that the Magistrate, while recording the confession, questioned the accused to ascertain that he was making his confession voluntarily and the defect is not remedied by examining the Magistrate, the confession is not admissible.[7] But where the defect in the mode of recording the confession, is one of substance, it cannot be cured by oral evidence and the confession will be inadmissible.[8] When the provisions of the Section 164, Cr.P.C. are not complied with by the Magistrate recording a confession, the confession is of no evidentiary value, even if it is admissible in evidence.[9] See notes to Section 80 under the headings "Is there any presumption under Section 80 as to the identity of the deponent or the confessor" and "the presumptions of Section 80 arise...taken according to law."

Admissibility of a confession.—Assuming that the making of a confession by the prisoner has been proved to the satisfaction of the Court, the next question that the Court has to determine is whether the confession is admissible. A confession is admis-

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1. Section 364, Cr. P. Code.
2. Section 91 ; In re *Tangedypalle Pedda Obigadu*, 45 M 280 : 69 IC 264 : 1922 M 40 : 23 Cr LJ 690 ; *E.v.Gulabu*,35 A 260 : 19 IC 307 : 14 Cr LJ 211.
3. *Nazir Ahmad* v. *E.*,63 IA 372 : 17 L 629 ; see *E.* v. *Kommoju*, 1940 P 163 ; *Rishi* v. *State*, 1953 P 425.
4. *Bakhshan* v. *E.*, 1936 L 247 ; *Mohammad Ali* v. *E.*, 1934 A 81 : 56 A 302 ; *Partap Singh* v. *E.*,6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *E.* v. *Maruti Santu More*, 54 IC 465 : 21 Cr LJ 456, per Hayward, J.
5. *Mohammad Ali* v. *E.*,56 A 302 : 1934 A 81 : 147 IC 390 : 35 Cr LJ 385 ; *Madi Ganga* v. *State of Orissa*, 1981 SC 1165 : 1981 Cr LJ 628.
6. Section 533, Cr.P.Code.
7. *Ondi Boro* v. *E.*,1948 C 193 : 49 Cr LJ 294.
8. *Maroti Jago* v. *E.*,1940 N 230 ; *E.* v. *Kommoju Brahman*, 1940 P 163 ; *Punta* v. *E.*,24 P 646 ; *Neharoo Mangtu Satnami* v. *E.*,1 LR 1937 N 268 : 1937 N 220 ; *The King* v. *Saw Min*, 1939 RLR 97 ; *Ranbir Singh* v. *E.*,136 IC 19 : 1932 L 204 : 33 Cr LJ 242 ; *Housabai Bala Shinde* v. *E.*,1932 B 553 ; *Prag* v. *E.*,128 IC 215 : 1930 O 449 : 32 Cr LJ 94 ; *Partap Singh* v. *E.*,6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *Farid* v. *E.*,2 L 325 : 65 IC 613 : 1922 L 237 : 23 Cr LJ 149 ; *Jai Narayan Rai* v. *Q.E.*, 17 C 862 ; *Q.E.* v. *Viran*, 9 M 224 ; *Bala Majhi* v. *State*, 1951 Orissa 168 (FB) ; but see *Rangappa Hanamappa* v. *State*,1954 B 285.
9. *Jagmal* v. *E.*,1948 A 211 : 1948 ALJ 106 : 49 Cr LJ 243 ; but see *Rangappa Hanamappa* v. *State*, 1954 B 285.

sible, unless it can be shown that it was made to a person in authority in consequence of some improper inducement, threat or promise[1] or to a Police Officer,[2] or at a time when the accused was in the custody of a Police Officer.[3] Of course, the onus of proving that a confession is inadmissible is on the prisoner,[4] but the onus is not heavy and may be discharged by proof of circumstances throwing doubt on the voluntariness of the confession.[5] In the case of a confession properly recorded under Section 164, Cr.P.Code, the recording Magistrate's certificate that the confession, to his belief, was voluntary is not conclusive and the confession may still be shown to be involuntary.[6] If the avoiding circumstances of a confession mentioned in Sections 24-26 are not shown to exist, the admissibility of the confession is established; but its evidential value will depend upon the particular circumstances of the case.

How confession should be construed and used.–The word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.

Regarding the use of confession and admission, it must either be accepted as a whole or rejected as a whole and the court is not competent to accept only the inculpatory part while rejecting the exculpatory part is inherently incredible.[7]

Confession not contrary to oral evidence and so it cannot be said to be untrue.–There was no statement in the confession which was contrary to the oral evidence though the details put forward when the witnesses were examined in court did not appear in extenso in the confession and for that reason it cannot be said that the confession was untrue.[8]

Evidential value of confessions.–Conflicting opinions have been expressed as to the evidential value of confessions. While some writers and Judges of great authority have denounced this species of evidence as the weakest and the most suspicious of all evidence,[9] other writers and Judges of equal authority have described it as the highest and most satisfactory proof of guilt.[10] This conflict of opinion is, however, more apparent than real and is capable of explanation, if the distinction between confession as evidence of the act and evidence in proof of the alleged confession is fully comprehended. If the making of a confession is proved beyond question, it is "the highest sort of

1. Section 24.
2. Section 25.
3. Section 26.
4. See note to this section under the heading "burden of proving the voluntary or involuntary character of a confession."
5. See note to this section under the heading "nature of the onus."
6. *E.* v. *Shambu*, 135 IC 838 : 1932 A 228 : 33 Cr LJ 201 ; *Prag* v. *E.*,128 IC 215 : 1930 O 449 : 32 Cr LJ 9 ; *Nar Singh* v. *E.*,73 IC 257 : 1922 O 302 : 24 Cr LJ 561 ; *Jagjiban Ghose* v. *E.*,2 IC 681 : 9 CLJ 663 : 10 Cr LJ 125 ; *Manipur State* v. *Naosekpam Nimai Singh* 1953 *Manipur*,7.
7. *Palvinder Kaur* v. *The State of Punjab*, 1953 SCR 94 : 1952 SCJ 545 : 1953 Cr LJ 154.
8. *Subramania Goundan* v. *The State of Madras*, 1958 SCR 428 : 1958 Cr LJ 238 : 1958 SCJ 321.
9. E.g.,Blackstone, Commentaries, IV 357 ; Foster, High Treason C.III, Section 8.
10. Starkie Ev.,I, 52 ; Swift Ev., 133 ; Grose. J.,in *Lambe's Case*, 2 Leach, 3rd, Ed., 629 ; *Birey Singh* v. *State*, 1953 A 785.

evidence"[1] and one of the most effectual proofs in the law, as ordinarily no rational being will make a false admission prejudicial to his interest and safety.[2] Cases are, of course, conceivable where the confession may be false. The testimonial trustworthiness of the confession is based upon the presumption, that, as a free agent, no man would make a confession against himself if the facts confessed were not true.[3] "The prisoner, oppressed by the calamity of his situation, may have been induced by motives of hope or fear to make an untrue confession; and the same result may have arisen from a morbid ambition to obtain an infamous notoriety, from an insane or criminal desire to be rid of life, from a reasonable wish to break off old connections and to commence a new carreer, from an almost pardonable anxiety to screen a relative or comrade, or even from the delusion of an over-wrought and fantastic imagination."[4] But such cases are exceptional and very rare and do not affect the soundness or the generality of the rule that an innocent man will not ordinarily risk his life, liberty or property by making a false confession. It is in this sense, therefore, that a confession is described by the authorities as the best and the most conclusive evidence of the act. The proposition, however, assumes that the making of the confession has been proved beyond question- an assumption that, as will be seen in the next paragraph, is not often correct.

Before any evidential effect is attached to a confession, it must be proved that the prisoner made the alleged confession and made it voluntarily. It has been pointed out elsewhere in this work that the evidence in proof of a confession requires the closest scrutiny, as such evidence often proceeds from a tainted or an interested source. "Paid informers, treacherous associates, angry victims, and overzealous officers of law-these are the persons through whom an alleged confession is oftenest presented"[5] Further, "words may easily be misunderstood by an honest man. They may easily be misconstrued by a knave. What was spoken metaphorically may be apprehended literally. What was spoken ludicrously may be apprehended seriously. A participle, a tense,a mood; an emphasis may make the whole difference between guilt and innocence."[6] It is here, *i.e.*, when a confession is being proved, that our suspicions are aroused and, therefore, when the authorities say that a confession is the weakest and most suspicious kind of evidence, they have in view, not the confession as evidence of the act charged, but the evidence tendered to prove the alleged confession. It is as to this species of evidence that the authorities emphasize great caution and care. The rule may, therefore, be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected the confession, if once proved to have been made and made voluntarily, is one of the most effectual proofs in the law. If the Court comes to a conclusion that the confession was made by the accused and was free or voluntary and genuine, it can convict him on the basis of that statement.[7] There is no law that a conviction cannot be based exclusively on a confession in any circumstances and that even a genuine confession must be corroborated.[8]

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1. Wigmore, § 866.
2. Taylor, 865.
3. *Bala Majhi* v. *State*, 1951 Orissa 168 (FB).
4. Taylor, 863.
5. Wigmore, 866 ; Taylor, 862.
6. Macaulay, History of England, Vol. 1, Ch. 5, p.5383.
7. *Jangir Singh* v. *State*, 1953 Pepsu,19 ; *Birey Singh* v. *State*, 1953 A 785.
8. *Birey Singh* v. *State*, 1953 A 785.

An extra-judicial confession must be received with care and caution.[1] It has been noticed already that the exact words used by the accused must be ascertained,[2] and since it is difficult to ascertain the exact words used, an oral extra-judicial confession carries comparatively less weight.[3] Evidence of admissions of guilt to villagers may be sufficient to justify the conviction of a person accused of murder, but the evidence that such confession was made must be as closely scrutinized as all other evidence which is used to prove a case of murder.[4] A conviction may be based on a confession made to a respectable person; provided the confession was voluntary and made when the accused was not in police custody.[5] A confession alleged to have been made to a jail warder is of value, where the warder made a memorandum of the confession but the memorandum was not signed by the prisoner.[6] In the Punjab, confessions are often wrung out of villagers by *lambardars* and other persons in authority by putting them to very severe examination during investigation, and there is also very grave reason to suspect that in some cases something, more severe than questioning may be adopted to obtain a false confession. It is the suspicion that this kind of treatment is accorded to suspects that makes Courts very loath to act upon extra-judicial confession, even where there is nothing on the record to show that the case is false.[7]

A confession must be discarded if the accused at the time of making it is not only in the custody of the police present in the Magistrate's room, but is actually fettered and has a policeman standing by his side.[8] One method to bring about satisfaction as to the voluntary nature of a confession is to give enough time to the person concerned to compose himself.[9] A sufficient time should be allowed to elapse between the discontinuance on the police custody and the recording of the confession.[10]

The value of the evidence as to confessions depends upon the veracity of the witnesses to whom it is made and the circumstances in which it came to be made and actual words used by the accused.[11]

Whether an inadmissible confession may be used to contradict the confessor if and when examined as a witness.—It has been ruled by the Calcutta High Court that an involuntary confession cannot be used by the prosecution to contradict the confessor when he is cross-examined as a hostile prosecution witness;[12] but this Court in another

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1. *Havaldar Singh* v. *E.*,7 Luck 623 : 137 IC 63 : 1932 O 324 : 33 Cr LJ 379 ; *Munnu* v. *E.*,134 IC 1018 : 1931 O 415 : 33 Cr LJ 45 ; *Des Raj* v. *E.*,111 IC 449 : 1928 L 858 : 29 Cr LJ 865 ; *Ramappa* v. *Govt. of Mysore*, 12 Mys LJ 73 ; *Kandhai* v. *State*, 1953 VP 38 ; *Abdul Salam* v. *State*, 1953 Cr LJ 1865 ; *Fakirchand* v. *State*, 1955 MB 119 (FB).
2. See note to this section under the heading 'proof of an extra-judicial confession."
3. *Des Raj* v. *E*,111 IC 449 : 1928 L 858 : 29 Cr LJ 865.
4. *Taule* v. *E.*,117 IC 737 : 1929 O 272 : 30 Cr LJ 829 ; see also *E.* v. *Badal*, 112 IC 897 : 1928 O 393 :30 Cr LJ 33 : *Sheo Ratan* v. *E.*,114 IC 771 : 1929 O 167 : 30 Cr LJ 360 ; *Ramappa* v. *Govt. of Mysore*, 12 Mys LJ 73.
5. *Sheo Balak* v. *E.*, 99 IC 232 : 28 Cr LJ 104 ; *see* also *Muhammad Bakhsh* v. *E.*, 1941 S 129.
6. The *Crown* v. *Pakriswamy, etc.*,1930 MWN 1249.
7. *Shoran* v. *Crown*, 18 L 794.
8. *Haidar* v. *Crown*, 1937 PLR 663 (2) ; *Bhukhin* v. *E.*,1948 N 344 : ILR 1948 N 147 : 49 Cr LJ 561 : 1948 NLJ 489.
9. *Kirpa* v. *State*,1952 HP 68 : 1952 Cr LJ 1495.
10. *Jagmal* v. *E.*,1948 A. 211 : 1948 ALJ 106 : 49 Cr LJ 243.
11. *Kishore Chand* v. *State of H.P.*, (1991) 1 SCC 286 (para 8).
12. *Nayeb Shahana* v. *E.*,61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr LJ 1479.

decision has also held that a confession made to the police may be used to contradict the confessor when he is examined as a defence witness.[1]

Corroboration to confession; Rule of prudence in regard to corroboration.—The rule of prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused person in the crime must be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered ofter the confession was made. If the rule required that each and every circumstances mentioned, in the confessional statement must be separately and independently corroborated, then the rule would be meaningless, inasmuch as the independent evidence itself would afford sufficient basis for conviction and it would be unnecessary to call the confession in aid.[2]

"There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence.[3] The Courts have considered the evidence of extra-judicial confession a weak piece of evidence.[4] In *Sahoo* v. *State of U.P.*[5] it was held that an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime. Before evidence in this behalf if accepted, it must be established by cogent evidence what were the exact words used by the accused....even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence....However, in *Pyara Singh* v. *State of Punjab*,[6] the Supreme Court observed that the law does not require that evidence of an extra judicial confession should in all cases be corroborated...thus extra judicial confession....appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of the witness, witnesses who appear to be unbiased not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence...to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."[7]

Cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed,it would be sufficient to sustain a conviction; in such an

1. *Keratali* v. *E.*,61 C 967 : 150 IC 980 : 1934 C 616 : 35 Cr LJ 1178.
2. *Balbir Singh* v. *State of Punjab*, 1957 Cr LJ 481.
3. *State of U.P.* v. *M.K Anthony*, 1985 SC 48 (para 15).
4. See *Jagta* v. *State of Haryana*,(1975) 1 SCR 165 at p. 170 : 1976 SC 1545 at p. 1548 ; and *State of Punjab* v. *Bhajan Singh*,(1975) 1 SCR 747 at p. 751 : 1975 SC 258 at p. 261.
5. (1965) 3 SCR 86 : 1966 SC 40.
6. (1978) 1 SCR 597 : 1977 SC 2274.
7. *State of U.P.* v. *M.K. Anthony*,1985 SC 48 (para 5).

event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.[1]

No hard and fast rule can be laid down regarding the necessity of corroboration in a particular case. As a general rule there should be corroboration.

"Law does not require that the evidence of an extra-judicial confession should in all cases be corroborated." Where the extra-judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the accused, the Supreme Court was critical of the Sessions Judge for having disbelieved the confession particularly when it was corroborated by the recovery of an empty cartridge from the place of occurrence."[2]

"The Supreme Court has held it to be now well settled that in order to sustain a conviction on the basis of a confessional statement it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession."[3]

"General corroboration is sufficient."[4]

A confession should not be believed merely on the ground that it contains a wealth of information which might be difficult to invent. Unless the main features of the story are shown to be true, it is unsafe to regard mere wealth of information of uncorroborated confession as a safeguard of truth.[5]

Admissibility and value of retracted confessions.—Where a prisoner adheres at the trial to a previous judicial or extra-judicial confession, it may, if the Court believes it, be acted upon without there being any corroboration of it.[6] In the same manner, a plea of guilty is sufficient by itself to support a conviction, though followed by a sentence of death.[7] But a retracted judicial or extra-judicial confession stands on a different footing, and is "an endless source of anxiety and difficulty to those who have to see that justice is properly administered."[8] When a retracted confession is given in evidence against a prisoner, the Court has first to determine whether the confession is admissible. When the confession has been held to be admissible, the court has then to consider what weight should be given to this piece of evidence. The admissibility of a confession depends upon its having been made without any such inducement, threat or promise as is mentioned in Section 24 of the evidence Act, and it has been remarked more than once that the mere fact that confession has been retracted does not show that it was not voluntary but was made in consequence of some inducement, threat or promise.[9] From the point of view of admissibility alone therefore, the mere fact that a confession has

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1. *Kashmir Singh* v. *State of Madhya Pradesh*, 1952 SCR 526.
2. *Piara Singh* v. *State of Punjab*, 1977 SC 2274 (para 10).
3. *Modi Ganga* v. *State of Orissa*, 1981 SC 1165 (para 6).
4. *Subramanian Goundan* v. *State of Madras*, 1958 SC 66.
5. *Muthuswami* v. *State of Madras*, 1953 SCJ 619 : 1954 Cr LJ 236.
6. *E.* v. *Dhani*, 52 IC 881 : 20 Cr LJ 721 (1).
7. Taylor, § 866 ; Section 271 ; Cr.P.C.
8. Per Straight, C.J., in *Q.E.*, v. *Babu Lal*, 6 A 509 (FB) ; see also observations by Mr Justice Cave in *R.* v. *Thompson*, (1893) 2 QB 12 at p. 18 : *Range Gowda* v. *Government of Mysore*, 52 Mys. HCR 134 : *Ganesh Gogai* v. *State*, 1955 Assam 51.
9. *Pharho* v. *E.*, 1932 S 201 : 141 IC 392 : 34 Cr LJ 147 : *Mohar Singh* v. *E.*, 96 IC 647 : 27 Cr LJ 983 ; *Pratap Singh* v. *E.*, 6 L 415 : 93 IC 978 ; 1925 L 605 : 27 Cr LJ 514 : *E.* v. *Dewan Kahar*, 72 IC 961 : 1923 P 13 ; 24 Cr LJ 497 ; *Sheo Prasad Koeri* v. *E.* 52 IC 50 : 20 Cr LJ 562 : *Q.E* v. *Basvanta*, 35 B 168.

been retracted is immaterial.[1] There may, however, be other circumstances in the case, which may cast a doubt on the voluntary character of the confession, and where there are such other circumstances, the fact that the confession has been retracted will strengthen the inference that the confession was not voluntary, and the confession will then have to be voluntary, altogether from evidence. But if the Court holds the confession to be voluntary, its admissibility is established, and there is nothing in the law to prevent the Court from basing a conviction on a retracted confession alone, if it believes it to be true.[2]

When the relevancy of a confession has been established, the use to be made of it is not a matter of law but of prudence,[3] and depends upon the circumstances of each case,[4] upon the circumstances under which the confession was made, the circumstances under which it was retracted, the reasons given for the retraction[5] and the delay in retracting.[6] Though, as a matter of pure law, there may be nothing to prevent Court from convicting on a retracted confession alone, such confession is a highly suspicious piece of evidence, and the Courts have emphasized the grave danger of making such piece of evidence alone as a basis for conviction. They have, therefore, as a matter of prudence, consistently declined to record a conviction on a retracted confession alone and have required the prosecutor to give some independent evidence in corroboration of the confession.[7] It is a settled rule of evidence that unless a retracted confessions is corroborated in material

1. *Ghulam Mohammad* v. *E.*, 1942 L 271 : *E* v. *Bhagwandas Bisesar*, 1941 B 50 : *Ibrahim* v. *E.*, 1937 L 208 : 163 IC 745 : 38 Cr LJ 583 ; *Khimji Khetsi* v. *E.*, 156 IC 972 : 36 Cr LJ 1037 : *Bhikari* v. *E.*, 150 IC 819 : 1934 O 405 : 35 Cr LJ 1113 : *Durga* v. *E.*, 8 OWN 247 ; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 ; 1925 Cr LJ 514.
2. *Manohar Singh* v. *E.*, 1946 A 15 ; In re *Rajgopal*, 1944 M 117 ; *Ram Singh* v. *E.*, 1943 O 269 ; *Sharif* v. *E.*, 1944 L 472 ; *Dikson Mali* v. *E.*, 1942 P. 90 : 196 IC 597 ; *Suker Dusadh* v. *E.*, 1941 P. 303 ; *Khimji Khetsi* v. *E.*, 156 IC 972 ; *Nahnun* v. *E.*, 151 IC 716 : 1934 L 715 : 35 Cr LJ 1390 ; *Martin* v. *E.*, 151 IC 924 : 1934 L 89 : 35 Cr LJ 1453 ; *Chinnaya* v. *Government of Mysore*, 11 Mys. LJ 407 ; *Housabai Bala Shinde* v. *E.*, 56 B 542 : 140 IC 740 : 1932 B 553 : 34 Cr LJ 73 ; In re *Syamo Maha Patro*, 55 M 903 : 137 IC 9 : 1932 M 391 : 33 Cr. LJ 418 (FB) ; *Bhagwan Das Bhagat* v. *E.*, 126 IC 902 : 1930 P 289 : 31 Cr. LJ 1128 ; *E.* v. *Kutab Bux*, 57 C 488 ; 126 IC 547 ; 1930 C 633 ; *E* v. *Balai Ghose*, 124 IC 486 : 1930 C 141 : 3 Cr LJ 667 : 1930 MWN 785 ; *Khuban* v. *E.*, 120 IC 257 : 1930 A 29 : 31 Cr LJ 26 ; *Rahman* v. *E.*, 119 IC 420 : 1930 L 88 : 30 Cr LJ 1080 ; *Kuttiappa Chetty* v. *E.*, 1929 MWN 791 ; *Sanwaldas Kundandas* v. *E.*, 1929 S 253 ; *Majhi* v. *E.*, 104 IC 247 : 1927 L 682 : 28 Cr LJ 807 ; *Mahipat Singh* v. *E.*, 103 IC 800 : 28 Cr LJ 752 : 1927 O 597 ; *E* v. *Raj Kali*, 1 Luck 577 : 98 IC 250 : 1926 O 622 : 27 Cr LJ 1306 ; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 : *Mahmud* v. *E.*, 81 IC 62 : 25 Cr LJ 574 ; *Moti Ram* v. *E.*, 75 IC 152 : 24 Cr LJ 904 ; *Bihari Mahaki* v. *E.*, 69 IC 789 : 1922 P 492 : 22 Cr LJ 293 ; *Sheo Prasad Koeri* v. *E.*, 52 IC 50 : 20 Cr LJ 562 ; *Bhaddu* v. *E.*, 46 IC 1005 : 19 Cr LJ 861 ; *E.* v. *Kehri*, 29 A 434 ; *Q.E* v. *Gangia*, 23 B 316 ; *Q.E* v. *Raman*, 21 M 83 ; *Q.E* v. *Maiku Lal*, 20 A 133 ; *Q.E* v. *Gharya*, 19 B 728 ; *Kesawa Pillai* v. *E.*, 1929 M 837 ; *Nanhey* v. *E.*, 1931 O 412 : 134 IC 876 : 33 Cr LJ 16 ; *Madda Peda Brahmayya*, In re, 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 51 Cr. LJ 8.
3. *Ragha* v. *E.*, 89 IC 903 : 1925 A 627 : 26 Cr LJ 1431 ; *Mahmud* v. *E.*, 81 IC 62 : 25 Cr LJ 574 ; *Bhaddu* v. *E.*, 46 IC 1005 : 19 Cr LJ 861 ; *E* v. *Lalit Mohan Chuckerbutty*, 38 C 559 ; 10 IC 532 : 12 Cr LJ 286 ; *Q.E* v. *Gharya*, 19 B 728 ; *E* v. *Bhugwandas Bisesar*, 1941 B 50 : 192 IC 671 ; see also *Rama Kariyppa Pichi* v. *E.*, 120 IC 350 : 1929 B 327 : 31 Cr LJ 97.
4. *Nanhey* v. *E.*, 134 IC 876 : 1931 O 412 : 33 Cr LJ 16 ; *Sheikh Shafi* v. *E.*, 124 IC 459 : 1930 N 259 : 31 Cr LJ 661 ; *Mohar Singh* v. *E.*, 96 IC 647 : 27 Cr LJ 983 : *Partap Singh* v. *E.*, 6 L 415 ; 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *Moti Ram* v. *E.*, 75 IC 152 : 24 Cr LJ 904 ; *Q.E* v. *Maiku Lal*, 20 A 133.
5. *Moti Ram* v. *E.*, 75 IC 152 : 24 Cr LJ 904 ; *Q.E* v. *Raman*, 21 M 83 ; delay in making the confession affects its value. *Rano* v. *E.*, 1944 S 178 : ILR 1944 Kar. 75 : *Madda Peda Brahmayya*, In re 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 51 Cr LJ 8 ; *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 51 BLR 955 : 84 CLJ 146 : 53 CWN 609 ; 1949 ALJ 283 ; 50 Cr LJ 872 : 51 PLR 311 : 76 IA 147.
6. *Findal* v. *State*, 1954 HP 11.
7. *Harold White* v. *The King*, 1945 MWN 560 (PC) : *Sultan* v. *E.*, 1945 L 91 : *Uddel Nanhe* v. *E.*, 1944 NLJ

particulars, it is not prudent to base a conviction in a criminal case on its strength alone.[1] It is the duty of a Court that is called to act upon a retracted confession to inquire all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true.[2] The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession, or explains having made it by allegation of police torture, is enough in itself to put the Judge upon inquiry.[3]

The extent and nature of the corroboration required, before a Court can act upon and accept a retracted confession, depends upon the circumstances of each case.[4] On the question as to what will constitute sufficient corroboration of a retracted confession in a particular case, no rule is laid down by the authorities, except that the corroboration must be on some material particular[5] connecting the accused with the offence.[6] The production of property, the subject of the offence,[7] or some other article connected with the commission of the offence,[8] will be sufficient corroboration. The truth of a confession may be sufficiently indicated also by the character of the confession itself and the circumstances in which it was made.[9] Where a confession is wanted in those natural particulars which one would expect in a free and voluntary confession, it would naturally excite Court's suspicion.[10] A confession should not be relied upon where it is inconsistent with the other evidence in the case.[11] Evidence of motive alone is not sufficient corroboration.[12] It is, however, not necessary that the corroboration evidence should itself be sufficient for conviction.[13]

· 413 : *Mir Ali* v. *E.*, 1943 S 166 : *Ghulam Mohammad* v. *E.*, 1942 L 271 ; *Dikson Mali* v. *E.*, 1942 P 90 ; *E* v. *Bhagwandas Bisesar*, 1941 B 50 : *Purnananda Das Gupta* v. *E.*, 1939 C 65 : 40 Cr LJ 199 : 179 IC 506 : 68 CLJ 206 (FB) : *Bhojo* v. *E.*, 152 IC 1032 : 1934 A 172 : 36 Cr LJ 223 : *Nahnun* v. *E.*, 151 IC 716 : 1934 L 715 : 35 Cr LJ 1390 ; *Martin* v. *E.*, 151 IC 924 : 1934 L 89 : 35 Cr. LJ 1453 ; *Bhikari* v. *E.*, 150 IC 819 : 1934 O 405 : 35 Cr. LJ 1113 ; *Imamuddin* v. *E.*, 150 IC 862 : 1934 O 388 : 35 Cr. LJ 1154 ; *Allah Ditta* v. *E.*, 148 IC 205 : 1934 L 8 : 35 Cr LJ 623 ; *Pharho* v. *E.*, 141 IC 392 : 1932 S 201 : 34 Cr. LJ 147 ; *Bhagwan Das Bhagat* v. *E.*, 126 IC 902 : 1930 P 289 : 31 Cr LJ 1128 ; *E* v. *Kutab Bux*, 57 C 488 : 126 IC 547 : 1930 C 633 ; *Sheikh Shafi* v. *E.*, 124 IC 459 : 1930 N 259 : 31 Cr LJ 661 ; *E* v. *Balai Ghose*, 124 IC 486 : 1930 C 141 : 31 Cr. LJ 667 ; *Arjan Singh* v. *E.*, 11 L 106 : 119 IC 325 : 1930 L 257 ; 30 Cr. LJ 1046 ; *Bhaddu* v. *E.*, 46 IC 1005 : 19 Cr LJ 861 ; *Har Prasad* v. *E.*, 36 IC 133 : 17 Cr LJ 453 ; *E* v. *Noni Gopal Gupta*, 38 C 559 ; 10 IC 582 : 12 Cr.LJ 286 ; *Q.E* v. *Mahabir*, 18 A 78 : (1895) 15 AWN 227 ; *Kanai Lal* v. *State*, 1950 C 413 : 85 CLJ 196 : 51 Cr. LJ 1507 ; *Bhukhin* v. *E.*, 1948 N 344 : ILR 1948 N 147 : 49 Cr. LJ 561 ; 1948 NLJ 489 ; *Abdul Mumin Khan* v. *State*, 1953 Hyd. 145 : 1953 Cr. LJ 785 : *Bhuboni Sahu* v. *The King*, 1949 PC 257 ; *Gopisetti Chinna Venkata Subbaiah*, In re, 1955 Andhra 161 *Sher Bahadur* v. *Crown*, PLD 1951 L 352.

1. *Puran* v. *State*, 1953 SC 459 ; see *Muthuswami* v. *State of Madras*, 1954 SC 4 ; see also *Laloo* v. *State*, 1953 Raj. 214 : *Arjuna Misra* v. *Union of India*, 1950 Orissa 235 : ILR 1950 Cut. 305 ; *Madda Peda Brahmayya*, In re, 1949 M 817 : 1949, 1 MLJ 386 : 1949 MWN 281 : 51 Cr. LJ 8 ; *Abdul Salam* v. *State*, 1954 J & K 1 : 1953 Cr.LJ 1865 ; *Sant Ram* v. *State*, 1953 HP 105 ; *Kandhari* v. *State*, 1953 VP 38 ; *Sarajuddin Ahmed* v. *State*, 1953 Assam 109 ; *Ramaswamy Konar*, In re, 1954 M 1006.
2. *E* v. *Durgaya*, 3 Bom. LR 441.
3. *E* v. *Bhagi Vedu*, 8 Bom. LR 697 ; but see *Purnanda Das Gupta* v. *E.*, 68 CLJ (FB) ; *E* v. *Thakur Das*, 1943 C 625.
4. *Vasam Setti Appa Rao*. In re, 1953 M 1004 ; *Bhuboni Saha* v. *The King*, 1949 PC 257.
5. *Q.E* v. *Rangi*, 10 M 295 ; *Q.E* v. *Bharmappa*, 12 M 123 ; *Q.E* v. *Mahabir*, 18 A 78 : (1895) 15 AWN 227.
6. *Nahnun* v. *E.*, 151 IC 716 : 1934 L 715 : 3 Cr LJ 1390 ; *E* v. *Jawai*, 44 IC 179 : 19 Cr LJ 275.
7. *Arjan Singh* v. *E.*, 11 L 106 : 119 IC 325 : 1930 L 257 : 30 Cr LJ 1046.
8. *Ibid.*
9. *Jahangiri Lal* v. *E.*, 1935 L 230 : 150 IC 1056 : 35 Cr LJ 1180 ; *Q.E* v. *Maiku Lal*, 20 A 133.
10. *Mst. Parwati* v. *E.*, 1936 N 88 : 163 IC 319 : 37 Cr LJ 321.
11. *E* v. *Tilak*, 32 IC 321 : 17 Cr LJ 33 : *Motijan Bibee* v. *The Crown*, 6 CWN 380 ; see also *Q.E* v. *Maiku Lal*, 20 A 133.
12. *Tufani Sheikh* v. *E.*, 14 IC 667 : 13 Cr LJ 283 : 15 CLJ 323.
13. *Mohar Singh* v. *E.*, 96 IC 647 : 27 Cr LJ 983.

The rule requiring corroboration of resiled confessional statements does not apply to the statement which does not amount to confession.[1]

As against a co-accused, a retracted confession is a considerably weaker species of proof than the deposition of an approver made in Court and tested by cross examination.[2] A retracted confession, though admissible against a co-accused,[3] has therefore, very little value,[4] and cannot be treated as a sufficient corroboration of the approver. But as against the maker, a retracted confession may by sufficient corroboration of the approver.[5] See notes to Section 30 and Section 133.

It is the duty of the Judge to point out to the jury that a retracted confession is not as strong a piece of evidence as a confession to which the accused adheres.[6]

Retracted confession requires corroboration.—It is a settled rule of evidence that unless confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.[7]

Corroboration needed for retracted confession.—Confession was retracted at the earliest opportunity, namely, before the Committing Magistrate and this retraction was adhered to in the court of the Judicial Commissioner. The confession was inculpatory but corroboration was necessary because of the retraction.[8]

It is a general rule of practice that it is unsafe to base the conviction of the accused upon his retracted confession, even when it is held to be true and voluntary, unless it is corroborated in material particulars by independent evidence.[9]

Corroboration by independent evidence is necessary before a conviction can be based upon a retracted confession, even when it is accepted as voluntary and true.—In law it is open to a Court to convict an accused relying solely on his own confessional statement which has been retracted, before the accused can be convicted by relying upon such confession.

What amounts to sufficient corroboration for the purpose of basing a conviction on a retracted confession, is always a question of fact which is to be determined in the light of the circumstances of each case.[10]

Nature of the corroboration required for supporting a retracted confession. Difference between corroboration for accomplice evidence and retracted confession.—In the case of an accomplice, he is on his own showing a person who is depraved and debased who has taken part in the crime and now tries to exculpate himself and wants to fasten the liability on another. Therefore, in the case of an accomplice it is absolutely necessary that what he deposes to is corroborated in every material particular.

In contrast with this, a person who makes a confession stands on a different footing

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1. Vasam Setti Appa Rao, *In re*, 1953 M 1004.
2. *Ghulam Mohammad* v. *E.*, 1942 L 271 ; *Indar Dutt* v. *E.*, 132 IC 185 : 1931 L 408 : 32 Cr LJ 818 ; *Sheo Narain Singh* v. *E.*, 8 P 262 ; 117 IC 43 : 1929 P 212 ; 30 Cr LJ 176 ; *Moyez Sardar* v. *E.*, 84 IC 172 : 1925 C 406 : 26 Cr LJ 360 ; *Debi Dayal* v. *E.*, 18 IC 672 : 14 Cr LJ 112.
3. *Sardar* v. *E.*, 125 IC 639 : 1939 L 667 ; 31 Cr LJ 877 ; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514.
4. *E* v. *Biseswar De*, 71 IC 497 : 1923 C 217 : 24 Cr LJ 145 ; *Dikson* v. *E.*, 1942 P 90.
5. *Rahmat* v. *E.*, 113 IC 65 : 30 Cr LJ 49.
6. *E* v. *Kausar Ali*, 1944 C 249.
7. *Purun* v. *The State of Punjab*, 1959 Cr LJ 1925.
8. *Pangambani Kalanjoy Singh* v. *State of Manipur*, 1956 Cr LJ 126.
9. *Pyare Lal Bhargava* v. *State of Rajasthan*, 1962 (2) Cr LJ 178.
10. *Sarwan Singh Kattan Singh* v. *State of Punjab*, 1957 SCJ 699 : 1957 Cr LJ 1014.

and all that is necessary to find is whether the confession made by him was voluntary and true and was result of remorse and repentance or was the result of any inducement, threat or promise coming from a person in authority. It is only with the object of arriving at a conviction on this point that corroboration is sought for.

Therefore a retracted confession is not to be equated with the evidence of an accomplice, and the standard and degree of corroboration required is quite different, and it is not necessary that the confession be corroborated in every material particular.

All that is required, therefore, in the case of a confession is that there is a general corroboration, and it is sufficient if the general trend of the confession is substantiated by some evidence which tallies with what is contained in the confession. In contrast with the corroboration required for the evidence of an accomplice, it is not necessary that every material circumstances mentioned in the confession regarding the complicity of the accused should be separately and independently corroborated. Further it is not necessary that the corroboration which is on record must come from fact and circumstances discovered after the confession was made. That is, the fact that these facts and circumstances had already come to light and were known to the authorities before the confession was made does not detract from their corroborative value.[1]

Nature of corroboration required for confession.—Courts ordinarily consider it unsafe to convict any accused person on the basis of his retracted confession except where the truth of such confession is established by corroboration in material particulars by independent evidence. What is sufficient for the purpose has to be decided in each case on its own facts and circumstances. It may, however be generally stated that where the prosecution by the production of reliable evidence which is independent of the confession and which is also not tainted evidence like the evidence of an accomplice or the evidence or a co-accused, establishes the truth of certain parts of the account given in the confession and those parts are so integrally connected with other parts of the accused's confession, that a prudent judge of facts would think it reasonable to believe in view of the established truth of those parts, that what the accused has stated in the confession as regards his own participation in the crime is also true, that is sufficient corroboration. More than this is not needed; less than this is ordinarily insufficient.[2]

Conviction cannot be based on uncorroborated retracted confession.—Where the conclusion of guilt rests solely on a retracted confession, not only uncorroborated immaterial particulars, but untrue in many parts, such a conviction is opposed to law and cannot be allowed to stand.[3]

Value of retracted confession.-Rule for guidance of court.—A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made, But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convicted of the absolute truth of a confession and

1. *Sabramania Goundan* v. *State of Madras*, 1958 SCR 428 : 1958 Cr LJ 238 : 1958 SCJ 321.
2. *Nand Kumar and others* v. *State of Rajasthan*, (1963) (2) Cr LJ 702 : (1963) (3) SCJ 422 : (1963) (2) SCR 890.
3. *Arjuna Lal Mishra* v. *The State*, 1953 Cr LJ 1033 : ILR (1951) Cut 464.

prepared to act upon it without corroboration.[1]

Corroboration required for retracted confession.—Courts ordinarily consider it unsafe to convict any accused person on the basis of his retracted confession except where the truth of such confession is established by corroboration in material particulars by independent evidence. What is sufficient corroboration for this purpose has to be decided in each case on its own facts and circumstances. It may, however, be generally stated that where the prosecution by the production of reliable evidence which is independent of the confession and which is also not tainted evidence like the evidence of an accomplice or the evidence of a co-accused, establishes the truth of certain parts of the account given in the confession and those parts are so integrally connected with other parts of the accused's confession, that a prudent judge of facts would think it reasonable to believe, in view of the established truth of those parts, that what the accused has stated in the confession as regards his own participation in the crime is also true, that is sufficient corroboration. More than this is not needed, less than this is ordinarily confession.[2]

Onus of proving the voluntary character of a retracted confession.—It has been pointed out above the onus of proving that a confession is irrelevant by reason of its not being voluntary is on the accused person. The mere fact that a confession has been retracted does not necessarily show that the confession was the result of some improper inducement, threat or promise.[3] But Courts have laid it down as a rule of prudence, that a retracted confession should not, by itself, be made the basis of conviction and that the Court should insist upon some independent evidence in corroboration of the confession.[4] This rule of practice and prudence, therefore, casts on the prosecutor the onus to dispel all doubts as to the truth of a retracted confession, and achieves very much the same result as the rule requiring proof of the voluntary character of a confession inasmuch as, though the decisions require evidence of the truth of the confession and not of its voluntary character, the voluntariness of the confession may reasonably, though not necessarily, be inferred where the truth of the confession is established.[5] Conversely, where the confession is found to be voluntary, its truth may be inferred from its voluntariness.[6] The question of the voluntariness of a confession and that of its truth, though two distinct questions, are so mixed up together, when the Court has to decide whether it should act upon a confession or not, that it is impossible to keep the one separate from the other.[7] Since the Court requires some corroborative evidence of the confession to establish its truth, its truth when established, leads to the inference that it is voluntary. Therefore, it may be stated to be the rule that where a confession is retracted the duty of proving its truth and consequently its voluntariness is on the prosecution. Where a confession is retracted, it is the duty of a Court that is called to

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1. *Pyare Lal Bhargava* v. *State of Rajasthan*, 1962 (2) Cr LJ 178.
2. *Nand Kumar and others* v. *State of Rajasthan*, (1963) (2) Cr LJ 702 ; (1963) (2) SCJ 890 : (1963) (2) SCJ 422.
3. *Ibrahim* v. *E.*, 1937 L 208 ; 168 IC 745 : 38 Cr LJ 583 : *Pharho* v. *E.*, 141 IC 392 : 1932 S 201 : 34 Cr LJ 147 ; *Mohar Singh* v. *E.*, 96 IC 647 : 27 Cr LJ 983 ; *Partap Singh* v. *E*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *E* v. *Dewan Kahar*, 72 IC 961 : 1923 P 13 : 24 Cr LJ 497 ; *Sheo Prasad Koeri* v. *E.*, 52 IC 50 : 20 Cr LJ 562 ; *E* v. *Kabilli Katoni*, 47 IC 811 : 19 Cr LJ 959 ; *Q.E* v. *Basuvanta*, 25 B 168.
4. *See* note under the heading "admissibility and evidential value of a retracted confession".
5. *E.* v. *Dewan Kahar*, 72 IC 961 : 1923 P 13 ; 24 Cr LJ 497.
6. *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr LJ 485.
7. *Ibid.*

act upon it, especially in a case of murder, to inquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot be true.[1]

Confessions must be taken as a whole, though they need not be believed or disbelieved as a whole where there is other evidence.—See notes to Section 17 under this heading.

Sections 24 and 25—Ban under these sections compared.—The ban which is partial under Section 24 and complete under Section 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective, the person need not have been "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding.[2]

Section 24 to 27 and Section 162 of the Criminal Procedure Code.—In the case of Deoman Upadhaya the Supreme Court held that : On an analysis of Sections 24 to 27 of the Indian Evidence Act, and Section 162 of the Code of Criminal Procedure, the following material propositions emerge ;

(a) Whether a person in custody or outside, a confession made by him to a police officer of the making of which is procured by inducement, threat or promise, having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(b) A confession made by a person whilst he is in custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of a Magistrate.

(c) That part of the information given by a person whilst in police custody, whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(d) A statement, whether it amounts to a confession or not, made by a person when he is not in custody, to another person, such latter person not being a police officer may be proved if it is otherwise relevant.

(e) A statement made by a person to a Police Officer in the course of an investigation of an offence under Chapter 14 of the Criminal Procedure Code cannot except to the extent permitted by Section 27 of the Indian Evidence Act, be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when the statement was made in which he is concerned as a person accused of an offence.[3]

Scope of Sections 24 to 30—Law relating to confessions.—The law relating to confessions is to be found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admission". Confession is a species of admission, and is dealt with in Section 24 to 30. A confession or an admission is

1. *E.* v. *Durgaya*, 3 Bom. LR 441.
2. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : (1960) (2) SCA 371.
3. *ibid.*

evidence against the maker of it, unless its admissibility is excluded by some provision of law. A confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a Police Officer is absolutely protected under Section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a Police Officer is protected by Section 26 unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a Police Officer or made by him while he is in the custody of Police Officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.[1]

No conflict of Section 24 with Section 80.— Having regard to the wording of Section 24 and also to the presumption under Section 80, the true view is that a confession duly recorded by a magistrate with the proper certificate appended to it will be admitted in evidence subject to the provisions and restrictions contained in Section 24 that under the latter sections well grounded conjecture reasonably based upon circumstances disclosed in the evidence, is sufficient to exclude the confession, because it would be idle to expect the accused to prove the inducement threat or promise, for in most cases such proof cannot be available.[2]

Grant of copy of confession.— Statements recorded under Section 164 Cr.P.Code are public documents and the court is bound to issue copies thereof.[3]

Function and duty of court under Section 24.— In scrutinising a case from the point of view of Section 24, the court will have to perform a threefold function: (1) It will have as a court to determine the sufficiency of the inducement, threat or promise as affording certain grounds; (2) it will have to clothe itself with mentality of the accused to see whether the ground would appear to the accused reasonable for a supposition that he would gain any advantage or avoid any evil; (3) it will have to judge as a court if the confession appears to have been caused in consequence of the inducement, threat or promise. The use of these vague expressions has been deliberately made with the object of securing absolute fairness in the matter of admitting confessions in judicial proceedings.[4]

25. Confession to police officer not to be proved.— No confession made to a Police Officer,[5] shall be proved as against a person accused of any offence.

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1. *Aghnoo Nagesia* v. *State of Bihar*, 1966 Cr LJ 100 : (1966)(1) SCJ 193 : (1966)(1) SCR 134.
2. *R.* v. *Panchkari*, 29 CWN 300 : 52 C 67.
3. *Bashiruddin* v. *R.A.*, 1932 All. 327 : 139 IC 330.
4. *R.* v. *Panchkari*, 29 CWN 300 : 52 C 67.
5. As to statements made to a police officer investigating a case, *see* the Code of Criminal Procedure, S. 162.

COMMENTARY

Reason of the rule.— In England a confession does not become inadmissible by reason of the mere fact that it is made to a Police Officer.[1] The rule embodied in the present section was enacted in view of the special circumstances obtained in this country. It is a notorious fact that confessions in this country are obtained by the police by deceit and torture.[2] The object of the Legislature in enacting the present section was to put a stop to the extortion of confessions by the police by malpractices.[3] The reason of rule is partly that the evidence of a Police Officer is untrustworthy to prove a confession, and partly that the police should not be encouraged to extort confessions in the hope of gaining credit by securing convictions.[4] It is, however, questionable whether the Legislature has succeeded in this object, as even now the Police Officer in this country works down from, and not up to, the confession, in the hope that the confession might lead to the recovery of some property or articles connected with the offence, or the discovery of other associates in the crime.[5]

Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of source of the evidence, prohibited them from being received in evidence. It is manifest that the class of persons who needed protection, most were those in the custody of the police and persons not in the custody of police did not need the same degree of protection.[6]

Confessions made to Police Officers.— Statements made by an accused person in the course of investigation are excluded by Section 162 of the Code of Criminal Procedure. This section covers a confession made to a Police Officer before any investigation has begun or otherwise not in the course of an investigation.[7] The criterion for excluding the confession under this section is the answer to the question, to whom was the confession made? If the answer is that it was made to a Police Officer, the confession is inadmissible;[8] and cannot be proved either by the evidence of the Police Officer[9] or by any other evidence, as the medium by which it is sought to prove an inadmissible confession does not alter its inadmissibility.[10] The rule enacted in Section 25 should be given the fullest effect and a confession made to a Police Officer must be ruled out of evidence,[11] even if it was made in the immediate presence of a Magistrate, as the terms of Section 25 are not qualified or controlled by Section 26.[12] If a confession is made to a Police Officer, it is inadmissible in evidence and the mere fact that the accused subsequently says before a Magistrate "I told the Police Officer so and so" (giving the

1. See Phipson, Ev., 7th Ed., 258.
2. See *Q.E.* v. *Bepin Behari Dev*, 2 CWN 71, 74 ; *Jogijiban Ghose* v. *E.*, 2 IC 681 ; 10 Cr.LJ 125 ; 13 CWN 861 ; *Q.E.* v. *Babu Lal*, 6 A 509, 523 (FB) but see 6 A 550, 551.
3. *Q.E.* v. *Babu Lal*, 6 A 509, 528 (FB) ; Steph. Intr. 165.
4. *Q.E.* v. *Babu Lal*, 6 A 509, 528 (FB) ; 6 CWN cexi.
5. See *Q.E.* v. *Babu Lal*, 6 A 509, 542-3 (FB), per Straight, C.J.
6. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : (1960)(2) SCA 371.
7. *Narayana Swami* v. *E.*, 1939 PC 47.
8. *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr.LJ 1478 ; *Q.E.* v. *Babu Lal*, 6 A 509 (FB).
9. *Paimullah* v. *E.*, 13 IC 783 : 13 Cr.LJ 127 ; See *E.* v. *Radhey Halwai*, 7 CWN 220.
10. *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr.LJ 1478.
11. *Q.* v. *Hurribole Chunder Ghose*, 1 C 207.
12. *Gajrani* v. *E.*, 114 IC 357 : 1933 A 394 : 34 Cr.LJ 754 ; *Q* v. *Hurribole Chunder Ghose*, 1 C 207, 215-16 ; *Q.* v. *Domun Kahar, etc.*, 12 WR 82 Cr.

conversation that took place) does not render the statement inadmissible.[1] The conversation will, however, be provable if it is made to a Magistrate or to some one other than a Police Officer in the immediate presence of a Magistrate,[2] even though it may be a mere repetition of what he stated to the police earlier. A confession made to another person deputed by a Police Officer to take the confession and when the Police Officer is in such proximity as to make his presence likely to affect the mind of the confessing person is, in substance a confession to a Police Officer and therefore, inadmissible.[3] But if a confession is made to a person other than a Police Officer and without its having been influenced by a Police Officer, the confession will be admissible even though it was overheard by a Police Officer.[4] Where an accused person makes a statement to another person in presence of the police, the question whether that statement was made to the other person or to the police is a question of fact and not of law.[5]

A person accused of any offence.— Offence is defined in Section 3(38) General Clauses Act, 1897. The phrase "accused of any offence" also occurs in Article 20(3) of the Constitution and there it has been held to mean a person against whom a formal accusation relating to the commission of an offence has been levelled (*e.g.*, an information to the police) which in the normal course may result in prosecution.[6]

The expressions "accused person" in Section 24 and "a person accused of an offence" in Section 25 have the same connotation and describe the person against whom evidence is sought to be led in a criminal proceeding. No formal accusation is predicted. The words "accused of any offence" in Section 27 are also similarly descriptive.[7]

A person making a confession is held to be an accused even though he was not an accused person at the time when he made it. It is not necessary that he should have been in police custody.[8]

Confessor need not have been "accused" of the offence at the time the confession was made.— A confession made to a Police Officer is absolutely inadmissible in evidence without any limitation or qualification. It is not necessary that, at the time the incriminating statement was made, the maker should have been an accused person. The statement will be inadmissible if the maker subsequently became an accused person. The test is the position of the person when it is proposed to prove the confession, not his position at the time when he is alleged to have made it.[9] The crime confessed need not have been under investigation at the time the confession was made. If in the course of investigation of an offence, a confession relating to another offence is made to the investigating officer, the confession relating to another offence is made to the investi-

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1. *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr.LJ 1478.
2. Section 26.
3. *E.* v. *Hari Piari*, 49 A 57 : 97 IC 44 : 1926 A 737 : 27 Cr.LJ 1068.
4. *Imam-ud-din* v. *E.*, 151 IC 894 : 1934 L 75 : 35 Cr.LJ 1432 ; *E.* v. *Shankar*, 149 IC 69 : 1934 O 222 : 35 Cr.LJ 894 ; *Ghunnai* v. *E.*, 147 IC 630 : 1934 A 132 : 35 Cr.LJ 448 ; *Q.* v. *Sageena, etc.* ; 7 WR 56 Cr. ; *Maharani* v. *E.*, 1948 A 7 : 1947 AIJ 265 : 48 Cr.LJ 939.
5. *Abdul Kadir* v. *E.*, 1946 C 452.
6. *Sharma* v. *Satish*, A 1954 SC 300 : 1954 Cr.LJ 865 : 1954 SCR 1077 ; *Balkishan* v. *State of Maharashtra*, 1981 SC 379 (Para 66, 68, 70).
7. *State of U.P.* v. *Deoman Upadhyaya*, 1961(1) SCR 14 : 1960 Cr LJ 1504.
8. *Devi Ram* v. *The State*, ILR (1961) 1 Punj. 33.
9. *Kartar Singh* v. *State*, 1952 Pepsu 98 : 1952 Cr LJ 1090 ; *Shewakram* v. *E.*, 1939 S 130 : 182 IC 464 ; *Rudrappa* v. *Govt. of Mysore*, 11 Mys. LJ 438 ; contra *Ram Lal* v. *E.*, 1942 O 246.

gating officer, the confession will be inadmissible.[1] The section does not limit its applicability only to confession of offences with which the accused is charged. Thus a statement to a police officer which, if true, would only establish against the confessor the offence of culpable homicide is inadmissible if the confessor is tried for murder.[2] See notes to Section 24 under the heading "condition (ii) of inadmissibility: confessor must be an accused person."

Confession: in this section does not mean confession only of the crime under investigation — The prohibition in Section 25 is general, confession in Section 25 is not limited only to confessions of offences with which the accused is charged. Thus where the accused is charged with murder, a confession to the police of a lessor offence (culpable homicide not amounting to murder) is also inadmissible.[3]

Confession contained in a recovery list — A confession contained in a recovery list made by the police under Section 103, Criminal Procedure Code, is inadmissible.[4]

The *panchanama* prepared was signed not only by the panchas but purported to have been signed also by the accused persons. This document was a record which was a complete confession of the crime from beginning to the end, by all the accused persons. This was highly irregular as the provisions of the Evidence Act and of the Code of Criminal Procedure had not been observed.[5]

Confession contained in F.I.R. — A confessional statement contained in F.I.R. is not admissible,[6] in evidence, except to the extent permissible under Section 27.[7]

Confession in first information is inadmissible, but admission is not — Where the accused himself gives the first information report, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8. If the information is non confessional, it is admissible against him as an admission under Section 21. But a confessional F.I.R. by the accused to the police cannot be used against him in view of Section 25. The separability test is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report no part of it could be rendered in evidence.[8]

If a F.I.R. is not a confession but contains admissions by accused it is admissible under Section 21.[9] If the F.I.R. made by an accused contains facts relating to motive, preparation and opportunity to commit the crime, with which he is charged, it is hit by this section[10] If the F.I.R. lodged by the accused is confession, it is inadmissible.[11]

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1 In re Kamakshi Naidu, 1943 M 89.
2 *Ali Gohar* v. *E*, 1941 S 134: 196 IC 61: ILR 1941 K 292: 42 Cr LJ 805.
3 *Ali Gohar* v. *E*, 1941 S. 134: 196 IC 61: ILR 1941 K 292: 42 Cr LJ 805.
4 *Baloch Pirwali* v. *E*, 144 IC 772: 1933 S 220: 34 Cr LJ 848; *Mahfuz Ali* v. *State*, 1953 A 110: 1953 Cr LJ 340: 1953 ALJ 193; *Gunda* v. *State*, 1954 A 127.
5 *Narayana Rao* v. *The State of Andhra Pradesh*, 1958 SCR 283: 1957 Cr LJ 1320.
6 *Kartar Singh* v. *State*, 1952 Pepsu 98: 1952 Cr LJ 1090; but see *Ranjit Singh* v. *State*, 1952 HP 81; See also *Shewakram* v. *E*, 1939 S 130; *Harnam Kisha* v. *E*, 1935 B 26; *Godha Waryam* v. *E*, 1933 L 899; *Nur Muhammad* v. *E*, 90 IC 148; *Manjoo* v. *E*, 1923 N 251; *Kaku* v. *E*, 22 Cr LJ 694; *Sikandar* v. *E*, 20 Cr LJ 83.
7 *Bheru Singh* v. *State of Rajasthan*, (1994) 2 SCC 467: (1994) 31 ACC 240 See also *Murli* v. *State of Rajasthan*, 1995 (1) SCC 39, para 5.
8 *Aghnoo* v. *State of Bihar*, 1956 Cr LJ 216: 1966 (1) SCJ 193: 1966(1) SCR 134.
9 *State* v. *Shiv*, AIR 1962 Raj 3.
10 *Ram Sajiwan* v. *State of U.P.*, 1964 ALJ 285.

Accused prosecuted on the first information report made by him.— It is not confession but only admission which may be proved against him. The report is not a confession of the appellant. It is not a statement made to a Police Officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the court. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.[1]

Police Officer.—The expression "Police Officer" in Section 25 of the Evidence Act is not used in the technical and restricted sense in which it is used in Section 1 of the Police Act,[2] but is used in a popular and more comprehensive signification.[3] It is not necessary that the Police Officer should be the investigating officer,[4] nor need the crime confessed be under investigation at the time;[5] in fact it is not necessary that the confession should have been made in the course of investigation.[6] Officers from the Commissioner of Police in a Presidency town and the Superintendent of Police in a district down to a constable are "Police Officer" within the meaning of Section 25. A Police Officer does not cease to be a Police Officer for purposes of Section 25, if he is also invested with magisterial powers.[7] The expression is not limited to Officers of the regular police,[8] but includes members of the special police and members of the Criminal Investigation Department. Police Officers of Indian States[9] and foreign countries[10] and members of the Frontier Constabulary[11] are within the section. A police *patel* is a Police Officer,[12] and so is a police *chowkidar*[13] and a village *chowkidar*,[14] but not a

1. *Faddi* v. *State of Madhya Pradesh*, (1964)(2) Cr.LJ 744.
2. *E.* v. *Akia*, 101 IC 599 : 1927 N 222 : 28 Cr.LJ 471.
3. *Srikant Dass* v. *E.*, 150 IC 991 : 1934 P 256 : 35 Cr.LJ 1217 ; *Radha Kishun Marwari* v. *E.*, 12 P 46 : 140 IC 283 : 1932 P 293 ; 34 Cr.LJ 1 ; *E.* v. *Akia*, 101 IC 599 : 1927 N 222 : 28 Cr.LJ 471 ; *Salam* v. *E.*, 43 IC 111 : 19 Cr.LJ 79 ; *Q.E. Salemuddin Sheik*, 26 C 569 : 3 CWN 393 ; *Q.E.* v. *Nagla Kala*, 22 B 235 ; *Q.E.* v. *Bhima*, 17 B 485 ; *Q.* v. *Hurribole Chunder Ghose*, 1 C 207 ; In the matter of *Hiran Miya*, 1 CLR 21.
4. *E.* v. *Mallangowda Parwatgowda*, 42 B 1 : 42 IC 597 : 18 Cr.LJ 981 ; In the matter of *Hiran Miya*, 1 CLR 21.
5. *Seshapani Chetty* v. *E.*, ILR 1937 M 358 : 1937 M 209 : 166 IC 917 : 38 Cr.LJ 323.
6. *Hussaina* v. *E.*, 1936 L 380 : 163 IC 80 : 37 Cr.LJ 740.
7. *Jas Bahadur Thapa* v. *E.*, 8 R 52 : 125 IC 337 : 1930 R 227 : 31 Cr.LJ 823 ; *Q.* v. *Hurribole Chunder Ghose*, 1 C 207.
8. *Q.E. Salemuddin Sheik*, 26 C 569 : 3 CWN 393.
9. See *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr.LJ 1478 ; *Salam* v. *E.*, 43 IC 111 : 19 Cr.LJ 79 ; *Q.E.* v. *Nagla Kala*, 22 B 235.
10. *Mhabli Rama Sail* v. *E.*, 87 IC 520 : 1924 B 480 : 26 Cr.LJ 984.
11. *Khwaja Hassan* v. *E.*, 71 IC 360 : 25 Cr.LJ 136 ; *Q.E.* v. *Nagla Kala*, 22 B 235.
12. *Mechi* v. *E.*, 88 IC 32 : 1925 N 340 : 26 Cr.LJ 1038 ; *E.* v. *Rama Dhan Power*, 31 IC 340 : 16 Cr.LJ 740 ; *Q.E.* v. *Bhima*, 17 B 485 ; See *E.* v. *Rama Bhirapa*, 3 B 12 ; but see *E.* v. *Akia*, 101 IC 599 : 1927 N 222 : 28 Cr.LJ 471.
13. *Birja* v. *E.*, 1941 O 563 ; *Deokinandan* v. *E.*, 1936 A 753 : 165 IC 701 (FB) ; *E.* v. *Shankar*, 149 IC 69 : 1934 O 222 : 35 Cr.LJ 894 ; *Jangi* v. *E.*, 148 IC 475 : 1934 O 19 : 35 Cr.LJ 664 ; *E.* v. *Pacham*, 8 Luck. 410 : 143 IC 846 : 1933 O 192 : 34 Cr.LJ 653 ; *Q.E. Salemuddin Sheik*, 26 C 569 : 3 CWN 393 ; but see *Khuda Baksh* v. *E.*, 42 PR 1917 Cr. : 13 IC 84 : 19 Cr.LJ 52.
14. *E.* v. *Jagia*, 1938 PWN 293 : 1938 P 308 : 174 IC 524 : 17 P 369 : 39 Cr.LJ 428 : 19 PLT 268 ; *Panchu Sheikh* v. *E.*, 1943 C 612 ; *Punja Gualin* v. *E.*, 1947 P 146 : 25 P 356 : 229 IC 592 : 48 Cr.LJ 412 : 27 PLT 507.

kotwar or watchman in the Central Provinces,[1] or a headman in Burma,[2] or a *mukhia* in the United Provinces,[3] or a *panchayat*[4] or a village Magistrate.[5] Political *moharrir*, Oghi, is a Police Officer.[6] It has been held in some cases that an excise officer is not a Police Officer within the meaning of Section 25,[7] but the Bombay,[8] the Calcutta,[9] the Madras[10] and Punjab[11] High Courts consider that in excise cases an excise officer, having been invested with powers to search, arrest and investigate, should be treated as a Police Officer. The same is the view of the Nagpur[12] and Sindh Courts,[13] also. However it has been held by the Madras High Court that a prohibition officer or an officer in charge of a prohibition station is not a Police Officer.[14] A Ward Rationing Officer is a Police Officer.[15] A Sub-Divisional Magistrate is not a Police Officer.[16] An officer empowered to investigate into offences under the Hoarding and Profiteering Ordinance by the Provisional Government in exercise of the powers conferred by Section 12 (3) of that Ordinance is a Police Officer.[17] but a Food Grain Inspector is not a Police Officer,[18] nor is an Assistant Inspector of Custom.[19]

Is Customs Officer a Police Officer.—Confession before a Customs Officer cannot be treated as statement before a Police Officer. If a statement which is recorded by a Custom Officer in the exercise of his powers under this section be an admission of guilt it will be too much to say that statement is a confession to a Police Officer, as a Police Officer never acts judicially and no proceeding before police is deemed to be a judicial proceeding for the purposes of Sections 198 and 228, Indian Penal Code, or for any

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1. *Sukhwaria Chamarin* v. *E.*, 76 IC 291 : 1924 N 29 : 25 Cr.LJ 147 ; *Bhagwatdin* v. *E* , 57 IC 88 : 21 Cr.LJ 568.
2. *Nga Myin* v. *E.*, 2 R 31 : 81 IC 540 : 1924 R 245 : 25 Cr.LJ 924 (FB).
3. *Ram Charan* v. *E.*, 1935 A 549 : 155 IC 119 : 36 Cr.LJ 636.
4. *E.* v. *Jasha Bewa*, 11 CWN 904.
5. *Q.E.* v. *Sama Papi*, 7 M 287 ; See also *Maniara Kuppathan*, 105 IC 667 : 1927 M 974 : 28 Cr.LJ 955.
6. *Abdul Hamid* v. *E.*, 144 IC 160 : 1933 Pesh. 38 : 34 Cr.LJ 804.
7. *Ram Chand* v. *E.*, 1945 L 10 ; *Public Prosecutor* v. *Marimuthu Goundan*, 1938 MWN 95 : 1938-1 MLJ 238 : 1938 M 460 : 173 IC 448 : 39 Cr.LJ 338 ; *Radha Kishun Marwari* v. *E.*, 12 P 46 : 140 IC 283 : 1932 P 293 ; 34 Cr.LJ 1 ; *Matilall Kalwar* v. *E.*, 140 IC 257 : 1932 C 122 : 34 Cr.LJ 21 ; *Tura Sardar* v. *E.*, 129 IC 101 : 1930 C 710 : 32 Cr.LJ 231 : 52 CLJ 177 ; *Maung San Myin* v. *E.*, 54 C 601 : 102 IC 547 : 1927 C 527 : 28 Cr.LJ 579 ; *E.* v. *Budhu*, 99 IC 594 : 1927 S 112 : 28 Cr.LJ 162 ; *Tillibai* v. *E.*, 82 IC 151 : 1925 S 70 : 25 Cr.LJ 1223 ; *Ah Foong Chinaman* v. *E.*, 46 C 411 : 48 IC 504 : 20 Cr.LJ 24 ; *Rokun Ali* v. *E.*, 45 IC 284 : 19 Cr.LJ 524 ; *E.* v. *Wazir Singh*, 3 PR 1918 Cr. : 14 IC 588 : 19 Cr.LJ 364.
8. *Nanoo Sheikh Ahmad* v. *E.*, 51 B 78 : 99 IC 330 : 1927 B 4 : 28 Cr.LJ 122(FB) ; *E.* v. *Dinshaw Cursetji Driver*, 117 IC 331 : 1929 B 70 : 30 Cr.LJ 783.
9. *Amin Shariff* v. *E.*, 61 C 607 : 150 IC 561 : 1933 C 580 : 35 Cr.LJ 1071 ; *Keratali* v. *E.*, 61 C 967 : 150 IC 980 : 1934 C 616 : 35 Cr.LJ 1178 ; *Ibrahim Ahmad* v. *E.*, 131 IC 113 : 1931 C 350 : 32 Cr.LJ 640.
10. *Public Prosecutor* v. *C. Paramasivam*, 1953 M 917 : 153 Cr.LJ 1693 : 1953, 2 MLJ 189.
11. *Om Prakash* v. *State*, 1951 Punj. 387 : 53 PLR 157.
12. *Ram Karan Singh* v. *E.*, 154 IC 341 : 1935 N 13 : 36 Cr.LJ 511 ; *Rajmal Oswal* v. *E.*, 1950 IC 1144 : 1934 N 136 : 35 Cr.LJ 1233.
13. *Bachoo Kandero* v. *E.*, 1938 S 1 : 172 IC 968 : 39 Cr.LJ 239 : 32 SLR 185.
14. In re *K. Venkata Reddi*, 1948 M 116 : ILR 1948 M 574 : 49 Cr.LJ 100 ; *P.T. Vadivel Gounder* In re, 1952 M 299 : 1952 MWN Cr.5 : 1952 Cr.LJ 640 ; *Vasam Setti Appa Rao* In re, 1953 M 1004 : 1952 MWN 364 : 152, 1 MLJ 658 ; *Public Prosecutor* v. *C. Paramasivam*, 1953 M 917 : 153 Cr.LJ 1693 : 1953, 2 MLJ 189.
15. *Om Prakash* v. *State*, 1951 Punj. 387 : 53 PLR 157 : 6 DLR (Simla) 77 : 52 Cr.LJ 661.
16. *Srikant Das* v. *E.*, 150 IC 991 : 1934 P 256 : 35 Cr.LJ 1217.
17. In re *Someshwar H. Shelat*, 1946 (1) MLJ 368 : 1946 M 430 : 226 IC 269.
18. *Abu* v. *E.*, 1948 O 81 : 49 Cr. LJ 43 : 22 Luck. 492.
19. In re *Mayilvahanam*, 1947 M 308 : 1946, 2 MLJ 480 : 1946 MWN 766 : 59 MLW 751 : 229 IC 236 : 48 Cr. LJ 326 : ILR 1947 M 788.

purpose. The duties of the Customs Officers are very much different from those of the Police Officers and their possessing certain powers, which may have similarity with those of Police Officers, for the purpose of detecting the smuggling of goods and the persons responsible for it, would not make them Police officers.[1]

The Customs Officers are not Police Officers and statements made to them are not inadmissible under Section 25. Section 24 would however, apply, for customs authorities must be taken to be persons in authority and the statements would be inadmissible in a criminal trial if it is proved that they were caused by inducement, threat or promise.[2]

Even though under the new Customs Act of 1962 a Customs Officer has been invested with many powers which were not to be found in the provisions of the old Sea Customs Act of 1878, he cannot be regarded as a "Police Officer" within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Evidence Act.[3]

If it is true that a Customs Officer is invested with the powers of an officer in charge of a police station for the purpose of releasing any person on bail or otherwise. The expression "or otherwise does not confer upon him the power to lodge a report before a Magistrate under Section 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate do not make him an officer in charge of a police station. Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue. Therefore, a Customs Officer is under the Customs Act of 1962 not a Police Officer within the meaning of Section 25 and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25.[4]

The Customs Officer conducting enquiry is not a "Police Officer" within the meaning of Section 25 of Evidence Act. Statement made under Section 108 of Customs Act is not a statement made by a person accused of an offence.[5]

Test for being a Police officer–Whether Excise Inspector under Bihar and Orissa Excise Act (2 of 1915) is a Police Officer.–The words "Police Officer", to be found in Section 25 of the Evidence Act are not to be construed in a narrow way but have to be construed in a wide and popular sense. These words are however not to be construed in so wide a sense as to include persons on whom only some of the powers exercised by the Police are conferred.

What is pertinent to bear in mind for the purpose of determining as to who can be regarded as "Police Officer" for the purpose of this provision is not the totality of the

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1. *The State of Punjab* v. *Barkat Ram*, 1962(1) Cr. LJ 217 : 1962(3) SCR 333.
2. *Soni Vallabhdas Liladhar* v. *The Assistant Collector of Customs*, 1965 Cr. LJ 490 : (1965) 1 SCJ 208 : 66 BLR 282.
3. *Illias* v. *Collector of Customs, Madras*, (1969) 2 SCR 613 : 1970 Cr. LJ 998 ; *Ramesh Chandra* v. *State of W. Bengal*, 1970 SC 940 : 1970 Cr. LJ 863 ; *Harbansingh* v. *State of Maharashtra*, 1972 SC 1224 : 1972 Cr. LJ 751 : *Balkrishna* v. *State of W. Bengal*, 1974 SC 120 : 1974 Cr. LJ 280 ; *M.G. Venugopalan* v. *E.V. Govindan*, 1976 Cr. LJ 165 (Para 5).
4. Ramesh Chandra Mehta v. *The State of West Bengal*, AIR 1970 SC 940.
5. *Percy Rustomji Baste* v. *State of Maharashtra*, 1971 Cr. LJ 933.

powers which an officer enjoys but the kind of powers which the law enables him to exercise. The test for determining whether such a person is a "Police Officer" for the purpose of Section 25 of the Evidence Act would be whether the powers of a Police Officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of police station, establish a direct or substantial relationship with the prohibition enacted by Section 25, that is, the recording of a confession. In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or a delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question as to what other powers he enjoys.

Therefore an Excise Inspector under Bihar and Orissa Excise Act (2 of 1915) is a Police officer and confession recorded by him is inadmissible in evidence.[1]

Excise Officer is not a Police officer.—An officer of the Central Excise Department is not a Police Officer within the meaning of Section 25 of the Indian Evidence Act, 1872, for all purposes, though he may be such a police officer so far as he conducts an investigation in respect of offences under the Central Excise and Salt Act 1944. Therefore, an Excise Officer while discharging his duties under the Sea Customs Act, 1878 is not a Police Officer within Section 25 of the Indian Evidence Act.[2]

All that Section 21 of the Central Excise and Salt Act, (1944) provides, that is for the purpose of this inquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station and the area under his charge shall be deemed to be a police station. In any case he does not become a Police officer within the meaning of this section.[3]

The expression "police officer" is not confined only to such officers who are appointed under the Police Act, but includes also other officers who exercise the same powers as that of a Police officer of a police station, in respect of certain offences.[4]

Members of the Railway Protection Force are not Police Officers.—Members of the Railway Protection Force constituted under the Railway Protection Force Act, 1957, are not Police officers, either for the purpose of Section 25 of the Indian Evidence Act, 1872, or for the purpose of Section 162 of the Criminal Procedure Code.[5]

Confessional letter addressed to a Police Officer is admissible.—No doubt, the letter contains a confession and is also addressed to a Police officer. That cannot make it confession made to a Police officer which is within the bar created by Section 25 of the Evidence Act. The Police Officer was not nearby when the letter was written or knew that it was being written. In such circumstances quite obviously the letter would not have been a confession to a Police officer if the words "Sub-Inspection" had not been written. Nor do we think it can become one in similar circumstances only because the words "Sub-inspector" had been written there. It would still have not been a confession made to a Police Officer for the simple reason that it was not so made from any point of view.[6]

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1. *Raja Ram Jaiswal* v. *State of Bihar*, (1964) 2 SCR 752 : (1964) 1 Cr. LJ 705.
2. *Laxman Padma Bhagat* v. *The State*, 67 Bom. LR 317.
3. *Baduku Joti* v. *State of Mysore*, (1966) (2) SCA 77.
4. *Laxman* v. *State*, ILR 1965 Bom. 648, 67 Bom. LR 317.
5. *Hari Rachu Kanadi* v. *The State of Maharashtra*, 73 Bom. LR 891 ; *Bolkishan* v. *State of Maharashtra*, 1981 SC 379 paras 39, 54, 58 ; *State of U.P.* v. *Durga Prasad*, 1974 SC 2136.
6. *Sitaram* v. *Uttar Pradesh*, 1967 (1) SCJ 809.

Sub-Inspector of Police on deputation does not cease to be a Police Officer.—A Sub-Inspector of Police even while on deputation as Security Inspector in the Heavy Engineering Corporation does not cease to be a Police Officer in as much as he does not cease to be an enrolled Police Officer as contemplated by the Police Act.[1]

Confession made to a Police officer is not admissible against a co-accused, but may be admissible for, or to contradict the evidence of the confessor when examined as a witness.—Since a confession made to a Police Officer is inadmissible against its maker, *a fortiori*, it will be inadmissible against others who are being jointly tried with the confessor.[2] A statement which falls short of a confession is admissible against its maker, but it is not admissible against a co-accused as Section 30 is not applicable to such a statement.[3] Section 25 does not, however, prevent one of the accused persons from proving a confession made to the police by a co-accused admitting that the latter alone committed the offence ; but, in such a case, it is the duty of the Judge to instruct the jury that such confession is not to be received or treated as evidence against the person making it, but simply as evidence to be considered on behalf of other accused. Unless the law were so, the accused person who was on his trial with the confessing party might be considerably prejudiced by the exclusion of that evidence.[4] Section 25 makes a confession to a Police Officer inadmissible against the accused. It may, therefore, be used *in favour* of the confessing accused in certain circumstances,[5] or in favour of a co-accused.[6] But where the statement does not amount to a confession but is only an admission, it is admissible only against its maker and not against a co-accused.[7] Where a confessor to the police is examined as a witness on behalf of the other accomplices in independent proceedings, the confession may be used by the prosecution under Section 155 of the Evidence Act to impeach the credit of the confessor as a defence witness.[8] From the point of view of Section 25, it is immaterial whether the confessor was or was not in custody or accused at the time the confession was made,[9] or whether the confession was made to the investigating Police Officer or some other Police Officer.[10] Therefore, confessions and confessional statements have been held to be inadmissible even if they were made before arrest.[11] thus, incriminating statements made by way of first information reports have, in several cases, been excluded from evidence.[12]

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1. *Ram Lakhan Pandey* v *State of Bihar*, 1969 Pat. LJR 646.
2. *Kala Singh* v. *E.*, 146 IC 27 : 1933 L 161 :34 Cr LJ 1175 ; *E.* v. *Hari Singh Ganpat Singh*, 8 IC 622 . 12 Bom. LR 899 : 8 IC 622 : 11 Cr. LJ 1690 ; *Sankappa Rai* v. *E.* 31 M 127 : 3 MLT 270 ; see *O.E.* v. *Jadub Das*, 27 C 295 : 4 CWN 129.
3. *Shewkram* v. *E.*, 1939 S. 130 : 182 IC 464 ; *Hazir Ali* v. *E.*, 5 IC 315 : 11 CLJ 301 : 11 Cr. LJ 96 : 14 CWN 493.
4. *E.* v. *Pitamber Jina*, 2 B 61.
5. *See Gulab* v. *E.*, 75 IC 693 ; 1923 L 315 : 25 Cr. LJ 5 ; In re *Mottai Thevar*, 1951, 2 MLJ 605.
6. *E.* v. *Pitamber Jina*, 2 B 61 ; *See Keratali* v. *E.*, 61 C 967 : 150 IC 980 : 1934 C 616 : 35 Cr. LJ 1178.
7. *Hazir Ali* v. *E.*, 51 C 315 : 11 C LJ 301 : 11 Cr. LJ 96.
8. *Keratali* v. *E.*, 61 C 967 : 150 IC 980 : 1934 C 616 : 35 Cr. LJ 1178 ; but *see Nayeb Shahana* v. *E.*, 61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr. LJ 1479.
9. See *Q.E.* v. *Jadub Das*, 27 C 295 : 4 CWN 129.
10. *E.* v. *Mallangowda Parwatgowda*, 42 B 1 : 42 IC 597 : 18 Cr. LJ 931 : In the matter of Hiran Miya, 1 CLR 21.
11. *Q.E.* v. *Jadub Das*, 27 V 235 : 4 CWN 129.
12. *Shewakram* v. *E*, 1939 S 130 : 182 IC 464 ; *Harnam Kisha* v. *E.*, 59 B : 120 : 154 IC 621 : 1935 B 26 : 36 Cr. LJ 539 ; *Godha Waryam* v. *E.*, 146 IC 648 : 1933 L 899 : 35 Cr. LJ 143 *Nur Muhammad* v. *E.*, 90 IC 148 : 26 Cr. LJ 1492 ; *Manjoo* v. *E.*, 73 IC 266 : 1923 N 251 : 24 Cr. LJ 570 ; ***Kaku* v. *E.***, 63 IC 822 : 22

Extra judicial confession made to a private person in the presence of a police officer is inadmissible.[1]

Confessions made to police by deceased accomplices admissible against others.—See notes to Section 32 (3) and Section 30.

Purposes for which a confession to a Police Officer may be admissible.—A confession made to a Police Officers is not admissible against a person accused of any offence ; therefore, a confession to a Police Officer, though not receivable in evidence in a criminal trial, may be proved in civil proceedings as an admission.[2] Statements made to the police by accused persons as to the owernership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property, in an inquiry held by the Magistrate under Section 523, Cr.P. Code of 1882.[3] A confession made to a Police Officer, though not receivable against an accused person, may, in certain cases, be receivable in his favour,[4] or in favour of his co-accused.[5] The prohibition contained in Section 25 can be treated as applying only to confessions which are to be proved as against the accused, that is, in support of the prosecution case, and cannot apply to statements on which the accused himself wishes to rely in connection either with his conviction or his sentence.[6] The Judge may, in certain cases, himself refer to a confession contained in a police diary and may thus enable the accused to contradict the prosecution witnesses.[7] Section 25 of the Evidence Act does not render a confession made to a Police Officer inadmissible for all purposes. A confession may, therefore, be used to impeach the credit of the confessor if he is examined as a witness for another accused in separate proceedings.[8] There is nothing to prevent a Court from looking at a confession made to a Police Officer and comparing it with a subsequent confession made to a Magistrate, to find out whether it materially differs from the latter.[9] It is submitted, however, that though a confession to a Police Officer may be used to discredit a subsequent confession to a Magistrate, it cannot be used to corroborate the latter,[10] or to explain away a discrepancy in a subsequent confession to a Magistrate,[11] as it would mean using the confession against the

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Cr. LJ 694 : *Mohamada* v. *E.*, 1948 L 19 : 49 PLR 182 : 48 Cr. LJ 961 : *Harji* v. *E.*, 1918 L 69 : 45 IC 273 ; *Lal Khan* v *E.*, 1948 L 43 : 48 Cr. LJ 977 ; *Kartar Singh* v. *State* 1952, Pepsu 98 : 1952 Cr. LJ 1090 ; *Panna* v. *State*, 1950 Ajmer 75 ; *Sikandar* v. *E.*, 36 PR 1918 Cr. : 48 IC 883 : 20 Cr. LJ 83 ; *see* also *Moher Sheikh* v. *Q.E.* 21 C 392 ; for a case where part of the FIR made by the accused was held inadmissible, and the other part admissible, see Superintendent and Remembrancer of Legal Affairs, *Bengal* v. *Lalit Mohan Singha Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr. LJ 562.

1. *Bhulakiram Koiri* v. *State*, 1970 Cr. LJ 403.
2. *Bishen Das* v. *Ram Labhaya*, 106 PR 1915 : 32 IC 18.
3. *Q.E.* v. *Tribhovan Manekchand*, 9 B 131 ; *Ganpat* v. *Bani*, 56 IC62 ; *Pohlut* v. *E.*, 1943 L 312 ; *Mahanta Singh Natha Singh* v. *Het Ram Pakhar*, 1954 Punj. 27.
4. *Hasil* v. *E.*, ILR 1943 L 77 ; *Gulab* v. *B.*, 75 IC 693 : 1923 L 315 : 25 Cr. LJ 5; *In re* Mottai Thevar, 1951, 2 MLJ 605.
5. *E.* v. *Pitamber Jina*, 2 B 61.
6. *Hasil* v. *E.*, 1943 L 37 : 43 PLR 672.
7. *Karan Singh* v. *E.*,106 IC 442 : 1928 A 25 : 29 Cr LJ 26.
8. *Keratali* v. *E.*, 61 C 967 : 150 IC 980 : 1934 C 616 : 35 Cr. LJ 1178 ; but *see Nayeb Shahana* v. *E.*, 61 C 399 : 152 IC 44 : 1934 C 636 : 35 Cr. LJ 1479.
9. *Gulab* v. *E.*, 75 IC 693 : 1923 L 315 : 25 Cr. LJ 5.
10. *See Muthukumaraswami Pillai* v. *E.*, 35 M. 397 : 14 IC 896 : 13 Cr. LJ 352 (FB).
11. *Dip Singh* v. *E.*, 91 IC 894 : 1926 A 246 : 27 Cr. LJ 158.

accused. It has been observed by Stuart, C.J., that a confession or admission of guilt by an accused person is not wholly inadmissible under Section 25 and that it may received and applied so far as it proves merely corroborative circumstances and not an absolute confession of guilt,[1] but the correctness of these remarks is open to question. Of course, if the confession leads to the discovery of a fact, it becomes, subject to the provisions of Section 27, admissible in evidence to the limited extent specified in that section.

Ban is absolute.—The absolute ban imposed by this section is not qualified by Section 26. The section, except as provided by Section 27, absolutely prohibits a confession by an accused to a Police Officer.[2]

Sections 25 and 26.—Use of statements made to Police.—The accused made certain statements to the police. If the alleged statements are to be regarded as confessions, then they will be hit by Section 25, Evidence Act, for they were made to the Police officer who was there. If they are sought to be brought in under Section 26 as confessions made in the immediate presence of the Magistrate, then also they will not be admissible in evidence in that they were not recorded by the Magistrates in the manner prescribed by Section 164, Criminal Procedure Code.[3]

Confessions made to Police Officers are inadmissible but admissions may be admissible.—This section should be read with Section 162 of the Code of Criminal Procedure. Under the latter section, as now interpreted by the Privy Council in *Narayana Swami's Case*,[4] every statement, whether it amounts to a confession or not, made by an accused person to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure is inadmissible at any inquiry of trial of the offence which was under investigation when such statement was made. The admissibility of a statement made by an accused person to a Police Officer will be governed by this section, and not by Section 162 of the Code of Criminal Procedure, only where the statement was made before or after the investigation, or where the investigation in the course of which the statement was made was not under Chapter XIV of the Code, or the investigation being Chapter XIV was not in respect of the offence which is being inquired into or tried when the statement is sought to be given in evidence.[5] Such cases will be very rare indeed, but where any such case does occur, the admissibility of the statement will depend upon the question whether the statement amounts to a confession or is merely an admission falling short of a confession. If the statement in terms admits the offence or substantially all the facts which constitute the offence, the statement will be a confession and, therefore, inadmissible under the present section. However, incriminating the statement, if it does not satisfy this test, it will not be inadmissible under this section. Most of the cases in which merely incriminating statements, as distinguished from statements admitting substantially all the facts constituting the offence, were held inadmissible under the present section are now rendered obsolete by the Privy Council decision in *Narayana Swami's Case*.[6]

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1. *E.* v. *Pancham*, 4 A 198, 204.
2. *Magesia* v. *State*, (1965) (2) SCA 367.
3. *Zwinglee Ariel* v. *State of Madhya Pradesh*, 1954 Cr LJ 230.
4. *Narayana Swami* v. *E.*, 1939 PC 47.
5. *Ibid.*
6. For such cases ; see *In re Kodangi*, 135 IC 590 : 1932 M 24 : 33 Cr LJ 173 ; *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr LJ 1478 ; *Umer Duraz Munshi* v. *E.*, 86 IC 410 : 1925 S 237 : 26 Cr LJ 778 ; *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713 ; *Q.E.* v. *Javecharm*, 19 B

The Evidence Act draws a distinction between statements which amount to confessions and those which are admissions falling short of confessions and statements of the latter kind are admissible in evidence even if made to a Police Officer,[1] unless they are excluded by Section 162 of the Code of Criminal Procedure. Where a confession is contained in a first information report, the whole report need not be excluded and portions of the statement which have no connection with the actual narrative relating to the crime may be admitted.[2] A statement by person admitting that he was with the dacoits and saw one of the dacoits bury stolen property is not a confession of the dacoity and is admissible even if made to the police.[3]

A statement by the accused that he is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession is not a confession,[4] nor the statement that he acquired possession of an incriminating article in an innocent manner.[5] A statement that contains self-exculpatory matter cannot amount to a confession if the exculpatory statement is of some fact which is true would negative the offence alleged to be confessed.[6] Statements by an accused person in pointing out the places where the offence was committed by others, or where he concealed himself thereafter, and the houses to which he went for assistance, are not confessions but are statements made a part of his defence and, therefore, admissible.[7] A statement made by the accused, charged with the offence of murder or culpable homicide, that he was in the fight but that the deceased attempted to interfere with the seizure of trespassing cattle, is not a confession.[8] A mere admission of being present at the time when and the place where, an offence was committed does not amount to a confession.[9] For further discussion of this subject, see notes to Sections 17, and 24 and 26.

Pointing out places connected with the offence.—Evidence of pointing out of places connected with the commission of an offence, not involving evidence of any such confession as in *Nazir Ahmad's Case*,[10] is not evidence of a "confession," as defined by the Privy Council in *Narayana Swami's Case*,[11] and will, it is presumed, be

363 ; *E.* v. *Pandharinath*, 6 B 34 ; *Behari Lal* v. *E.*, 8 L 326 : 100 IC 707 : 1927 L 343 : 28 Cr LJ 323 ; *E.* v. *Sher Mahomed*, 46 B 961 : 75 IC 70 : 1923 B 65 : 24 Cr LJ 870.

1. *Gopaldas Shivalomal* v. *E.*, 1945 S 132 ; *Safdar Ali Shah* v. *E.*, 1941 L 82 ; *Muhammad Baksh* v. *E.*, 1941 S 129 ; *Misri* v. *E.*, 151 IC 437 : 1934 S 100 : 35 Cr LJ 1332 ; *Hussainibibi* v. *E.*, 93 IC 248 : 1926 S 151 : 27 Cr LJ 456 ; *Jalal* v. *E.*, 81 IC 347 : 1923 L 232 : 25 Cr LJ 811 ; *Superintendent & Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singh Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr LJ 562 : *Shua Din* v. *Crown*, 5 LLJ 128 ; *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713 ; *E.Mahomed Ebrahim*, 5 Bom LR 312 ; *Q.E.* v. *Meher Ali Mullik*, 15 C 582 ; *Q.E.* v. *Jagrup*, 7A 646 ; *E.* v. *Daber Pershad*, 6 C 530 ; *see also Rudrappa* v. *Government of Mysore*, 11 Mys LJ 438.
2. *Bharosa* v. *E.*, 1941 N 86 ; *Legal Remembrancer* v. *Lalit Mohan*, ILR 49 C 167 ; *see* also *Sofdar Ali Shah* v. *E.*, 1941 L 82. But see *Harnam Kisha* v. *E.*, ILR 59 B 120 : 1935 B 26 ; *Kartar Singh* v. *State*, 1952 Pepsu, 98 : 1952 Cr LJ 1090.
3. *Adhiklal Pathak* v. *E.*, 1942 P 156.
4. *Narayana Swami* v. *E.*, 1939 PC 47.
5. *E.* v. *Mahomed Ebrahim*, 5 Bom LR 812.
6. *Narayana Swami* v. *E.*, 1939 PC 47 ; *see* also *Hariomal* v. *E.*, 1939 S 185.
7. *E.* v. *Kangal Mali*, 41 C 601 : 26 IC 161 : 15 Cr LJ 713 ; *Nga Ba Kyaing* v. *E.*, 1936 R 131 : 162 IC 6 : 37 Cr LJ 631.
8. *Jalal* v. *E.*, 81 IC 347 : 1923 L 232 : 25 Cr LJ 811.
9. *Hazir Ali* v. *E.*, 5 IC 315 : 11 C LJ 301 : 11 Cr LJ 96.
10. *Nazir Ahmad* v. *E.*, 63 IA 372 : 17 L 629.
11. *Narayana Swami* v. *E.*, 1939 PC 47.

admissible if the places were not pointed out in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. A statement may be made by conduct and when so made is subject to the same rules as a verbal statement.[1] Therefore if the conduct of a person in pointing out places connected with the commission of an offence amounts to making a statement, and such statement is made in the course of an investigation under Chapter XIV of the Code, the statement will, if the other conditions of Section 162 of the Code are satisfied, be excluded by that section. But if in a particular case, and such a case will rarely occur, Section 162 of the Code does not apply, the evidence will not be inadmissible under the present section unless the evidence, as in *Nazir Ahmad's Case*,[2] in substance reproduces a "confession" as defined by the Privy Council in *Narayana Swami' Case*.[3]If the places were pointed out to a Magistrate, Section 162 of the Code will not apply, and the Privy Council decision in *Nazir Ahmad's Case*,[4] is not a direct authority for the exclusion of such evidence unless the evidence amounts to evidence of a confession. But it seems that, on the principle on which *Nazir Ahmad's Case* was decided, the evidence will, in all probability, be held to be inadmissible. The Allahabad High Court has held that the mere act of pointing out does not amount a confession or a statement and that therefore evidence of such act is not excluded by Section 25, Evidence Act, or by Section 162, Cr.P.Code,[5] but it is submitted that in such cases there is always, an express or implied, confessional statement which unless properly recorded by a Magistrate under Section 164, Cr.P.Code, would be inadmissible.[6] See notes to Sections 8 and 27 under the heading "pointing out places connected with the offence....." and notes to Section 21 under the heading "confessions and admissions in criminal cases."

Sections 25, 26 and 27-Incriminating statements not leading to discovery.—Mere production of blood-stained shirt and dhoti not sufficient for conviction. The incriminating statements made to a Police Officer were hit by Sections 25 and 26 of the Indian Evidence Act. The statement that the axe was one with which the murder had been committed was not a statement which led to any discovery within the meaning of Section 27 of the Evidence Act. Nor was the alleged statement of the appellant that the blood-stained shirt and dhoti belonged to him, a statement which led to any discovery within the meaning of Section 27. The courts below were wrong in admitting in evidence the alleged statement of the appellant that the axe had been used to commit murder or the statement that blood-stained shirt and dhoti were his. If these statements are excluded, then the only evidence which remains is that the appellant produced from the house some clothes. The prosecution gave no evidence to establish whether the axe belonged to the appellant or the blood-stained clothes were his.

Therefore, it cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence.[7]

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1. *Birja* v. *E.*, 1941 O 563 ; *Turab* v. *E.*, 152 IC 473 : 1935 O 1 : 36 Cr LJ 166 ; *Q.E.* v. *Nana*, 14 B 260 (FB); but see *Brij Nandan* v. *E.*, 133 IC 154 : 1931 A 9 : 82 Cr LJ 1006, where a demonstration of making a counterfeit coin was not held to be a confession and was admitted.
2. *Nazir Ahmad* v. *E.*, 63 IA 372 : 17 L 629.
3. *Narayana Swami* v. *E.*, 1939 PC 47.
4. *Nazir Ahmad* v. *E.*, 63 IA 372 : 17 L 629.
5. *E.* v. *Nanna*, 1941 A 145.
6. See *Abdul Rahim* v. *E.*, 1945 L 105 (FB); *see* also *Khabiruddin* v. *E.*, 1943 C 644.
7. *Prabhoo* v. *State of Uttar Pradesh*, (1963) (2) SCR 881 : (1963) (2) Cr LJ 182.

Sections 24 and 52.–Ban under these sections compared.–The ban which is partial under Section 24 and complete under Section 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective, the person need not have been accused of an offence when he made the confession. The expression "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal Proceeding.[1]

If Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the Legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional because of the possibility of abnormal instances to which the Legislatives might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination because the rule of admissibility of the evidence is not extended to a possible, but an uncommon or abnormal class of cases.[2] Use of confessional statement under **National Security Act,** not forbidden.[2a]

Scope and applicability.–Incriminating statements to police are hit by Section 25.[3]

26. Confession by accused while in custody of police not to be proved against him.–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,[4] shall be proved as against such person.

[5][*Explanation.*–In this section "Magistrate" does not include the head of village discharging magisterial functions in the Presidency of Fort St. George [6]x x x or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).[7]]

COMMENTARY

Sections 25 and 26 compared.–Sections 25 and 26 do not lay down identical propositions. Section 25 lays down a general proposition against the admissibility of

1. *State of Uttar Pradesh* v. *Deoman Upadhyaya,* 1960 Cr LJ 1504 : (1960) (2) SCA 371.
2. *State of Uttar Pradesh* v. *Deoman Upadhyaya,* 1960 Cr LJ 1504 : (1960) (2) SCA 371.

2a. *Zaki Ahmad* v. *State,* 1988 ALJ 453 (DB).

3. *Prabhoo* v. *State of Uttar Pradesh,* (1963) (2) SCR 881 : (1963) (2) SCJ 165.
4. A Coroner has been declared to be a Magistrate for the purposes of this section, see Section 20 of the Coroners Act, 1871 (4 of 1871).
5. Inserted by Section 3 of the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891).
6. The word "or in Burma" were omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.
7. See the Code of Criminal Procedure, 1893 (Act 5 of 1898).

confessions made to Police Officers. Section 26 carries the rule further by rendering a confession inadmissible if made by a person whilst he is in the custody of a Police Officer, even though the confession is not made to a Police Officer. The two sections lay down two clear and definite rules.[1] The present section does not control or qualify the preceding section; and, therefore, a confession made to a Public Officer is admissible, even if it was made in the immediate presence of a Magistrate.[2] The section deals with confessions which are made not to Police Officers but to persons other than Police Officers, *e.g.*, to a fellow prisoner, a doctor or a visitor,[3] and makes such confessions inadmissible if they were made whilst the accused was in the custody of a Police Officer.[4] In Section 25 the criterion for excluding a confession is the answer to the question. "To whom was the confession made?" If the answer is that it was made to a Police Officer, the confession is absolutely excluded from evidence. On the other hand, the criterion adopted in Section 26 for excluding a confession is the answer to the question. "Under what circumstances was the confession made?" If the answer is that it was made whilst the accused was in the custody of a Police Officer, the law lays down that such confession shall be excluded from evidence, unless it was made in the immediate presence of a Magistrate.[5]

Statements not amounting to confessions are not inadmissible —Scope.—This section interdicts confessional statements made by persons in police custody.[6] It has been noticed in the notes to Section 25 that a statement made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure, whether such statement amounts to a confession or not, is, by reason of Section 162 of the Code, inadmissible against the maker of such statement at any inquiry or trial of the offence that was under investigation at the time the statement was made. If the statement amounts to a confession, it is inadmissible also under Section 25 of the Evidence Act if the confession was made to a Police Officer. Thus, where a statement is made to a Police Officer, the relevant provision determining its admissibility or inadmissibility is Section 162 of the Code of Criminal Procedure or Section 25 of the Evidence Act. The present section only applies where the statement was made to a person other than a Police Officer. Where a statement is made to a Magistrate or in the immediate presences of a Magistrate, it is expressly made admissible by the present section even if it amounts to a confession. If the statement does not amount to a confession but is otherwise relevant, rule of exclusion enacted by Section 162 of the Code of Criminal Procedure or Section 25 or the present section of the Act does not, *ex hypothesi*, apply to it; Section 162 of the Code does not apply to any such statement because it is not made to a Police Officer, and Sections 25 and 26 do not apply to it because statement is not a confession. It follows, therefore, that where a statement is made by an accused person in the custody of a Police Officer to a person other than a Police Officer, its admissibility, if the statement is otherwise relevant, will depend upon the question whether it amounts to a confession or not. If it amounts to a confession, the present section will exclude it. If it does not amount to a confession and is otherwise

1. Per Mahmood,J., in *Q.E. v. Babu Lal*, 6 A 509, 525 (FB).
2. *Q. v. Hurribole Chunder Ghose*, IC 207, 215 ; *Q. v. Domun Kahar*, 12 WR 82 Cr.
3. *Narayana Swami v. E.*, 1939 PC 47 ; *Hakam v. E.*, 1940 L 129 (FB).
4. *Q E. v. Babu Lal*,6 A 509, 545 (FB) ; *Hakam v. E.*, 1940 L 129 (FB) ; *Abdul Kadir v. E.*, 1946 C 452.
5. Per Mahmood, J., in *Q E v. Babu Lal*, 6 A 509, 532 (FB).
6. *Udai Bhan v. State of U.P.*, AIR 1962 SC 1116.

relevant, *e.g.*, as an admission, it will be admissible. And the test to be applied to determine whether it is a confession or not will be whether the statement admits in terms the offence or at any rate substantially all the facts that constitute the offence. However incriminating the statement may be, it will be admissible if it is not a confession in the sense indicated. The statement made by a person proceeded against under Section 109 Cr. P. Code is not a confession and is therefore not affected by Section 26 of the Act.[1] See notes to Section 17 under the headings "admissions and confessions; importance of the distinction between the two" and "distinction between admissions and confessions", notes to Section 24 under the heading "condition (i) of inadmissibility, only such statements are inadmissible as amount to confessions" *et seq.*, and notes to Section 25 under the heading "confessions made to Police Officers are inadmissible but admissions may be admissible." Statement made by accused to doctor of Government Hospital. Though incriminating is not confession. It is not hit by Section 26 and hence admissible.[1a]

Admission not barred.—A confession has to be a direct acknowledgement of the guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove his guilt. Such a statement is admission but not confession. It is thus clear that an admission of a fact however incriminating, but not by itself establishing the guilt of the maker of such admission, would not amount to confession, within the meaning of Sections 24 to 26 of the Evidence Act. The statement by the accused before the doctor that it was the deceased who had caused the injury on his toe on the fatal night did not amount to a confession. It was an admission of fact, no doubt of an incriminating fact and which established the presence of the accused in the deceased's room on the fatal day but which clearly was barred under Section 26 of the Evidence Act.[2]

Custody.—The word "custody" in this section or Section 27, does not mean formal custody but includes cases in which the accused can be said to have come into the hands of a Police Officer or can be said to have been under some sort of surveillance or restriction.

The "Police custody" is deemed to extend even when the accused is deemed to have submitted to such custody to Police Officer by submitting to the interrogation and by making statement about discovery, and cannot thereafter be said to be a free man.[3] To be inadmissible under Section 26, the confession must have been made whilst the maker was in the custody of a Police Officer, therefore, where the maker of the confession is not in the custody of a Police Officer at the time the confession is made, the confession will be admissible.[4] But the custody need not be legal.[5] To exclude the confession it is not necessary that the accused should have been in custody for the offence confessed. The confession would be inadmissible even if the accused was in custody for a different

1. *Rex* v. *Ram Dayal*, 1950 A 134 : 1949 ALJ 413 : 51 Cr LJ 436.
1a. *State of Kerala* v. *Ammini*, AIR 1988 Ker.1 (FB).
2. *Kanda Padayachi* v. *State of Tamil Nadu*, 1972 (1) SCJ 395.
3. *Punja Maya* v. *State of Gujarat*, ILR 1964 Guj 954.
4. *Rajkumar Singh* v. *E.*,111 IC 721 : 1928 P 473 : 29 Cr LJ 913 ; *E.* v. *Mahomed Bux*, 85 IC 833 : 26 Cr LJ 609 ; *Q.E.* v. *Sama Papi*, 7 M 287.
5. *E.* v. *Mst. Jagia*, 1938 PWN 293 : 19 PLT 268 : 1938 P 308 : 174 IC 524 : 39 Cr LJ 428 : 17 P 369.

offence.[1] To constitute custody, it is not necessary that the maker of the confession should have been formally arrested,[2] it is sufficient if the state of affairs is such in which he can be said to have come into the hands of a Police Officer, or can be said to have been under some sort of surveillance or restriction,[3] and he will be deemed to be in custody if he is suspected by the police,[4] or is kept in strict supervision.[5] or is not permitted to depart at his own free will.[6] As soon as a suspected person comes into the hands of a Police Officer, he is, in the absence of clear evidence to the contrary, in custody.[7] Some sort of restraint must, however, exist on the movements of the confessor and this restraint must be imposed either directly or indirectly by the police.[8] Where the accused is neither arrested not is under supervision, but is merely invited to explain certain circumstances, it would be going further than the section warrants to exclude the statement that he makes, on the ground that he is to be deemed in police custody.[9] Temporary absence of the Police Officer in whose custody a person is does not make the confession made in his absence admissible.[10] A person who is once in custody does not cease to be so if he is allowed to go to converse with another person.[11] A person confined in jail is not in the custody of a Police Officer, in the absence of any suggestion of a close custody in the jail, such as possibly may occur when an accused person is watched and guarded by a Police Officer investigating the offence.[12] A prisoner in a judicial lock-up is in magisterial custody and not in the custody of a Police Officer who guards the lock-up.[13] Where a person, at a time when he was neither accused nor in custody, made a statement as a witness to a Magistrate, which was recorded under Section 164, Cr. P. Code, the statement was held to be admissble against him at his subsequent trial for an offence under Section 211, I.P.C.[14] Where an accused, while he is in the act of being arrested by a village headman at the instance of the police, makes a statement to the headman that he has committed a murder, such statement is very near to a statement made by a man when in police custody and should be scrutinized with

1. *See* In re *Kamakshi Naidu*, 1943 M 89 ; *Public Prosecutor* v. *Nagabhushanam*, 1943 M 661 ; *Ali Gohar* v. *E.*, 1941 S 134.
2. *Hakam* v. *E.*, 1940 L 129 : ILR 1940 L 242 ; *Choda Atchenah*, 3 MHC 318 ; *Maharani* v. *E.*,1948 A 7 : 1947 ALJ 265 : 48 Cr LJ 939.
3. *Maharani* v. *E.*, 1948 A 7 ; *Gurdial Singh* v. *E.*,1932 L 609 ; *E.* v. *Pancham* 1933 O 192 : 8 Luck 410 : 143 IC 846.
4. *Maung Lay* v. *E.*,1 R 609 : 77 IC 429 : 1924 R 173 : 25 Cr LJ 381 ; *Q.E.* v. *Kamalia*, 10 B 595.
5. *E* v. *Mahomed Bux*, 85 IC 833 : 26 Cr LJ 609 ; *Chhotey Lal* v. *State*, 1954 A 687.
6. *Allah Ditta* v. *E.*, 18 L 106 : 1937 L 620 : 171 IC 377 : 38 Cr LJ 1082 ; *Pharho* v. *E.*, 141 IC 392 : 1932 S 201 : 34 Cr LJ 147 ; *Haroon* v. *E.*, 141 IC 215 : 1932 S 149 : 34 Cr LJ 129.
7. *Aishan Bibi* v. *E.*,15 L 310 : 152 IC 206 : 1934 L 150 (2) : 36 Cr LJ 14 ; *Maung Lay* v. *E.*,1 R 609 : 77 IC 429 : 1924 R 173 : 25 Cr LJ 381.
8. *Pharho* v. *E.*,141 IC 392 : 1932 S 201 : 34 Cr LJ 147 ; *Haroon* v. *E.*, 141 IC 215 : 1932 S 149 : 34 Cr LJ 129.
9. *E* v. *Mahomed Bux*, 85 IC 833 : 26 Cr LJ 609 ; See, however, *Q.E.*, v. *Kamalia*, 10 B 595, where a person called on suspicion and accused was held to be in custody.
10. *Rambharose* v. *E.*, 1944 N 105 ; *Hakam* v. *E.*,1940 L 129 : ILR 1940 L 242 ; *Birja* v. *E.*, 1941 O 563 ; *E.Sheo Ram*, 108 IC 398 : 1928 L 282 : 29 Cr LJ 386 ; *E* v. *Mallaagowda Parwatgowda*, 42 B I ; 42 IC 597 : 18 Cr LJ 981 ; *Muhammad Ibrahim* v. *E.*,39 IC 977 : 18 Cr LJ 609 ; *E.* v. *Lester*, 20 B 165 ; *E.* v. *Mst. Jagia*, 1938 PWN 293 : 19 PLT 268 : 1938 P 308 : 174 IC 524 : 39 Cr LJ 428 : 17 P 369.
11. *E.* v. *Sheo Ram*, 108 IC 398 : 1928 L 282 : 29 Cr LJ 386 ; *E.* v. *Mahomed Bux*, 85 IC 833 : 26 Cr LJ 609.
12. *Q.E.* v. *Tatya Bin Appaji*, 20 B 795 ; but see *Rambharose* v. *E.*,1944 N 105.
13. *Imam-ud-din* v. *E.*,151 IC 894 : 1934 L 75 : 35 Cr LJ 1432 ; but see *Rambharose* v. *E.*, 1944 N 105.
14. *Nankoo Mahton* v. *E.*, 1936 P 358 : 163 IC 805 : 37 Cr LJ 862 : but see *Bhuboni Sahu* v. *The King*,1949 PC 257 : 76 IA 147 : 51 PLR 314 : 1949 ALJ 283.

great care.[1] The question whether a person is in custody is a question of fact in each case.[2] See notes to Section 27.

Police Officer.—The term "Police Officer" is used in Section 26 in the same sense in which it is used in Section 25 and reference should be made to the notes to that section for the meaning of this term. A confession made by a person whilst he was in the custody of a Police Officer of a Native State will be inadmissible, unless it was made in the immediate presence of a Magistrate.[3] A confession made to the Police officer of a foreign country is likewise inadmissible[4]. A village *chowkidar*[5] or a *dafadar*[6] is a Police Officer within the meaning of Section 26 of the Evidence Act. A member of the Civil Guard when called out on duty is a Police Officer but a confession made to him when he was not on duty cannot be regarded as a confession made to a Police Officer.[7] See also notes to Section 27.

Confession is admissible if made to a Magistrate or to a person other than a Police Officer but in the immediate presence of Magistrate.—A confession made by a person whilst he is in the custody of a Police Officer is not admissible, unless it is made in the immediate presence of a Magistrate. The confession will be admissible whether it was made to a Magistrate or to any person other than a Police Officer in the presence of a Magistrate; but it will be inadmissible if it is is made to a Police Officer whether in the presence of Magistrate or otherwise.[8] It is however, not necessary that the confession should have been made to a Magistrate having jurisdiction in the matter[9]. or competent to record it,[10] or that it should have been recorded.[11] Therefore,a confession made to the Magistrate of a foreign country[12] or of a Native State[13] is admissible. A confession properly recorded by a Magistrate in a Native State is admissible in evidence under Section 80 of the Act without further proof[14], and a confession not recorded or not properly recorded by the Magistrate of a Native State to whom it was made, is admissible as an extra-judicial confession on its being proved by the evidence of the Magistrate[15]. A Coroner is a Magistrate within the meaning of Section 26 and,

1. *Sit Ro Saw* v. *R*, 1936 R 455 : 165 IC 319 : 37 Cr LJ 1137.
2. *Hakam* v. *E.*, 1940 L 129.
3. *Salam* v. *E.*, 43 IC 111 : 19 Cr LJ 79 : *Q.E.* v. *Nagla Kata*, 22 B 235.
4. *Mhabli Rama Sail* v. *E.*, 87 IC 520 : 1924 B 480 : 26 Cr LJ 984.
5. *E.* v. *Mst. Jagia*, 1938 PWN 293 : 19 PLT 268 : 1938 P 308 : 174 IC 524 : 39 Cr LJ 428 : 17 P 369.
6. *Karu Kandu* v. *E.*, 1940 P 410 ;
7. *Ibrahim* v. *E.*, 1944 L 57 : 46 PLR 15 : 212 IC 156 : 45 Cr LJ 555.
8. See notes to the section under the heading "Section 25 and 26 compared".
9. *Reg.* v. *Vahala Jetha*, 7 Bom HC 56.
10. *Noukar Mouledino* v. *E.*, 1937 S 212 : 170 IC 827 : 38 Cr LJ 968; *E.*, v. *Hulasi*, 144 IC 157 : 1933 A 286 : 34 Cr LJ 704.
11. *Itwari* v. *E.*, 147 IC 113 : 1933 O 432 : 35 Cr LJ 303; *Moti Ram* v. *E.*, 147 IC 692 : 1933 L 998 : 35 Cr LJ 455 ; *Abdulla* v. *E.*, 14 L 290 : 145 IC 467 : 1933 L 716 : 34 Cr LJ 1025 (FB) ; *Sucha Singh*, 145 IC 467 : 1933 L 716 : 34 Cr LJ 379 ; *Feroz* v. *E.*, 11 PR 1918 Cr : 45 IC 843 : 19 Cr LJ 651.
12. In re *Panchanathan Pillai*, 52 M 529 : 121 IC 157 : 1929 M 487 : 31 Cr. LJ 223.
13. *Muhammad Bux* v. *E.*, 151 IC 311 : 1934 S 103 : 35 Cr LJ 1328 ; *Govinda* v. *E.*, 69 IC 257 : 23 Cr. LJ 673 ; *Badan Singh* v *K.E.*, 2 PR 1909 Cr. : 1 IC 444 : 9 Cr LJ 297 : *Q.E.* v. *Sunder Singh*, 12 A 595 ; see, however, *E.* v. *Dhanka Amra*, 24 IC 169 : 15 Cr. LJ 433; see also *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr LJ 1478.
14. *Govinda* v. *E.*, 69 IC 257 : 23 Cr. LJ 673 : *Badan Singh* v. *K.E.* 2 PR 1909 Cr : 1 IC 444 : 9 Cr. LJ 297 ; *Q.E.* v. *Sunder Singh*, 12 A 595.
15. *Muhammad Bux* v. *E.*, 151 IC 311 : 1934 S 103 : 35 Cr. LJ 1328 ; *E.* v. *Hulasi*, 144 IC 157 ; 1933 A 286 : 34 Cr. LJ 704 ; *E.* v. *Anandrao Gangaram Phanse*, 49 B 642 : 89 IC 1046 : 1925 B 529 : 26 Cr. LJ 1478 : *Badan Singh* v. *K.E.*, 2 PR 1909 Cr. : 1 IC 444 : 9 Cr.LJ 297 .

therefore, a confession made to him without such inducement, threat or promise as is mentioned in Section 24 of the Evidence Act and without claiming any Privilege against self-incrimination is admissible[1]. If a confession is made to a police Officer who is also discharging the functions of a Magistrate, the confession is admissible as a Police Officer does not cease to be Police Officer merely because he is also invested with magisterial powers.[2] A confession made by an accused person when he is produced for purposes of remand, is admissible.[3] The head of a village is not a Magistrate within the meaning of Section 26, unless he is invested with the powers of a Magistrate under the Criminal Procedure Code.[4] But a confession to a village Magistrate would certainly be admissible if the accused was not in police custody[5] or if the village Magistrate was exercising powers of an ordinary Magistrate under the Criminal Procedure Code.[6] A confession made in the presence of an Honorary Magistrate in the Punjab is admissible.[7] A confession by a person in police custody should, in order to be admissible, have been made in the immediate presence of a Magistrate. It is not necessary that the confessor should have known that the Magistrate was present; the main consideration determining the admissibility of the confession being the presence of the Magistrate and not the knowledge of the confessor of the Magistrate's presence.[8] A confession made to a Magistrate is admissible even if a Police Officer is present in the same or the next room[9] or has left the accused with the Magistrate and himself gone away to the place of occurance,[10] or where the accused has been deceived into a belief that the Magistrate is a Police Officer.[11] It is not necessary that the Magistrate, in whose presence the confession was made, should have had jurisdiction in the matter.[12] Illegal detention does not vitiate a confession made in the immediate presence of a Magistrate.[13]

A confession made by an accused person whilst in the custody of the police is presumed to be involuntary and, therefore, inadmissible unless made to (competent) Magistrate who after satisfying himself about its voluntariness proceeds to record it in the manner prescribed by Section 164 of the Code of Criminal Procedure. This has been understood by the Rangoon Court,[14] and it is submitted rightly, to be the effect of the decision of the Privy Council in *Nazir Ahmed's case*.[15] That decision[16] throws a good

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1. *E.* v. *Bhagwandas Bisesar*, 1941 B 50 : 192 IC 671 ; *E.* v. *Azimkhan Zainkhan*, 110 IC 107 : 1928 B 52 : 29 Cr. LJ 651 ; *E.* v. *Ramnath Mahabir*, 50 B 111 : 93 IC 690 : 1926 B 151 : 27 Cr. LJ 466.
2. *Jas Bahadur Thapa* v. *E.*, 8 R 52 : 125 IC 337 : 1930 R 227 : 31 Cr. LJ 823 : *Q.E.* v. *Hurribole Chunder Ghose*, 1 C 207.
3. *Nga Po Dew* v. *E.*, 6 R 265 : 148 IC 1002 : 1934 R 78 : 35 Cr. LJ 823.
4. Explanation to Section 26, enacted by Act III of 1891 to overrule the decision in *E.* v. *Ramanjiyya*, 2 M 5.
5. *Q.E.* v. *Sama Papi*, 7 M 287.
6. See *Hashmat Khan* v. *E.*, 15 L 856 : 152 IC 998 : 1934 L 417 : 36 Cr. LJ 211 : *Maniara Kuppathan* v. *E.*, 105 IC 667 : 1927 M 974 : 28 Cr. LJ 955.
7. *Hasmat Khan* v. *E.*, 15 L 856 : 152 IC 998 : 1934 L 417 : 36 Cr.LJ 211.
8. *Jog Raj* v. *E.*, 129 IC 289 ; 1930 L 534 : 32 Cr.LJ 290.
9. *Barnabas Christian* v. *E.*, 1952 IC 272 : 1934 P 586 : 36 Cr. LJ 12 ; *Indar Datt* v. *E.*, 132 IC 185 : 1931 L 408 : 32 Cr. LJ 818.
10. *Ata Mohammad* v. *E.*, 138 IC 497 : 1932 L 261 : 33 Cr. LJ 632.
11. See *Pharho* v. *E.*, 141 IC 392 : 1932 S 201 : 34 Cr. LJ 147.
12. *Reg* v. *Vahala Jetha*, 7 Bom HC 56.
13. *Dhaman Hiranand* v. *E.*, 1937 S 251 : 171 IC 737.
14. *The King* v. *Saw Min*, 1939 Rang. LR 97.
15. *Nazir Ahmed* v. *E.*, 63 IA 372 : 17 L 629.
16. *Nazir Ahmed* v. *E.*, 63 IA 372 : 17 L 629.

deal of doubt on some of the decisions digested in the preceding paragraph. The Privy Council has condemned the practice of Magistrates associating themselves with the police in investigations under Chapter XIV of the Code of Criminal Procedure, except when they are required to record a confession under Section 164 of the Code. Where an accused person is brought to a Magistrate for the purpose of making a confession and the Magistrate does not proceed under Section 164 of the Code in recording the confession, there is no doubt that the oral evidence of the Magistrate as to confession, and the informal notes of the confession if taken by the Magistrate, will be inadmissible on the authority of *Nazir Ahmed' case.*

There are, however, several questions of considerable practical importance, which have been left undecided by the Privy Council decision in *Nazir Ahmed's Case.*

(1) Is a confession, oral or recorded, made by an accused person to a Magistrate who is not competent to record it, *e.g.*, where he is a Magistrate of third class or of second class not specially empowered, admissible. It is submitted that the observations of the Privy Council in *Nazir Ahmed's Case* distinctly lead to the inference that no confession made in the course of police investigation is provable unless recorded by a competent Magistrate in the manner prescribed by Section 164.[1] It has been held by the Allahabad High Court that a dying declaration amounting to a confession is inadmissible, if recorded by a Magistrate who did not comply with the provisions of Section 164 of the Code of Criminal Procedure.[2] The point was raised in a Lahore case but was not decided.[3] It has been held by the Madras High Court that a confession can be recorded by a Magistrate not authorised under Section 164, Cr. P.C., when he is acting under Section 176 of the Code.[4]

(2) Is an oral confession made to a Magistrate admissible when the accused is not produced before him for the purpose of having his confession recorded under Section 164, *e.g.*, where the accused makes a confession when produced before a Magistrate for remand, or where the Magistrate happens to be present in an investigation in his private capacity when the accused makes a confession, as, for example, where an Honorary Magistrate is attending the investigation of a dacoity committed in the house of a neighbour in the Magistrate's village? It is submitted that, in the circumstances supposed, if the Magistrate is competent to act under Section 164 of the Code of Criminal Procedure, it is his duty to ask the confessor if he is willing to have his confession recorded under Section 164. If he refuses, oral evidence of the Magistrate about the confession will be inadmissible, the reason being that the confessor is in custody and the Magistrate has not satisfied himself about the voluntariness of the confession in the manner prescribed by Section 164. If the Magistrate is not competent to act under Section 164, the confession will be inadmissible for the reasons stated in (1) above.[5] If this be the correct interpretation of the decision in *Nazir Ahmed' Case*, then the words "unless it be made in the immediate presence of a Magistrate" in Section 26 of the Evidence Act become, in substance, equivalent to the words "unless recorded by a Magistrate in the manner prescribed by Section 164 of the Code of Criminal Proce-

1. *The King* v. *Saw Min*, 1939 Rang. LR 97 ; but see *Naresh* v. *E.*, 1939 ALJ 107 ; contra *Miral Bhutto* v. *E.*, 1943 S 166.
2. *Babbu* v. *State*, 1954 A 633 wherein *Rex* v. *Moti*, 1953 A 792 distinguished.
3. *Akbar Badr Din* v. *E.*, 1938 L 594.
4. In re *Ramaswami Reddiar*, 1953 M 138 : 1953 Cr.LJ 315 : (1952) 2 MLJ 814.
5. In re *Dinanath*, 1940 N 186.

dure". Relying upon *Nazir Ahmed's Case* it has been held by in a Patna case[1] that though an extra-judicial confession to any ordinary person (other than a police officer) can be proved, such a confession cannot be proved at all if made to Magistrate, unless the provisions of Section 164, Cr. P.C. have been complied with; and that it will not help for a Magistrate to say that he did not purport to act under the provisions of Section 164. The case where a confession in made to a Magistrate before the investigation has commenced is not covered by *Nazir Ahmed' Case*. Thus a confession made to a Magistrate before the matter is reported to the police has been held to be admissible even if it is not recorded in conformity with the provisions of Section 164, Criminal Procedure Code.[2]

(3) Has a Magistrate power to record a statement of an accused person, which does not amount to a confession as defined by the Privy Council in *Narayana Swami's Case*?[3] It has been held in several cases that he is not precluded from recording such statement; but in *Nazir Ahmed' Case* the Privy Council has approved of the judgment of Banerjee, J., and Maclean, C.J., in *Bhairab's case*,[4] in which it was held to the contrary.

(4) The provisions of Section 164 requiring the Magistrate to warn the prisoner and to satisfy himself about the voluntary character of the statement only apply where the statement recorded is a confession". A Magistrate need not, therefore, comply with these conditions where the statement made by the prisoner does not amount to a confession as defined by the Privy Council in *Narayana Swami's Case, i.e.*, he need not make any record at all of the statement. Is, then, the Magistrate not recording the statement of the prisoner in conformity with the provisions of Section 164, incompetent to depose to the statement when it is sought to be proved against the prisoner as an admission? The only logical position to adopt, if this question has to be answered in the affirmative, is to say that such statements cannot be recorded at all or that the word "confession" as used in Section 164 is used in a sense much wider than that assigned to it by the Privy Council in *Narayana Swami's Case* and was intended to include admissions.

Confession to Presidency Magistrate.—Though Section 165 Cr. P.Code did not formerly apply in Calcutta it was held that a confession by an accused in police custody recorded by a Presidency Magistrate is not excluded by Section 26 when it is proved by the magistrate.[5]

Coroner.—A Coroner is declared to be a Magistrate for the purposes of Section 26 by Section 20 of the Coroner's Act, 1871.

Taluka Magistrate.—In a case which arose when the Code of Criminal Procedure, 1898, was in force, the Supreme Court negatived the contention that the Investigation Officer ought to have requisitioned the services of the Judicial Magistrate who was available at that place, instead of those of the Taluka Magistrate, for recording the confession of the accused under Section 164 Cr. P.C., with the observation that though it would have been better to have the confession recorded by the Judicial Magistrate rather than the Taluka Magistrate, that by itself was not sufficient to discard the testi-

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1. *E.* v. *Komanoju*, 1940 P 163.
2. In re *Nainamuthu Kamappan*, 1940 M 138.
3. *Narayana Swami* v. *E.*, 1939 PC 47 ; *see* also *Ahmed* v. *Government of Mysore*, ILR 1951 Mys. 239.
4. *Q.E.* v. *Bhairal*, 2 CWN 702.
5. *Rex* v. *Nilmadhav*, 15 Cal. 595 FB.

mony of confession recorded by the Taluka Magistrate, who had stated in his evidence that he was appointed a Magistrate in 1952 and had been specially empowered to record the confession.[1] Under Section 164 of the Code of Criminal Procedure, 1973 the power to record confession has been given only to Magistrates and Judicial Magistrates.

Prolonged detention and its effect on voluntariness.—Accused in Police Custody for 10 days, before being sent to Jail custody-confession in Jail-prolonged detention in police custody unless satisfactorily explained, is a circumstance strongly mitigating against voluntariness of confession-prolonged detention held satisfactorily explained and the confession held was voluntary.[2]

Sections 25 and 26-Use of statements made to police.—The accused made certain statements to the police. If these alleged statements are to be regarded as confessions, then they will be hit by Section 25, Evidence Act, for they were made to the Police Officer who was there. If they are sought to be brought in under Section 26 as confession made in the immediate presence of the Magistrate, then also they will not be admissible in evidence in that they were not recorded by the Magistrate in the manner prescribed by Section 164, Criminal Procedure Code.[3]

Reasons underlying Sections 25, 26.—Whereas Section 25, renders inadmissible a confession made by an accused to the police, Section 26 goes further and enacts that a confession made by a person, while he is in the custody of he police, even to a third person, who may not be a Police Officer, is inadmissible unless it is made in the immediate presence of a Magistrate. The reason underlying these two sections is obvious namely, that the influence of the police is presumed to affect the voluntary nature of the confession and, therefore, its reliability. The law is imperative in excluding what comes from an accused person in the custody of the police if it incriminates him. Courts in this country have been so jealous of the voluntary nature of the confession that they have construed the word 'custody' not necessarily to mean custody after formal arrest, but it has been held to extend to a state of affairs in which the accused can be said to have come into the influence of a Police Officer or has been even under some form of police surveillance or restrictions on his movements by the police.

A conviction for acquisition of gold in excess of permissible limit based solely on confession of accused made to Excise Authority in presence of Police Officer is illegal as such confession is inadmissible.[4]

Sections 25 and 26-Reasons for the provision.—Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. It is manifest that the class of persons who needed protection most were those in the custody of the police and persons not in the custody of police did not need the same degree of protection. But by the combined operation of section 27 of the Evidence Act and section 162 of the Code of Criminal Procedure, the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether

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1. *Abdul Rehman* v. *State of Karnataka*, AIR 1979 SC 1924.
2. *Shri Irfan Ali* v. *State*, 1970 Cr LJ 603 (All).
3. *Zwinglee Ariel* v. *State of Madhya Pradesh*, 1954 Cr LJ 230.
4. *Ram Singh* v. *State*, 1970 Cr LJ 635 (Delhi).

he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not.[1]

Explanation.—The Explanation was added by section 3 of Act 3 of 1891, to meet the decision in *R.v.Ramanjiyya*, (2 M 5), in which it has been held that a village munsif in the Madras Presidency is such a magistrate as is contemplated by this section. The effect of the addition of the explanation is to alter the law as laid down in the above decision.

An extra-judicial confession is often a very weak piece of evidence. There may be circumstances in which it may be of more probative value than it usually is. The first disability is that whenever there is an extra-judicial confession by the time it comes to the Court one is not in a position to know in what actual words the accused had spoken. As far as the actual wording goes, the longer and the more complicated the story of the confession the greater such danger and naturally the less the value of the extra-judicial confession. Where the extra-judicial confession is somewhat reliable, there being an independent corroboration, if it is retracted, it cannot be rated too high.[2]

Constitutionality of sections 25 and 26.—Section 25 and 26 are not discriminatory and do not offend against Article 14.[3]

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed 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.

COMMENTS

Principle:—Sections 26 and 27.—Section 27 partially removes the ban placed on the reception of confessional statements section 26, but the removal of the ban is not of such an extent as to absolutely undo the object of section 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not as relates distinctly to the fact discovered is provable.[4]

Theory of confirmation by subsequent facts.—Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore, declared provable in so far as it distinctly relates to the fact thereby discovered.[5]

This section is based on the doctrine of confirmation by subsequent facts. That doctrine is that where, in consequence of a confession otherwise inadmissible, search is

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1. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : (1960) (2) SCA 371.
2. *State of Madhya Pradesh* v. *Mst. Gangabai*, 1971 MPLJ 829.
3. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504, 1960 (2) SCA 371.
4. *Udai Bhan* v. *The State of Uttar Pradesh*, (1962) (2) Cr LJ 251 : ILR (1962) (2) All 522.
5. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : 1961 (2) SCJ 334, 337.

made and facts are discovered which confirm it in material points, then such discovery is a guarantee that the confession made was true. But only that portion of the information can be proved which relates distinctly or strictly to the facts discovered.[1]

The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence.[2]

Sections 26, 27 compared.—Ban under these sections compared. The expression "accused of any offence" in section 27, as in section 25, is also descriptive of the person concerned, *i.e*, against a person who is accused of an offence. Section 27 renders provable certain statements made by him while he was in the custody of a Police Officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person whilst he is in the custody of a Police Officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered. Even though section 27 is in the form of a proviso to section 26, the two sections do no necessarily deal with evidence of the same character. The ban imposed by section 26 is against the proof of confession statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By section 26, a confession made in the presence of a Magistrate is made provable in its entirety.[3]

Normally the section is brought into operation when a person in police custody produces from some place of concealment some object such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused.[4] A presumption of falsity attaches to a confession made in the circumstances mentioned in the three preceding sections. Every confession must be rejected which has been improperly obtained or which has been made by an accused person to a Police Officer or to anyone else whilst the confessor is in the custody of a Police Officer.[5] The principle upon which the rejection is founded is that a confession thus made or obtained is untrustworthy. But if circumstances appear which rebut the presumption of its being false and demonstrate its truth, there is no reason why the confession should not be allowed. When, in consequence of information furnished by the accused, a fact is discovered, then the discovery of that fact supplies a guarantee of the truth of the information. The confession, in so far as it is confirmed by the discovery, is shown to be true and, therefore, becomes admissible. This is the *rationale* of the exception enacted by Section 27.[6] The section seems to be based on the view that if a fact is actually discovered in

1. *Dharma* v. *State*, 1965 Raj LW 418.
2. *Ram Kishan* v. *State of Bombay*, 1955 Cr LJ 196 208.
3. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : (1960) (2) SCA 371.
4. *Pulukuri Kottayya* v. *E.*, 1947 PC 67.
5. Sections, 24,25 and 26.
6. *Ram Richhpal* v. *State*, 55 PLR 23 : 1954 Punj 97 (FB) ; *In re Peria Chelliah Nadar*, 1942 M 450 ; *Naresh Chandra Das* v. *E.*, 1942 C 593 ; *Neharu* v. *E.*, ILR 1937 N 268 : 1937 N 220 : 168 IC 962 ; 38 Cr LJ 642 ; *Supdt.& Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Mahji*, 57 C 1062 : 125 IC 733 : 1930 C 291 ; *Sukhan* v. *E.*, 10 L 283 : 115 IC 6 ; 1929 L 344 : 30 Cr LJ 414 (FB) ; *Bulaqi* v. *E.*, 9 L 671 : 112 IC 347 : 1928 L 476 : 29 Cr LJ 1019.

consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence. But if there is a reasonable doubt about the guilt of the accused and the benefit of the same should go to him.[1]

Sections 27, 25 and 26-Scope of Section 27 Essential ingredients.--Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him.[2] An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles of receiving stolen articles, within the meaning of Section 411, Indian Penal Code states to the Police, "I will show you the articles at the place where I have kept them" and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact, i.e., keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not the discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above statement and that made by the appellant in this case which in effect is that "I will show you the person to whom I have given the diamonds exceeding 200 in number". The only difference between the two statements is that a "named person" is substituted for "the place" where the articles are kept. In neither case are the articles or the diamonds the fact discovered.[3]

Section 27 is an exception to Sections 25 and 26, which prohibits the proof of a confession made to a Police Officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery, it will be admissible wholly and the court cannot say that it will exclude one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession.[4]

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1. *Jaharlal Das* v. *State of Orissa*, (1991) 3 SCC 27 (Para 10).
2. *Pulukuri Kottayya* v. *E.*, 1947 PC 67 : 1947, 1 MLJ 219 : 51 CWN 474 : 60 MLW 258 : 230 IC 135 : 1947 ALJ 355 : 49 BLR 508 : 74 IA 65 : 48 Cr LJ 533 : *Ramkishan Mithanlal* v. *State*, 1955 SC 104.
3. *Jaffer Hussein Dastgir* v. *State of Maharashtra*, (1969) 2 SCWR 550 : (1969) 2 SCC 872.
4. *K. Chinnaswamy Reddy* v. *State of Andhra Pradesh*, 1963 (1) Cr LJ 8.

In *Mohd. Inayatullah* v. *State of Maharashtra*,[1] the Supreme Court explained and stated the law as follows : "The expression 'provided that' together with the phrase 'whether it amounts to a confession or not' shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies to any extent, Section 24 also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'. The word has been advisedly used to limit and define the scope of the proveable information. The phrase 'distinctly' relates to the fact thereby discovered' and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotly related to the fact discovered, ... Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this."[2]

Section 26 and 27.—Section 27 partially removes the ban placed on the reception of confessional statements under Section 26, but the removal of the ban is not of such an extent as to absolutely undo the object of Section 26. All it says is that so much of the statement made by a person accused of an offence and in custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is provable.[3]

Scope explained.—Section 27 is an exception to the rules enacted in Sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved as against a person accused of an offence and that 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 provided as against such person. Where, however, any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, that part of the information as relates distinctly to the fact thereby discovered can be proved, whether it amounts to a confession or not. The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved

1. *Mohd. Inayatullah* v. *State of Maharashtra*, 1976 SC 483, (Paras, 11, 12, 13 & 14).
2. *Palukuri Kottayya* v. *Emperor*, 74 IA 65 : 1947 PC 67 ; *Udai Bhan* v. *State of U. P.*, 1962 Supp. (2) SCR 830 : 1962 SC 1116.
3. *Udai Bhan* v. *The State of Uttar Pradesh*, 1962 (2) Cr LJ 251 ; ILR (1962) 2 All. 522.

against the accused. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such informaton is required to relate. On a bare reading of the terms of the section it appears that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the Police Officer is obviously precluded from proving the information or part thereof unless it comes within the four corners of the section. If the Police Officer wants to prove the information or a part thereof, the court would have to consider whether it relates distinctly to the fact thereby discovered and allow the proof thereof only if that condition was satisfied. If, however, the Police Officer does not want to prove the information or any part thereof, Section 27 does not come into operation at all. The evidence of the Police Officer would no doubt go to show that the accused knew of the existence of the fact discovered in consequence of information given by him. But that would not necessarily show his direct connection with the offence. It would merely be a link in the chain of evidence which, taken along with other pieces of evidence, might go to establish his connection therewith. The circumstances would therefore be quite innocuous and evidence could certainly be given of that circumstance without attracting the operation of Section 27.[1]

Applicability of Section 27—Essential condition for.—In order that Section 27 of the Evidence Act may apply the prosecution must establish that the information given by the appellant led to the discovery of some fact deposed to by him. It is evident that the discovery must be of some fact which the police had not previously learnt from other sources and that the knowledge of the fact was first derived from information given by the accused.[2]

Essential ingredient of Section 27.—The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled.[3]

Construction of the section.—The section must be construed, in any particular case as favourably to the accused as possible, for it is a section which makes an exception against the accused contrary to the general sections, namely, Sections 24-26 which are in his favour.[4] It should not be construed so as to lift the ban imposed by the preceding Section.[5] The interpretation placed on the wordings of the section must not

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1. *Ramkishan* v. *State of Bombay*, 1955 SCR 903 : 1955 SCJ 129.
2. *Jaffer Hussein Dastigir* v. *State of Maharahstra*, (1969) (2) SCWR 550 : (1969) (2) SCC 872.
3. *Jaffer Hussein* v. *State of Maharashtra*, 1971 (1) SCJ 433 ; *Eanabhadrappa* v. *State of Karnataka*, 1983 SC 446 (para 7).
4. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Mahji*, 57 C 1062 ; 125 IC 733 : 1930 C 291 ; *Naresh Chandra Das* v. *E.*, 1942 C 593 ; *Karam Din* v. *E.*, 115 IC 1 : 1929 L 338 : 30 Cr LJ 385.
5. In re *Sheikh Khader Sahib*, 1950 M 108 : 62 LW 768 : 1949 MWN 512 : (1949) 2 MLJ 451 ; *Rama Shidappa Thorali* v. *State*, 1952 B 299 : 54 BLR 316 : 1952 Cr LJ 1219 : ILR 1952 B 662 (FB); but see *Ram Richhpal* v. *State*, 55 PLR 23 : 1954 Punj. 97 (FB).

be inconsistent with common sense and with the intention of the Legislature as expressed in the Statute.[1] The difficulty, however great of proving that a fact discovered on information supplied by the accused is a relevant fact, can afford no justification for reading into the section something which is not there, and admitting in evidence a confession barred by Section 26.[2]

The section is a proviso to sections 24-26 — Section 27 of the Evidence Act is by way of a proviso to Sections 25 and 26 and a statement, even by way of confession, which distinctly relates to the fact discovered is admissible as evidence against the accused in the circumstances stated in Section 27.[3] In English Law, a confession made by an accused person to a Police Officer, or whilst he is in the custody of a Police Officer, is not inadmissible. Consequently, under that law, the rule corresponding to the one enacted by the present section is an exception only to the rule corresponding to the one enacted in Section 24 of the Act. But in India it has been held in a large number of decisions that the present section is a proviso to all the three preceding sections.[4] Therefore, if an accused person makes a statement in consequence of some improper inducement, threat or promise, and some fact is discovered as a result of that statement, the statement cannot be excluded from evidence under Section 24.[5] The observations of the Privy Council in the case of Narayana Swami,[6] seem to confirm Mahmud, J's dissenting judgment in *Q.E.* v. *Babu Lal*,[7] that Section 27 is proviso to Section 26 only.[8]

Person making the statement must be accused of an offence and in the custody of a Police Officer — Import of the expression "accused of any offence"[9] — The expression "accused of any offence", is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by Section 27 of the Evidence Act. It does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability.[10]

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1 *Ram Richhpal* v. *State*, 1954 Pun.97 (FB).

2 *Pulukuri Kottayya* v. *E*, 1947 PC 67.

3 *Delhi Administration* v. *Balkrishnan*, 1972(1) SCJ 347.

4 *Hakam* v. *E*, 1940 L 129, per Bhide, J; *Namasudra* v. *E*, 59 C 1040; *Mathura* v. *E*, 1946 P. 210: 24 p 671; *Neharu* v. *E*, ILR 1937 N 268; 1937 N 220: 38 Cr LJ 462; *Sukhan* v. *E*, 10 L 283: 115 IC 6: 1929 L 344: 30 Cr LJ 414 (FB); *Bulaqi* v. *E*, 9 L 671: 112 IC 347: 1928 L 476: 29 Cr LJ 1019; *Amir-ud-din Ahmed* v. *E*, 45 C 557: 44 IC 321: 19 Cr LJ 305; *Q.E.* v. *Babu lal*, 6 A 509 (FB); but see *Supt. & Remembrancer of Legal Affairs Bengal* v. *Bhajoo Mahji*, 57 C 1062: 1930 C 291; *E* v. *Ramanjja Ayyangar*, 1935 M 528: 58 M 642: 158 IC 764: 36 Cr LJ 1442; *Mst Jamunia Pratap Lohar* v. *E*, ILR 1936 N 78: 1936 N 200 (proviso to Sections 25 and 26); *Ramkishan Mithanlal* v. *State*, 1955 SC 104.

5 *E* v. *Remis*, 1947 P 152: 25 P 205; *Shera* v. *E*, 1943 L 5; *Mathura* v. *E*, 24 P 671: 1946 P 210. In re Kataru Chinna Papiah, 1940 M 136; *Neharu Mangtu* v. *E*, 1937 N 220; *Bulaqi* v. *E*, 9 L 671: 112 IC 347: 1928 L 476: 29 Cr LJ 1019; but see In re Semalai Goundan, 86 IC 664: 1925 M 574: 26 Cr LJ 840: *E* v. *Tadutaru Poligadu*, 50 LW 435: 1939 MWN 873; 1940 M 12; *Punian Goalin* v. *E*, 1947 P 146: 25 P 356: 229 IC 592: 48 Cr LJ 412: 27 PLT 507.

6 1939 PC 47.

7 6 A 509 (FB) *Pulukuri Kottayya* v. *E*, 1947 PC 67: 1947 I MLJ 219: 51 CWN 474: 60 MLW 258.

8 *Satish Chandra Seal* v. *E*, 1945 C 137. But see the judgment of Bhide and Dalip Singh JJ. in *Hakam* v. *E*, 1940 L 129; *Adhik Lal Pathak* v. *E*, 1942 P 156: *Naresh Chandra Das* v. *E*, 1942 C 593; In re Kamkashi Naidu, 1942 MWN 750: 1943 M 89.

9 *Suresh Chandra Bahri* v. *State of Bihar*, AIR 1994 SC 2420: 1995 Supp (1) SCC 80, para 72, disti. *Nari Sauta* v. *E*, AIR 1945 Pat 161: 46 Cri LJ 613: *Abdul Sattar* v. *U.T. Chandigarh*, AIR 1986 SC 1438.

This section, being in the nature of an exception, must be strictly construed. Therefore, the section has no application where the person giving information is an accused but not in custody, or is in custody but not an accused, or is neither an accused nor in custody.[1] But it is not necessary that he should have been accused of, and in custody for, the offence confessed.[2] A person is in police custody for purposes of Section 27, even where he has been committed to such custody by a magisterial order.[3] A person went to the police station and stated "I went to the west facing room and, finding my wife sitting, wounded her and she became senseless". The Sub-Inspector went to the house of the informant and found the corpse of the woman in that room. The statement was held inadmissible on the ground that at the time of making the statement, the informant had not been accused of any offence.[4] But it has been held in a subsequent case of the same Court that, as soon as a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence; and, if the statement is made to a Police Officer as such, he becomes an accused person in the custody of a Police Officer within the meaning of Section 27.[5] For purposes of Section 27, the word "custody" does not necessarily mean detention or confinement. Submission to custody by word or action under Section 46 (1), Cr. P. Code, may be taken to amount to custody.[6] The expression "police custody" does not necessarily mean formal arrest;[7] it also includes police surveillance and restriction of the movements of the person concerned by the police.[8] Detention of a person by the police as a suspect amounts to his being in police custody.[9] As soon as an accused or suspected person comes into the hands of a Police Officer, he is, in the absence of clear evidence to the contrary, no longer at liberty, and is, therefore in custody within the meaning of Section 27 of the Evidence Act.[10] Where a Police Officer interviews a person as a suspect and is with him for a considerable time and walks with him to a place where an incriminating article is pointed out by the suspect, the latter will be deemed to be in police custody, even though he is arrested only after the incriminating article is found.[11]

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1. *Mathura* v. *E.*, 24 P 671 ; In re *Peria Guruswami Gounder*, 1941 M 765 ; *Durlav Namasudra* v. *E.*, 59 C 1040 : 138 IC 116 : 1932 C 297 : 33 Cr. LJ 546 ; *Jalla* v. E., 131 IC 93 : 1931 L 278 : 32 Cr. LJ 650 ; *Mohammed Yusif* v. *E.*, 126 IC 449 : 1930 S 225 : 31 Cr. LJ 1026 ; *Rajkumar Singh* v. *E.*, 111 IC 721 : 1928 P 473 : 29 Cr. LJ 913 ; *Deonandan Dusadh* v. *E.*, 7 P 411 : 111 IC 118 : 1928 P 491 : 29 Cr. LJ 790 ; *Khuda Baksh* v. *The Crown*, 1923 L 238 ; *E.* v. *Nga Aung* Ba, 35 IC 962 : 17 Cr. LJ 402 ; *Q. E.* v. *Babu Lal*, 6 A 509 (FB).
2. In re *Kamakshi Naidu*, 1943 M 89 ; *Public Prosecutor* v. *Nagabhushanam*, 1943 M 661 : See also *Ali Gohar* v. *E.*, 1941 S 134
3. *Ram Babu Jagdev* v. *E.*, 1938 P 60 : 18 Pat. LT 964.
4. *Deonandan Dusadh* v. *E.*, 7 P 411 : 111 IC 118 : 1928 P 491 : 29 Cr. LJ 790.
5. *Santokhi Beldar* v. *E.*, 12 P 241 : 142 IC 474 ; 1933 P 149 ; 34 Cr. LJ 349 ; Bharosa v. E., 1941 N 86.
6. *Santokhi Beldar* v. *E.*, 12 P 241 : 142 IC 474 : 1933 P 149 : 34 Cr. LJ 349 ; *Jalla* v. *E.*, 131 IC 93 : 1931 L 278 : 32 Cr. LJ 650 ; See also *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singha Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr. LJ 562.
7. *Aishan Bibi* v. *E.*, 15 L 310 : 152 IC 206 : 1934 L 150 : 36 Cr. LJ 14 ; *Mst. Jamunia Partap Lohar* v. E., ILR 1936 N 78 : 1936 N 200 : 164 IC 964 ; *Allah Ditta* v. *E.*, 18 L 106 : 1937 L 620 : 171 IC 377 : 38 Cr. LJ 1082.
8. *Gurdiyal Singh* v. *E.*, 139 IC 429 : 1932 L 609 : 33 Cr. LJ 756 ; *Maharani* v. *E.*, 1948 A 7 : 1947 ALJ 265 : 48 Cr. LJ 939 ; *E.* v. *Fancham*, 1933 O 192 : 8 Luck. 410 : 143 IC 846.
9. *Nawab Din* v. *E.*, 144 IC 12 : 1933 L 516 : 34 Cr. LJ 683 ; See *Aishan Bibi* v. *E.*, 15 L 310 : 152 IC 206 : 1934 L 150 : 36 Cr. LJ 14 ; *Allah Ditta* v. *E.*, 18 L 106 : 1937 L 620 : 171 IC 377 : 38 Cr. LJ 1082.
10. *Maung Lay* v. *E.*, 1 R 600 : 77 IC 429 : 1924 R 173 : 25 Cr. LJ 381 ; See *Aishan Bibi* v. *E.*, 15 L 310 : 152 IC 206 : 1934 L 150 : 36 Cr. LJ 14.
11. *Sudam Chandra Bag* v. *E.*, 144 IC 74 : 1933 C 148 : 34 Cr. LJ 675.

Even if an accused is not formally arrested when he gives information leading to the discovery, if it is proved that he was arrested before he went to the spot from which the articles are recovered, the accused shall be deemed for all practical purposes to be in police custody when giving such information.[1] Whether a person is in custody or not, is a question of fact.[2] Where a Police Officer, contrary to rules, interviews a prisoner in jail and receives information from him and subsequently the prisoner being remitted to police custody takes the police to a place from where he produces an incriminating article, the information is admissible.[3] For further notes as to the meaning of "custody", see notes to Section 26.

But though the rulings lay down that the person making the confession must be both an accused and in the custody of a Police Officer to make the information admissible, it is submitted that the reason of the rule on which this section is founded does not lend itself to this construction of the section. Suppose, a person gives some information in consequence of some such inducement as is mentioned in Section 24 and also suppose that, at the time the information is given, the informant is not in the custody of a Police Officer. It is difficult to see on what principle would such information be held inadmissible if it has led, and distinctly relates to the discovery of a relevant fact. Now, suppose the information is given to a Police Officer and the informant is not in custody. It is not easy to conceive any ground for the exclusion of the information in such a case either, if it has led, and distinclty relates, to the discovery of a relevant fact.[4] It is owing to this obvious unreasonableness of the result that the authorities have assigned a sort of artificial meaning to the words "accused" and "custody" in order to bring the information within the terms of Section 27. Presumably the expression "person accused of any offence in the custody of a Police Officer" is merely a compendious mode of describing the persons whose confessions are excluded under the three preceding sections, and the object of the section was to declare that confessional parts of statements which are excluded under one or other of the three preceding sections become admissible if, and inasmuch as, they lead to the discovery of a relevant fact, the question of custody being immaterial where the confession was made in the circumstances mentioned in Section 24 and 25. If this was the intention of the section, it must be admitted it has not been clearly expressed. The important point to remember about this section is that it is an exception to the exclusionary rules enacted in the three preceding sections, which are themselves exceptions to the general rule that a confession is provable against its maker as an admission. The section cannot possibly mean that whenever a fact is discovered in consequence of some information given by a person, the information will not be provable, unless the informant was an accused and in custody at the time the information was given. Suppose, for instance, that A, who has committed a murder but who is neither an accused nor in custody, confesses to a friend that he has committed the murder and concealed the corpse in a certain place and takes him to the place where the corpse is lying. It will be absurd to argue that, since a fact has been discovered in consequence of information given by A, therefore the information is not provable, because A, at the time of the informa-

1. *Mst. Jamunia Partap Lohar* v. *E.*, ILR 1936 N 78 : 1936 N 200.
2. *Hakam* v. *E.*, 1940 L 129 (FB).
3. In re *Chundru Pallayya*, 1943 M 315 : 206 IC 101 : 44 Cr. LJ 489.
4. *See* the remarks of Rankin C.J., on this aspect of the section in *Namasudra* v. *E.*, 59 C 1040.

tion, was neither an accused nor in police custody. It is, of course, possible to avoid this strained construction of the section by holding that, in view of the similarity of the description of the person mentioned in Section 26 (any person whilst he is in the custody of a police officer) and the present section (person accused of any offence in the custody of a police officer), the latter is a proviso to Section 26 alone and not to Sections 25 and 24 also; but in that case the result would be that information given in consequence of any such threat, promise or inducement as is mentioned in Section 24 or to any Police Officer, whether the accused is in custody or not, would be inadmissible even if it leads to the discovery of a fact. This was the view taken of this section by Mahmud, J., in his dissenting judgment in *Q. E.* v. *Babu Lal*,[1] and it appears to receive confirmation from some observations made by the Privy Council in *Narayana Swami's Case*,[2] though it has been held in some subsequent cases that the effect of the Privy Council decision is not, to overrule earlier cases in India in which it had been held that Section 27 is a proviso to all the three preceding sections.[3] It has been held by the Lahore High Court, that a confessional statement made by a person at a stage when he is not accused of any offence, and as a result of which certain articles are recovered is not admissible in evidence against that person when he is subsequently discharged in respect of those articles.[4]

Information must lead to the discovery of a relevant fact, i.e., a material object.—A confessional statement is not admissible if it has not led to the discovery of any fact.[5] A fact is said to be discovered when the knowledge of the existence of that fact was first of all derived from information given by the accused.[6] The fact deposed to as discovered must itself be relevant to the issue; otherwise no evidence can be admitted in proof thereof. Section 27 has nothing to do with the question whether the fact discovered is or is not relevant and that question must be determined with reference to the other provisions of the Act.[7] If a statement leads to the discovery of the fact that the property is concealed in the house mentioned to the knowledge of the person making the confession, and if the property is proved to have been connected with the offence the fact discovered would become relevant.[8] In order to make the information admissible it is necessary to show that the articles discovered, were connected with the crime, the connection being shown by some circumstances such as presence of blood on them.[9] "The word 'discovery' may mean either the purely mental act of learning something which was not known before to a person, as the mere mental fact of becoming aware of something after hearing it stated; or the physical act of finding upon search or inquiry something, or material fact, the existence or the exact locality of which was unknown till then. It is in the latter sense that the word is used in this

1. 6 A 509 (FB).
2. 1939 PC 47.
3. *Hakam* v. *E.*, 1910 L 129, per *Dalip Singh & Bhide*, JJ.; *Adhiklal Pathak* v. *E.*, 1942 P 156; *Naresh Chandra Das* v. *E.*, 1942 C 593; In re *Kamakshi Naidu*, 1943 M 89 : 1942 MWN 750.
4. *Chetu* v. *E.*, 1948 L 69 : 49 PLR 16 : 48 Cr. LJ 200 : 228 IC 334.
5. *Shamlal* v. *E.*, 120 IC 210 : 1929 N 350 : 31 Cr. LJ 15; *State* v. *Kali*, 1951 HP 28.
6. *Karam Din* v. *E.*, 115 IC 1 : 1929 L 338 : 30 Cr LJ 385.
7. In re *Athappa Goundan*, ILR 1937 M 695 : 1937 M 618 : 171 IC 245 : 33 Cr LJ 1027 (FB); *Sukhan* v. *E.*, 10 L 283 : 115 IC 6 : 1929 L 344 : 30 Cr. LJ 414; *Gokul Chamar* v. E., 6 P 611 : 105 IC 683 : 1928 P 22 : 28 Cr. LJ 971.
8. In re *Ravipudi Venkanna*, 1941 M 261.
9. *Ramprashad Makundram*, 1949 N 277 : 1949 NLJ 216 : ILR 1949 N 200 : 50 Cr. LJ 713.

section, that is, in the sense of finding upon search or inquiry, of articles connected with the crime or other material fact, the reason being that it is only this kind of discovery which proves that the information in consequence of which the discovery was made, is true and not fabricated. The statements admitted by the section are statements preceding finding upon search or inquiry".[1] The fact discovered may be the stolen property, the instrument of the crime, the corpse of the person murdered, or any other material thing; or it may be a material thing in relation to the place or the locality where it is found.[2] Therefore, where the accused merely points out places connected with the commission of the offence, there is no "discovery".[3] Where a female accused took the police to a shop and stated that she had purchased the arsenic from there, it was held that there was no discovery of a fact within the meaning of Section 27.[4] Similarly, where the accused took the police to a dhatura plant and said that she had taken the poisonous seed from there, the statement was held inadmissible.[5] There are, however, cases in which the section was apparently held applicable where, in consequence of information given by the accused, a complainant,[6] a witness[7] or a co-culprit was traced.[8] In a Madras Full Bench case, for example, where the corpse of the murdered woman had been found wrapped up and sewed in a coir mattress, the statement of the accused that he had purchased the mattress from a shopkeeper whom he pointed out and had it carried to his house by a coolie woman whom also he pointed out, was held admissible under this section on the ground that a relevant fact, namely, that the accused had purchased and taken to his house (where the murder was committed) the coir mattress in which the corpse had been found wrapped up, was discovered in consequence of the information given.[9] The words "facts discovered" occurring in the section embrace the place from which the object is produced, the knowledge of the accused as to this and the information given must relate distinctly to this fact.[10] Two guns said to have been used in a dacoity and taken on loan by two accused, were, on information given by the accused that they used them in the dacoity, recovered from persons who were both licence holders and held licences covering the guns recovered from them. Held, that it could not by any stretch of imagination be held that there was any discovery of these guns within the meaning of Section 27.[11]

Section 27 of the Evidence Act is in the nature of an exception to the prohibition

1. *Kuruvila Joseph* v. *State*, 1952 TC 300 : 1952 Cr. LJ 1290.
2. *Sukhan* v. E., 10 L 283 : 115 IC 6 : 1929 L 344 : 30 Cr. LJ 414 (FB).
3. *Dhaman Hiranand* v. E., 1937 S 251 : 171 IC 737 : 31 SLR 494 ; *Turab* v. E., 152 IC 473 : 1935 O 1 : 36 Cr. LJ 166 ; *Ramani Mohan De* v. E., 143 IC 797 : 1933 C 146 : 34 Cr. LJ 638 ; *Baghel Singh* v. E., 121 IC 497 : 1929 L 794 : 31 Cr. LJ 269 ; *Keramat Mandal* v. E., 92 IC 439 : 1926 C 320 : 27 Cr. LJ 263 ; See *Hira Gobar* v. E., 52 IC 601 : 20 Cr. LJ 681.
4. See *Gajrani* v. E., 144 IC 357 : 1933 A 394 : 34 Cr. LJ 754.
5. E. v. *Panchu*, 32 IC 136 : 17 Cr. LJ 7.
6. *Ismail* v. E., 1946 S 43 ; In re *Pasupuleti Venkat Subbayya*, 1943 M 418.
7. *Public Prosecutor* v. *India China Lingiah*, 1954 M 433 ; 1953 MWN 918.
8. E. v. *Ramanuja Ayyangar*, 58 M 642 ; *Subedar* v. E., 77 IC 890 : 1924 A 207 : 25 Cr. LJ 490 ; *Ram Singh* v. E., 7 PR 1916 Cr. : 34 IC 993 : 17 Cr. LJ 273 ; See also *Ishar Singh* v. E., ILR 1939 L 67 ; *Ilam Din* v. E., 120 IC 1 : 1930 L 157 : 30 Cr. LJ 1125 ; contra *Planianda Velan* v. E., 1934 MWN 601 ; *Salam* v. E., 43 IC 111 : 19 Cr. LJ 79 ; In *Abu Shikdar* v. Q. E., 11 C 635, the fact discovered was theft but the evidence was rejected on other grounds.
9. E. v. *Ramanupa Ayangar*, 58 M 642 ; 158 IC 764 : 1935 M 528.
10. *Pulukuri Kottayya* v. E., 1947 PC 67.
11. *Bala Huddar* v. E., 1933 N 252.

imposed by the two preceding sections of the Evidence Act, and a statement which is sought to be made admissible under that provision must be constituted strictly and with exactitude. Even a slight variation in the language of the statement may substantially change its meaning and import and have a far-reaching effect on the inference to be drawn from it. While, therefore, a verbatim reproduction of the words used by the accused may not be expected in the recovery memo prepared by the Police Officer or in the deposition of the witnesses of recovery, precision is a matter of utmost importance in the interpretation of the statement of the accused as incorporated in the recovery memo, and as proved in Court. Statement by accused that 'he had kept the stone on which he ground Dhatura in a corner inside the pit in the motor garage'—Statement to the effect that the accused had ground Dhatura on the stone related to the past user of the stone and did not lead to any discovery and accordingly was indmissible. The remaining part of the statement was admissible.[1]

Pointing out places connected with the offence and statements made while pointing out such places; no discovery.—It has been stated already that evidence of the mere fact that the accused pointed out places connected with the commission of the offence cannot be said to lead to any discovery.[2] And the same rule of exclusion applies to statements made while pointing out such places. From the statement "this is the place where I killed the deceased" there is no discovery, and a confession of murder made to a police constable is not at all confirmed by the prisoner's saying "this is the place where I killed the deceased".[3] Section 8 does not seem to apply to this kind of evidence; but if in the circumstances of a particular case, the act of pointing out be held as amounting to "conduct", the accompanying statement will still be subject to the rule of exclusion enacted in Section 25 and 26 of the Evidence Act and Section 162 of the Code of Criminal Procedure.[4] If, however, the accused points out, or leads the police to, a place from where some incriminating article is found, there would be discovery within the meaning of Section 27 and the relevancy of the conduct of the accused and the accompanying or preceding statement would be governed by other considerations. See notes to Sections 8 and 25 under the heading "pointing out places connected with the offence" and notes to Section 21 under the heading "confessions and admissions in criminal cases".

It is the statement leading to discovery of an incriminating article or thing which is made admissible under Section 27, and not the fact of discovery.[5]

Discovery in consequence of information; accused himself producing, or leading the police to, the material object; statements preceding discovery.—The fact deposed to must have been discovered in consequence of information given by the accused. If the accused himself produces an article, or leads the police to the place where it is lying, the act of production, or of leading the police to, and pointing out, the place where the article is lying is by itself relevant under Section 8.[6] If, however, the

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1. *Shri Irfan Ali* v. *State*, 1970 Cr. LJ 603 (All.).
2. See the preceding paragraph.
3. *E.* v. *Rama Pirapa*, 3 B 12, 17; *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Majhi*, 57 C 1062 : 125 IC 733 : 1930 C 291.
4. *Abdul Rahim* v. *E.*, 1945 L 105 (FB); *Turab* v. *E.*, 152 IC 473 : 1935 O 1 : 36 Cr. LJ 166 : *Q. E.* v. *Nana*, 14 B 260 (FB); *Birja* v. *E.*, 1941 O 563; *see* also notes to Section 25 under the heading "pointing out places connected with the offence".
5. *Bahadal* v. *State of Orissa*, 1979 SC 1262 (para 4).
6. *Babulal* v. *E.*, 1946 N 120; *Papiah* v. *E.*, 1939 MWN 1134; *Mst. Jamunia Pratap Lohar* v. *E.*, 1936 N

accused at first makes a statement as to the whereabouts of the article, and subsequently himself produces the article or leads the police to, and points out, the place where it is lying, then, according to some earlier decisions, the article cannot be said to have been discovered in consequence of "information" given by the accused. Discovery in such a case is attributed not to the "information", but the "act" of the accused. Therefore, according to these decisions, the physical act of producing the article or of leading the police to, and pointing out, the place where the article is lying may be given in evidence, but not the preceding statement.[1] Thus, where a person accused of murder himself produced a knife saying that he had committed the murder with it, and also stated that he had thrown the anklets of the deceased near the place of murder, and, accompanied by a Police Officer, went to the place of murder and pointed out the anklets, it was held that the knife and the anklets were not discovered in consequence of information given by the accused but by his own act, and that, therefore, though the act of producing the knife and pointing out the anklets could be given in evidence, the preceding statement relating to the knife and the anklets was inadmissible.[2] Similarly, where the accused charged with the theft of some jwari stated that they had taken the grain and concealed it in a jar which they forthwith produced, it was held that the discovery of jwari took place by the act of the accused and not in consequence of information, and that, therefore, though the fact of the production of the jwari could be proved, the preceding statement concerning it was inadmissible.[3] The last cited Bombay case was followed in the Punjab in a case[4] in which the accused, after stating that he had buried the chhavi with which he had committed the murder, had himself produced it. On these facts the Court allowed only the fact of production of the chhavi to be proved and not the preceding statement that he had buried it and had committed the murder with it. In a Full Bench decision of the Bombay High Court, however, where the accused, after stating that he had buried the property in the fields, took the police to a spot and with his own hands disinterred the earthen pot in which the property was kept the statement was held admissible on the ground that the subsequent discovery was "the consequence" of the information, since it set the police in motion.[5] The same view of this matter has been taken in Calcutta[6] where, in the circumstances mentioned above, the statement preceding the discovery has been taken to be a "necessary preliminary" of the fact discovered.[7] The trend of recent decisions has been undoubtedly in favour of the view that Section 27 is applicable to statements immediately preceding the discovery, even though the discovery is made by the act of accused.[8] The preceding

200 ; *Rafiqueuddin Ahmad* v. *E.*, 62 C 572 : 155 IC 687 : 1935 C 184 : 36 Cr. LJ 808 (FB) ; *Aishan Bibi* v. *E.*, 15 L 310 : 152 IC 206 : 1934 L 150 : 36 Cr. LJ 14 ; *Misri* v. *E.*, 31 A 592 : 3 IC 975 : 10 Cr. LJ 439 ; *Q. E.* v. *Kamalia*, 10 B 595 ; See *Sudam Chandra Bag* v. *E.*, 144 IC 74 : 1933 C 148 : 34 Cr. LJ 675 ; *Gurdial Singh* v. *E.*, 139 IC 429 : 1932 L 609 : 33 Cr. LJ 756 ; *see* also *E.* v. *Ranchhod Gokul*, 11 IC 613 : 12 Cr. LJ 429.

1. *Santa Singh* v. *E.*, 171 PLR 1913 : 19 IC 190 : 14 Cr. LJ 190 ; *Q. E.* v. *Kamalia*, 10 B 595 ; *E.* v. *Pancham*, 4 A 198 ; *see* also *Bhikha Grover* v. *E.*, 1943 B 458.
2. *E.* v. *Pancham*, 4 A 198.
3. *Q. E.* v. *Kamalia*, 10 B 595.
4. *Santa Singh* v. *E.*, 171 PLR 1913 : 19 IC 190 : 14 Cr. LJ 190.
5. *Q. E.* v. *Nana*, 14 B 260 (FB).
6. *The Legal Remembrancer* v. *Chema Nashya*, 25 C 413 : 2 CWN 257.
7. See *Rafiqueuddin Ahmad* v. *E.*, 62 C 572 : 155 IC 687 : 1935 C 184 : 36 Cr. LJ 808 (FB).
8. *Ram Richhpal* v. *State*, 55 PLR 23 : 1954 Punj 97 (FB) ; *Ganu Chandra Kashid* v. *E.*, 1932 B 286 : 33 Cr. LJ 396 ; *Rama Shidappa Thorali* v. *State*, 1952 B 299 : 52 Cr. LJ 1219 : 54 BLR 316 : ILR 1952 B 662 (FB);

statement and the subsequent act of production constitute one transaction.[1] The statement of an accused person that he had in possession some stolen property is admissible in evidence, even though he himself produced the property.[2] It makes no difference whether the accused himself digs out the property, or whether on information given by him, someone else digs up the ground and produces it.[3] A statement by the accused that he had buried the illicit liquor in a certain place, to which he subsequently took the police, is admissible under Section 7.[4] Where the accused made a statement as to the burial of a dead body and pointed out the place where the dead body was discovered directly in consequence of this statement, it was held that the statement was admissible under Section 27.[5] Where an accused person offers to indicate the place where stolen property is concealed and takes the Police Sub-Inspector to the spot, namely a locked room, and after entering the same, retrieves the property from underneath a pile of firewood in the presence of the Sub-Inspector, such statement is admissible in evidence under Section 27.[6] Statements such as "I threw the weapon in such and such a place,"[7] "the property will be found in the heap of rubbish."[8] "I will point out the place where the dead body was buried,"[9] "I have buried the article in a particular place."[10] "I have buried the things in the pond"[11] "I, in company with my father and brother, buried the body in a particular place."[12] "I buried the bottle, the rope and the cloth gag in a dunghill next to the cattle shed in the compound,"[13] are admissible, even if the accused himself points out the place where the thing is hidden. Of course if the information which leads to the discovery of an article comes from another source and not from the accused, any statement made by the accused before the discovery is not admissible and this is so even if the article is excavated by the accused himself, provided the information was sufficient to enable the police to locate the place where the thing lay buried.[14]

Manjunathaya v. *E.*, 1914 M 61 (2) : 51 Cr. LJ 533 : 24 IC 845 ; *Q. E.* v. *Comner Sahib*, 12 M 153 : 2 Weir 738 ; *Amiruddin Ahmed* v. *E.*, 1918 C 33 : 45 C 557 ; *Isher Singh* v. *E.*, 1916 L 228 : 17 Cr. LJ 183 : 33 IC 823 : 72 PLR 1916 ; *E.* v. *Mela*, 29 Cr. LJ 967 ; *Karam Din* v. *E.*, 1929 L 338 ; *Nawab Din* v. *E.*, 1933 L 516 ; *State* v. *Mohinder Singh*, 1953 Punj. 81 : 1953 Cr LJ 561 ; 54 PLR 408 ; *State* v. *Lekha Singh*, 1953 Punj. 101 : 55 PLR 112 : 1953 Cr. LJ 697 ; *Public Prosecutor* v. *Kandikatla Nagabhushanam*, 1943 M 661 ; *Rafiqueuddin Ahmad* v. *E*, 62 C 572 : 1935 C 184 (FB) ; *E.* v. *Mela*, 112 IC 55 : 29 Cr. LJ 967 ; *Shivabhai Becharbhai* v. *E.*, 50 B 683 : 97 IC 660 : 1926 B 513 : 27 Cr. LJ 1140 ; *see* In re *Sogiamuthu Padayachi*, 50 M 274 : 93 IC 42 : 1926 M 638 : 27 Cr. LJ 394, where the statement seems to have been made at the time of the production of the property.

1. See *Bahadur* v. *E.*, 88 IC 7 : 1925 S 289 : 26 Cr. LJ 1063 ; *see* also *Kalijiban Bhattacharjee* v. *E.*, 1936 C 31 : 63 C 1053 : 163 IC 41.
2. In re *Nainamalai Konan*, 69 IC 377 : 1921 M 679 : 23 Cr. LJ 697.
3. *Manjunathaya* v. *E.*, 24 IC 845 : 15 Cr. LJ 533 ; *See* also *Kirpa* v. *State*, 1952 HP 68 : 1952 Cr. LJ 1495.
4. *E.* v. *Mela*, 112 IC 55 : 29 Cr. LJ 967.
5. *Nawab Din* v. *E.*, 144 IC 12 : 1933 L 516 : 34 Cr. LJ 683 ; *Mamun* v. *E.*, 121 IC 728 : 1930 L 530 : 31 Cr. LJ 293 ; *Saifal* v. *E.*, 95 IC 603 : 27 Cr. LJ 827 ; *E.* v. *Turezi.*, 55 IC 685 : 21 Cr. LJ 349.
6. *Baliram* v. *E.*, (1935) 18 NLJ 342.
7. *Lalji Dusadh* v. *E.*, 6 P 747 : 106 IC 698 : 1928 P 162 : 29 Cr LJ 106.
8. *Manjunathaya* v. *E.*, 24 IC 845 : 15 Cr. LJ 533 ; See *Sudam Chandra Bag* v. *E.*, 144 IC 74 : 1933 C 148 : 34 Cr. LJ 675.
9. *Sulakhan Singh* v. *E.*, 89 IC 901 : 1926 L 138 : 26 Cr. LJ 1429 ; *E.* v. *Turezi*, 55 IC 685 : 21 Cr. LJ 349.
10. *E.* v. *Mela*, 112 IC 55 : 22 Cr. LJ 967 ; *Isher Singh* v. *E.*, 33 IC 823 : 17 Cr. LJ 183 : 72 PLR 1916.
11. *Kaka Singh* v. *E.*, 21 PWR 1903 Cr.: 155 PLR 1908.
12. *Mamun* v. E., 121 IC 728 : 1930 L 530 : 31 Cr. LJ 293 ; *Saifal* v. *E.*, 95 IC 603 ; 27 Cr. LJ 827.
13. In re *Athappa Goundan*, ILR 1937 M 695 : 1937 M 618.
14. In re *Addauki Venkadu*, 1939 M 266 : 181 IC 933 : 40 Cr. LJ 606 : 49 MLW 175.

Although this point was not exactly before the Court, the principle of the earlier Full Bench ruling of the Lahore High Court[1] seems to have affected the authority of the decisions which declare admissible statements preceding the production of pointing out of the property or the article by the acoused. Information may be given otherwise than by a statement,[2] and what the section makes admissible is that part of the information which is the immediate or proximate cause of the discovery.[3]If, therefore, the physical act of the accused in such a case be treated as constituting information. the act itself is the immediate and proximate cause of the discovery. The statements which precede or accompany the act of production or of pointing out of a thing are not always the immediate or proximate cause of the discovery of that thing. In a Calcutta case in which the history of this section has been fully discussed, one of the judges has actually held that in such cases only the act of the accused in pointing out the place and the consequent discovery are admissible, and that the preceding statement is not.[4] Where the accused makes a statement promising that he would point the place where he buried the article, take the police to that place and unsuccessfully searches for the article, and the article is produced by the co accused, the discovery cannot be said to be in consequence of the information given by the accused.[5]

Information leading to discovery — Admissible in evidence — The accused had stated that he would give the clothes of the deceased which he had placed in a pit above a brick kiln and that thereafter the accused, in the presence of witness, dug the pit in the brick kiln and took out the clothes. Such statement having led to discovery was admissible in evidence. The fact that the appellant hid the clothes of the deceased clearly indicated his guilty knowledge and was consistent with his having murdered the deceased.[6]

Statement of accused to police leading to discovery — Admissibility — The fact that the accused had knowledge of where the dead bodies were, was discovered by a statement made by him before the police. It was the accused who took the Police party to the place where the bodies were. The knife was also pointed out by him from under a bush near one of the dead bodies after he had previously stated that he had left the knife at the place of occurrence. It was held that the statement made by the accused before the police was rightly admitted into evidence under section 27 of the Evidence.[7]

Statement of accused disclosing the place where guns were concealed. which could not be known to others, leading to the recovery of the guns is admissible in evidence.[8] Recovery pursuant to the confessional statement (in this case a severed head) is admissible in evidence.[9]

Section 27 — Self incriminating statement made by the accused which does not

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1 *Sukhan* v. *E*, 10 L 283. This ruling was impliedly overruled on another ground in *Hakam* v. *E*, 1940 L 129 (FB).
2 *Karam Din* v. *E*, 115 IC 1; 1929 L 338: 30 Cr LJ 385; *E* v. *Nga Kyaing*, 3 R 656; 94 IC 706: 1926 R 112: 27 Cr LJ 658; *Misri* v. *E*, 31 A 592: 3 IC 975: 10 Cr LJ 439 (FB), where there was no statement and yet Section 27 was considered applicable.
3 *Sukhan* v. *E*, 10 L 283: 115 IC 6: 1929 L 344: 30 Cr LJ 414 (FB).
4 *Supt. & Remembrance of Legal Affairs, Bengal* v. *Bhajoo Majhi*, 57 C 1062: 125 IC 733: 1030 C 291.
5 In re Nandivada Ganganna Dhora, 1940 M 744.
6 *Pershadi* v. *State of Uttar Pradesh*, 1957 Cr LJ 328.
7 *Nand Kumar and others* v. *State of Rajasthan*, (1963) (2) Cr LJ 702: (1963) (2) SCJ 422.
8 *Narpal Singh* v. *State of Haryana*, AIR 1977 SC 1066: 1977 Cr LJ 642.
9 *State of T.N.* v. *Karuppusamy*, JT 1992 (2) SC 451: see *Tarseem Kumar* v. *Delhi Admn*, (1994) Supp (3) SCC 367: 1995 Cri LJ 470: AIR 1994 SC 2585.

lead to the discovery of fact is not admissible in evidence under section 27. Statement made by the accused that the axe was used for committing murder, or that blood stained clothes concealed in his house were his, is not a statement which leads to the discovery of a fact and hence is not a statement falling under section 27.[1]

In absence of statement of accused section 27 not attracted.—The operation of section 27 is not attracted when the prosecution does not want to prove the statement made by the accused which led to the discovery of any fact, and only says that some property was recovered 'at his instance' or 'as a result of information given by him'.[2]

No discovery if Police already knew where was the property.--The complainant in a case of pickpocketing in a train identified the appellant in an identification parade to the effect that he was present in the train on the material date and at the material hour—when his pocket was picked and the diamonds stolen. The appellant had also made a statement to the Police, while under arrest and custody inter alia as follows:

"I will point out one Gaddi alias Ramsingh of Delhi at Bombay Central Railway Station at III Class Waiting Hall to whom I have given a packet containing diamonds of different sizes more than 200 in number."

The High Court came to the conclusion as to the complicity of the appellant with the crime on the above two pieces of evidence brought forward at the trial and convicted him of the offence under section 411, Penal Code. It was held that although the statement might otherwise have been admissible in evidence, there was no discovery of a fact connecting the appellant with the receipt of the diamonds which were stolen within the meaning of section 27 of the Evidence Act because the police already knew that the third and/or the fourth accused had the diamonds. The appeal must be allowed and the appellant directed to be set at liberty.[3]

Discovery evidence is not substantive evidence but only corroborative evidence.—Discovery evidence, by itself, is subsidiary and cannot sustain a conviction, but where there is plenty of other evidence to sustain the prosecution case, discovery evidence is a valuable piece of corroborative evidence.[4]

Section 27 and illustration (a) to section 114.—Recovery of stolen property from an open place in consequence of information received from an accused does not necessarily prove his possession of it.

The presumption under Illustration (a) of Section 114 of the Evidence Act as to the guilty knowledge of the accused can be drawn only when it is established that he was in possession of stolen property. When the only evidence against the accused is that in consequence of information received from him some stolen property was recovered from an open place accessible to all, the fact of such recovery and the statement made by him which led to it are both relevant facts under section 27, but they do not necessarily prove his possession of the recovered property. Hence, if the prosecution case rests only on this evidence, it must be held that the charge under section 411, Penal Code, has not been established.[5]

In a theft case the statement of accused to Police that he would show the place

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1. *Prabhoo* v. *State of Uttar Pradesh*, 1963 (2) Cr. LJ 182.
2. *Ramkishan Mithanlal Sharma* v. *Bombay*, 1950 Cr LJ 156, 1955 SCJ 129.
3. *Jaffer Hussain* v. *Maharashtra*, 1971 (1) SCJ 433.
4. *Dinkar Bandhu* v. *State*, 73 Bom. LR 405 : 1970 Mah. LJ 634.
5. *Trimbak* v. *Madhya Pradesh*, 1954 Cr LJ 335.

where ornaments are hidden and information leading to recovery are admissible in evidence.—The accused had stated that he would show the place where he had hidden the ornaments. The entire statement of the accused (as well as of the other accused who stated that he had given the ornaments to a certain prosecution witness and would have it recovered from that witness) would be admissible in evidence.[1]

"Fact discovered—Deceased's head not found—Admissibility of evidence.—While the dhotis in which the severed heads were tied and the bricks and the sand remained intact in a river for twenty days, but even the bones of the heads, had altogether disappeared. The severed head having not been found in the bundles, the fact that the bundles did contain them or that the bundles were connected with the crime in question had to be established by the prosecution by independent evidence and the statement of the accused could not in law, be utilised for that purpose, because it related to the past contents or user of the bundles and not to the fact discovered within the meaning of section 27 of the Evidence Act. Statement by the accused to the effect that the sword which he would hand over was used by him in another dacoity case is not admissible under section 27 of the Evidence Act and there being no other evidence to that effect, there is nothing to prove the connection of the sword with the crime in question although the sword had stains of human blood.[2]

Cases.—Where the accused produced the murder weapon and cut leg of the deceased in the Police Station but the prosecution did not prove that the murder weapon belonged to the accused, production of these articles cannot read to the only conclusion that he committed the murder.[3]

Recovery of shirt of deceased from house of accused on his own information-Evidence is admissible under Section 27.[4]

Where the evidence sought to be given was that on being interrogated, three accused persons made statements in which it was disclosed that the dismembered parts of the persons murdered were thrown in a nala, and then they took the police to the nala and pointed out the place where these parts were thrown. The trial court admitted this evidence, and the statements made by each accused which led to the discovery of the same face were brought on the record. It was held that the evidence was admissible under Section 27 and there had not been any illegality in bringing the statement made by each accused on the record.[5]

Statements accompanying production of a thing.—If the accused himself produces a thing and simultaneously makes some statement concerning it, the act of production is itself admissible,[6] but the accompanying statement is not admissible under the present section, as it does not lead to any discovery; nor is it admissible under Section 8.[7] Thus,

1. *K. Chinnaswamy Reddy* v. *State of Andhra Pradesh*, (1963) (1) Cr. LJ 8.
2. *The State of Uttar Pradesh* v. *Jangney*, 1971 AWR 163.
3. *State* v. *Prabhu Sahay Kharia*, 1969 Pat. LJR 364 : 1969 BLJR 578.
4. *Bijoy Munda* v. *State*, ILR (1969) Cut. 119.
5. *Lachman Singh* v. *State*, 1952 SCJ 230 : 1952 Cr. LJ 363.
6. *Rafiqueuddin Ahmad* v. *E.*, 62 C 572 : 155 IC 687 : 1935 C 184 : 36 Cr. LJ 808 (FB); *Ganu Chandra Kashid* v.*E.*, 56 B 172 : 137 IC 174 : 1972 B 286 : 33 Cr. LJ 396 ; *Santa Singh* v.*E.*, 19 IC 190 : 14 Cr. LJ 190 : 171 PLR 1913 ; *Reg* v *Jora Hasji, etc.*, 11 Bom HC 242 ; see *Misri* v.*E.*, 31 A 592 : 3 IC 975 : 10 Cr. LJ 439 (FB).
7. In re *Singampilli Yerrana*, 1941 M 306 ; In re *Annika Lakshmudu*, 1941 MWN 956 ; *Santa Singh* v.*E.*, 19 IC 190 : 14 Cr LJ 190 : 171 PLR 1913 ; *Reg* v *Jora Hasji, etc.*, 11 Bom HC 242 ; see also *Suptd.& Remembrancer of Legal Affairs, Bengal* v.*Bhajoo Majhi*, 57 C 1062 : 125 IC 733 : 1930 C 291, a case of pointing out ; but see *Chavadappa Pujari* v. *E.*, 1945 B 292 ; *Kalijiban Bhattacharjee* v. *E.*, 1936 C 3 :

where the accused stated that the he had robbed a person of Rs. 48, whereof he had spent Rs. 8, and had Rs. 40 which he delivered to the Police Officer, the Court held the statement to be inadmissible.[1] Similarly, where the accused gave a knife to a Police Officer saying that he had committed the murder with it, the statement was held admissible.[2] A statement to the police by the accused while producing the materials used by him in committing the offence is inadmissible, since it cannot be said to be a statement in consequence of which a fact was discovered.[3] But where the accused took the police to the house of another person and asked him to hand over the article which he had given to him, it was held that the statement was admissible.[4]

Statements after discovery.—A statement made after the production of articles cannot be said to have led to the discovery of the articles.[5]

Confessional statements in recovery lists.—A confessional statement contained in a list of recovery prepared by the police under Section 103, Cr. P. Code, is inadmissible.[6]

Joint discoveries; like information given by more than one accused.—It is not a proper course, where two persons are being tried, to allow a witness to state "they said that" or "the prisoners then said". It is certainly not at all likely that both the persons should speak at once and it is the right of each of them to require the witness to depose as nearly as possible to the exact words he individually used. In detailing statements which are alleged to have led to discovery, it is of the essence of things that what each prisoner said should be precisely and separately stated. If the witness cannot be clear upon this point, no attention should be paid to his testimony.[7] It is improper to treat as the individual statements of two different persons a composite statement made up of information gathered from the two persons, it being impossible to say how much of the statement was made by one of them and how much was made by the other.[8] There is no such thing as a "joint discovery" viz., discovery made in consequence of information given by more than one accused person; it is only the information first given which is admissible, and where it cannot be ascertained which of the accused first gave the information the alleged discovery cannot be proved against any one of the accused.[9] In the words of Supreme Court. "If evidence otherwise confessional in character is admissible under Section 27....It is obligatory upon the Investigating Officer to state the record who gave the information, when he is dealing with more than one accused, what

63 C 1053 : 37 Cr. LJ 775 : 163 IC 41 and *Rafiqueuddin Ahmad* v.*E* 62 C 572 : 155 IC 687 : 1935 C 18 : 36 Cr LJ 808 (FB), where the accompanying statement has been held to be admissible and In re *Sogiamuthu Padayachi*, 50 M 274 : 93 IC 42 : 1926 M 638 : 27 Cr. LJ 394, where the statement admitted seems to have accompanied the production of property.

1. *Adu Shikdar* v.*Q.E.*, 11 C 635.
2. *E.*v.*Pancham*, 4 A 198 ; see *Reg* v.*Jora Hasji, etc.*, 11 Bom HC 242.
3. In re *Annika Lakshmudu*, 1942 M 237 : 199 IC 87 ; *Bhukhin* v.*E.*, 1948 N 344 : ILR 1948 N 147 : 49 Cr LJ 561 : 1948 NLJ 489.
4. *E.*v.*Faujdar*, 55 A 463 : 144 IC 1021: 1933 A 440 : 34 Cr LJ 875.
5. *Nari Santa* v.*E.*, 1945 P 161 ; *Jagar Singh* v.*Crown*, 1952 Pepsu 23.
6. *Baloch Pirwali* v.*E.*, 144 IC 772 : 1933 S 220 : 34 Cr LJ 848 ; *Mahfuz Ali* v.*State*, 1953 A 110 : 1953 Cr LJ 340 : 1953 ALJ 193 ; *Gunda* v.*State*, 1954 A 127.
7. *Q.E.*v.*Babu Lal*, 6 A 509 (549-550) (FB).
8. In re *Peria Guruswami Gounder*, 1941 M 765.
9. *Gurubaru Praja* v.*The King*, 1949 Orissa 67 : 51 Cr. LJ 72 : *Puthu* v.*E.*, 1945 O 235 ; *Abdul Kader* v.*E.*, 1946 C 452 : 50 CWN 88 ; In re *Sheikh Mahaboob*, 1942 M 532 (1); In re *Peria Guruswami Gounder*, 1941 M 765 ; *Rafiqueuddin Ahmad* v.*E.*,62 C 572 : 155 IC 687 : 1935 C 184 : 36 Cr LJ 808 (FB); *Durlav*

words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information as to provide incriminating evidence against the person.[1]" Once a fact has been discovered in consequence of information received from a suspected person, it cannot be discovered in consequence of information received from another suspected person. It is only the information that was given by the first person which is admissible under Section 27.[2] Thus, where several persons are charged with theft and all that the evidence shows is that all the accused went together with the Police Officer and took out the property from the place where it was buried at one and the same time, and there is no evidence to show that, before they took out the property, any one of them said where it was buried, the stolen property cannot be said to have been discovered in consequence of the information given by them within the meaning of Section 27, and the fact that all the accused went together and took out the property has no value against any one of them.[3] But if there be reliable evidence, which is extremely unlikely, that the statement was made by several persons simultaneously, then the information will be admissible against all persons making the statement.[4]

In a suitable case, however, it is possible to ascribe to more than one accused the information which leads to the discovery. Thus where information is first given by A but before the article is recovered B also gives similar information and the article is recovered in consequence, neither information is taken out of the section by reasons of the plurality of information.[5]

Where several accused gave information but discoveries were made by one "S'- His statement is admissible.–If the evidence adduced by the prosecution is found to be open to suspicion and it appears that the police have deliberately attributed similar confessional statements relating to facts discovered to different accused persons, in order to create evidence against all of them, the case undoubtedly demands a most cautious approach. The discoveries made at the instance of S, one of the accused cannot be ruled out of consideration. It may be that several of the accused gave information to the police that the dead bodies could be recovered in the Sakinala, which is a stream running over several miles. But such an indefinite information could not lead to any discovery unless the accused followed it up by conducting the police to the actual spot where parts of two bodies were recovered. From the evidence of the head constable as well as that of B, one of the witnesses, it was quite clear that S led the police via Salimpura to a particular spot on Sakinala, and it was at his instance that blood-stained earth was recovered from a place outside the village, and he also pointed out the trunk of the body of D, one of the persons murdered. Therefore the statement of S is admissible under Section 27.[6]

Namasudra v.*E.*, 59 C 1040 : 138 IC 116 : 1932 C 297 : 33 Cr LJ 546 ; *E.v.Shivputraya Baslingaya* 126 IC 876 : 1930 B 244 : 31 Cr LJ 1104 : *Faqira* v.*E.*, 116 IC 619 : 1929 L 665 : 30 Cr LJ 639 ; *Adam Khan* v.*E.*,1927 L 739 : 101 IC 488 : 28 Cr LJ 456 ; *Ram Singh* v.*E.*, 7 PR 1916 Cr : 34 IC 993 : 17 Cr LJ 273.

1. *Mohd. Abdul Hafeez* v.*State of U.P.* 1983 SC 367, (para 5).
2. *Naresh Chandra* v.*E.*, 1942 C 593 ; *Budha* v.*E.*, 64 IC 502 : 1922 L 315 : 23 Cr LJ 22 ; *Kudaon* v.*E.*, 91 IC 236 : 1925 N 407 : 27 Cr LJ 60 ; *Poshaki* v.*State*, 1953 A 526 : 1953 Cr LJ 1257 : 1953 ALJ 115.
3. *Rafiqueuddin Ahmad* v.*E.*, 62 C 572 : 155 IC 687 : 1935 C 184 : 36 Cr. LJ 808 (FB); *Dito* v.*E.*, 135 IC 2 : 1931 S. 154 : 33 Cr. LJ 106 : but see *Suleman* v.*E.*, 36 IC 474 : 17 Cr LJ 506 : *Lachman Singh* v. *State*, 1952 SC 167 : 1952 Cr. LJ 863.
4. *Abdul Kader* v.*E.*, 50 CWN 88 : 1946 C. 452 ; *State* v.*Chhotelal Mohanlal*, 1955 N. 71.
5. *Naresh Chandra* v.*E.*, 1942 C. 593 ; see also *Abdul Kader* v.*E.*, 1946 C. 452.
6. *Lachaman Singh* v. *State*, 1952 SCJ 230 : 1952 Cr. LJ 863 : 1952 ALJ 437 : 1952 SCR 839.

Joint statement given by two accused leading to the discovery of two material objects—whether admissible—separate statements from the accused person to be recorded.—Technically, it may be possible for two persons to give joint information which may lead to the discovery of fact. But it is always safer for the prosecution to record separate statements if the prosecution wishes to prove portions of the statement under Section 27. As in this case, it is all the more desirable and safe if the Police Officer records separate statements from the accused persons. The question really is not whether one person give the information or two persons give the information. The importance lies in that the information should, be precise in the sense that one particular accused gave a particular part of the information and the other accused gave the other part of the information, so that a definite portion of the information can be imputed to a particular accused person and proved against him. Otherwise, no portion of the joint statement can be proved under the section. What is proved in this case is only that M.S.1 and 2 were recovered (or discovered) on information furnished by the accused persons. That cannot mean that the accused persons were themselves the culprits or they had anything to do with the crime. It can only mean that they knew the whereabouts of the weapons: and we do not attach more importance to these recoveries than that.[1]

By whom should discovery have been made; no discovery where the fact is already known to the police—Discovery of incriminating articles when inadmissible.—If the police already knew where the incriminating articles were hidden, their discovery by accused is inadmissible in evidence.[2]

The statement of the appellant that accused No. 3 had the custody of the diamonds would not be something unknown to the police so as to constitute "a fact deposed to as discovered in consequence of the information received" from the appellant. The discovery, if any, merely related to the whereabouts of accused No. 3. There was no discovery of any fact deposed to by the appellant within the meaning of Section 27. If the police had not gone to the office of the Bombay Samachar and had not learnt of the complicity of the third accused with the crime, the statement of the appellant would amount to information received from him relating to the discovery of diamonds in the custody of accused No. 3. In the result although the statement might otherwise have been admissible in evidence there was no discovery of a fact connecting the appellant with the receipt of the diamonds which were stolen within the meaning of Section 27 of the Evidence Act because the police already knew that the third and/or the fourth accused had the diamonds.[3]

Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and Courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 is not whittled down by mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant's guilt.[4] The discovery should have been made by the police. Therefore, if the fact was known to other persons but not to the police who came to know of it only in consequence of

1. *Rama Setty* v.*State of Kerala*, 1971 KLT 244.
2. *Ahir Raja Khima* v.*State of Saurashtra*, (1955) (2) SCR 1285 : 1956 Cr.LJ 421.
3. *Jaffer Hussein Dastigir* v.*State of Maharashtra*, 1969 (2) SCWR 550 : (1969) 2 SCC 872.
4. *Thimma and Thimma Raju* v.*State of Mysore*, 1970 SCC (Cr.) 320.

information given by the accused, the section would apply.[1] A mere existence of other information by which discovery was facilitated does not make information inadmissible.[2] If, however, the fact was known to other Police Officers but not to the particular officer who deposes to it, there would be no discovery and the section would be inapplicable.[3] A fact already known to the police cannot be rediscovered on the statement of the accused person.[4] The exact location of a material object cannot be said to be known to the police where the accused merely states that he has buried the object in his own field but the object is recovered by the accused digging it out of the ground.[5] Where information is given by the accused to other who communicated it to the police, and the police discover the article, the information is admissible even if the accused himself digs out the article.[6] But mere plurality of information received before discovery does not necessarily take any of the information out of the section, and information received from the accused does not cease to be the information causing discovery simply because such discovery was facilitated by other assistance as well. Thus where information about the location of an article is given by A and subsequently similar information is given by B who also takes the police to the place where the article is lying, it cannot be said that the article is not recovered in consequence of information given by B simply because similar information had already been given by A.[7] Where several of the accused give information to the police that the dead bodies could be recovered from a stream in which they had thrown them, the stream running over several miles, such an indefinite information cannot lead to the discovery of the bodies unless the accused points out the actual spot where the bodies were lying.[8] Where a fact had been disclosed to a Police Officer by an approver, it cannot be said to have been discovered in consequence of some information subsequently given by the accused.[9] It is the first statement of the accused, to whom so ever made, that leads to the discovery of a fact if a fact is discovered. Thus where the accused first made a statement to the police and he was then made to repeat it to the *panchayatars* before the fact was discovered, the Court refused to admit the latter statement.[10] Where the brother of the deceased gave information about the place where the body of the deceased lay buried, and the accused also subsequently made a statement and disinterred the body, it was held that the discovery was not in consequence of information given by the accused and the statement made by him was consequently held inadmissible.[11] Where the Police Officer knows before hand precisely what the accused is going to say and procures the

1. *Supdt. & Remembrancer of Legal Affairs, Bengal* v.*Lalit Mohan Singha Ray*, 49 C 167 : 62 IC 578 ; 1922 C 342 : 22 Cr. LJ 562 : 1921 C. 111 ; contra *Har Narain* v. *E.*, 152 IC 565 : 1934 L. 313 : 36 Cr. LJ 189.
2. *Public Prosecutor* v.*India China Lingiah*, 1954 M 433 : 1953 MWN 918.
3. *Abu Shikdar* v.*E.*, 11 IC 635.
4. *Naresh Chandra Das* v.*E.*, 1942 C 593 : ILR (1942) IC 436 ; *Bharosa* v.*E.*, 1941 N. 86 ; *Public Prosecutor* v.*Subba Reddi*, 1939 M. 15 ; *Charagh Din* v.*E.*, 153 IC 228 : 1934 L. 786 : 36 PLR 40 ; *Wahid Bux Bhutto* v. *E.*, 120 IC 81 : 1929 S. 25 : 30 Cr. LJ 1121 ; *Shamlal* v.*E.*, 120 IC 210 : 1929 N. 350 : 31 Cr. LJ 15; *Mohammed Yusif* v.*E.*, 126 IC 449 : 1930 S. 225 ; *Chetu* v.*E.*, 1948 L. 69 : 49 PLR 16 : 48 Cr. LJ 200 : 228 IC 334 ; *Poshaki* v.*State*, 1953 A. 526 : 1953 Cr LJ 1257 ; 1953 ALJ 115.
5. *Lachman Singh* v.*State* 1952 SC 167 : 1952 ALJ 437 : 1952 Cr. LJ 863 : 1952 SCR 839.
6. In re *Chandra Pallaya*, 1943 M. 315.
7. *Naresh Chandra Das* v.*E.*, 1942 C. 593 : ILR (1942) IC 436 ; See *Narayan* v.*State*, 1953 Hyd. 161 : 1953 Cr.LJ 935.
8. *Lachman Singh* v.*State*, 1952 SC 167.
9. *Pan Gang* v.*E.*, 42 IC 1002 : 19 Cr. LJ 42.
10. *Kattameedi Chenna Reddi*, In re, 1940 M. 710 : ILR 1940 M 254 : 1940 MWN. 86.
11. In re *Addouki Venkadu*, 1939. M. 266.

presence of witnesses to witness the making of the statement of the accused and then the accused is brought out of custody and makes a statement and afterwards certain facts are discovered, it cannot be said that anything is discovered in consequence of the statement made by the accused.[1]

How much of information is admissible, so much of such information as "relates distinctly" to the fact thereby discovered.—What is allowed to be proved under this section is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the Police Officer and the Police Officer is obviously precluded from proving the information or part thereof, unless it comes within the four corners of the section.[2] The use of words 'so much of such information' in the section clearly postulates that long and detailed statements unconnected with any fact thereby discovered are not to be proved. That information along is payable which advances the investigation of the police in any way. It should be information of a relevant fact and there must be some fact discovered as a result of information.[3] The word "distinctly" in the section is important. It means that only that part of the statement which leads directly to the recovery is admissible in evidence.[4] The question what part of information is admissible in a particular case is one of great difficulty, and the judgments of the High Courts are by no means unanimous on the point. The first step in the application of this section to a particular case is to ascertain the precise fact which was discovered in consequence of the information given by the accused person. It is not correct to say that only harmless portions of the statement are admissible under the section. The only limitation upon the admissibility of the statement is that it must relate distinctly to the facts discovered subject to its relevancy being proved by other evidence.[5] It has already been pointed out that the fact discovered must be a material object and relevant to the case.[6] The words 'fact discovered' occurring in the section embrace the place from which the object is produced, the knowledge of the accused as to this and the information given must relate distinctly to this fact.[7] When the fact discovered has been stated by the investigating officer, he should detail the information that led him to discover it. In the ordinary type of cases it will be found that the information preceding the discovery consists of two parts: (1) that in which the accused admits having done something to the material object; and (ii) what in which he indicates the connection of the material object with the offence. Contrary to the modern English rule,[8] and the rule prevailing in several jurisdictions in America,[9] High Court in India have unanimously held that part of the

1. *Public Prosecutor* v.*Sabba Reddi*, 1939 M 15 ; *Public Prosecutor* v. *India China Lingiah*, 1954 M. 43 : 1953 MWN 918.
2. *Ramkishan Mithanlal* v.*State*, 1955 SC 104.
3. *Mangal Singh Sonelal* v.*E.*, 1948 N. 78 : 49 Cr LJ 66 : 1948 NLJ 36 : ILR 1948 N. 57 ; see also *Rama Shidappa Thorali* v.*State*, 1952 B. 299 (FB).
4. *State* v.*Shankar Prasad*, 1952 A 776 : 1952 Cr.LJ 1334 ; *Poshaki* v.*State*, 1953 A 526 : 1953 Cr LJ 1257 : 1953 ALJ 115.
5. In re *Sheikh Khader Sahib*, 1950 M. 108 : 62 LW 768 : 1949 MWN 512 : 1949 (2) MLJ 451.
6. See notes to this section under the heading "information must lead to the discovery of a relevant fact, *i.e.*, a material object."
7. *Pulukuri Kotayya* v.*E.*, 1947 PC 67 ; *Mohd. Ilyas* v.*State*, 1950 A. 615.
8. See Taylor, § 902 ; *Supdt. & Remembrancer of Legal Affairs, Bengal* v.*Bhajoo Majhi*, 57 C. 1062 : 125 IC 733 : 1930 C. 291.
9. Wigmore, § 858.

statement in which the accused describes how he disposed of the material object is admissible under this section, inasmuch as the information as to how the accused dealt with or disposed of the material object may be said to have led to the subsequent discovery. Therefore statements such as "I pawned the *karas* to Allah Din",[1] "I buried the body of the deceased in such and such a place",[2] "I buried the liquor in a particular place",[3] "I and the other accused hid the ornaments in the fort",[4] "I have killed my wife and her corpse is lying in my house",[5] "I have buried the *karas* of the deceased in a place I can show",[6] "I put the bomb in R's office",[7] "I have buried the gun in the ground near a cabin of the Shikohabad Railway Station",[8] "I left with A the spade with which the pit was dug",[9] "I sold the cow and the calf to such and such a person",[10] "I buried the ornaments of the deceased in a certain field",[11] "We have buried the sword and *katarnas* in our field",[12] I have buried the property in the fields",[13] "We buried the rope, the cloth gag and the bottle in a dunghill next to the cattle shed in the compound",[14] "I deposited the cloth with a certain person",[15] "I buried the property on the Cauvery bank",[16] "I threw the *aruwal* in the channel and buried the ornaments in the hollow of the tree",[17] "I threw the spearhead in the well and the *lathi* in the *talab*",[18] "I have hidden the property which I am willing to produce",[19] "I am going to show you the place where Surtio Bhil is buried,[20]" "I have buried in my sugarcane garden the knife. If you come with me I shall take and give it",[21] "I buried that cloth bundle by the side of the pial of Khadar Sahib in a pit. I will show you the spot",[22] "I have kept the watches with Narendra",[23] "I sold the dynamo to the proprietor of soda factory near the Pillayar temple in Anuppalayam for Rs. 15."[24] "I would produce a trunk which I have concealed

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1. *Sukhan* v. *E.*, 10 L. 283 : 115 I.C. 6 : 1929 L. 344 : 30 Cr LJ 414 (FB) ; See also *Narayana* v. *State*, 1952 Hyd. 161 : 1953 Cr LJ 935.
2. *Nawab Din* v. *E.*, 144 I.C. 12 : 1933 L. 516 : 34 Cr LJ 683 ; *Sonaram Mahton* v. *E.*, 10 P. 153 ; 131 IC 797 : 1931 P 145 : 32 Cr LJ 792; *Mamun* v. *E.*, 121 IC 728 ; 1930 L 530 : 31 Cr LJ 293 ; *Saifal* v. *E.*, 95 IC 603 : 27 Cr LJ 827 ; *E.* v. *Turezi*, 55 IC 685 : 21 Cr LJ 349.
3. *E.* v. *Mela*, 112 IC 55 : 29 Cr. LJ 967 ; *State* v. *Kali*, 1951 HP 28 ; *Kanbi Babu* v. *State*, 1950 Sau. 93 ; *Crown* v. *Sadullah Khan*, PLD 1953 L 451.
4. In re *Kallam Narayana*, 56 M 231 ; 143 IC 46 : 1933 M 233 : 34 Cr LJ 481.
5. *Surendra Nath Mukerji* v. E., 47 IC 659 : 19 Cr LJ 935.
6. *Neharoo Mangtu Satnami* v. *E.*, ILR 1937 N 268 : 1937 N 220 ; *Sadashiva Daulat* v. *State*, 1950 MB 104.
7. *Namdeo Margoo Kaikade* v. *E.*, 1944 B 331.
8. *E.*, v. *Chokhey*, ILR 1937 A 710 : 1937 A 497 ; *Chotey Lal* v. *State* 1954 A 687.
9. *Kariyan* v. *E.*, 1937 MWN 881.
10. *Q.E.* v. *Babu Lal*, 6 A 590.
11. *Mst. Jamunia Pratap Lohar* v. *E.*, ILR 1936 N 78 : 1936 N 200 : 164 IC 964.
12. *Phuluva* v. *E.*, 1936 N 23.
13. *Q.E.* v. *Nana*, 14 B 260 (FB) ; *Pershad* v. *State*, 1955 A 443.
14. In re *Athappa Goundon*, ILR 1937 M 695 : 1937 M 618 (FB).
15. *Q.E.* v. *Kumar Sahib*, 12 M 153.
16. *Sogiamuthu* v. *E.*, 50 M 274 : 1926 M 638.
17. In re *Periyakaruppan*, 4 M Cr C 250.
18. *Udham* v. *E.*, 1939 ALJ 732 : 1939 A 685.
19. *Ganu Chandra Kashid* v. *E.*, 56 B 172 : 137 IC 174 ; 1932 B 286.
20. *Alibaksh* v. *E.*, ILR 1946 Kar. 194.
21. *Public Prosecutor* v. *Oor Goundan*, 948 M 242 : 60 MLW 729 : 1947, 2 MLJ 427 : 1948 MWN 60 : 49 Cr LJ 256.
22. In re *Sheikh Khader Sahib*, 1950 M 108 : 62 LW 768 : 1949 MWN 512 : 1949, 2 MLJ 451.
23. *Mohd Ilyas* v. *State*, 1950 A 615.
24. In re *Vellingiri*, 1950 M 613 : 1950, 1 MLJ 467 : 1950 MWN 297.

in a dung hill",[1] etc., are admissible. So also the statement with regard to the authorship of the concealment of an article of offence is admissible.[2] Where the gist of the offence is possession, words such as "I hid", "I pledged", "I sold", "I gave" or "I have kept" are admissible on the ground that words are distinctly related to the fact discovered, though in the circumstances of the case they may amount to a confession.[3]

In an earlier case of the Calcutta High Court, Shamsul Huda, J., thought that the statement "I concealed the body in such and such a place would be admissible,[4] but in a later case in which the exact fact discovered and the preceding information have not been fully stated, Lord Williams, J. influenced by the history of the rule enacted in section 27 and the principle underlying it, observed *obiter* that the only fact admissible under the section is that in consequence of information received from an accused person the relevant fact discovered and that the details of the information, as for example the statement "I threw the deceased into the river" cannot be admitted.[5] In another case where the accused had stated "I have wounded my wife with a sword, who is lying on the bed", the words "I have wounded my wife with a sword", were held inadmissible.[6] In a later case of that Court where the accused said that he had cut up the body in a field, thrown the pieces in the river and buried the clothers of the deceased, and the facts discovered were merely that in a field were found a blood-stained log of wood, some pieces of bone and a string said to have been worn by the deceased that at a place on the river bank were found the clothes said to have been worn by the deceased when he was last seen alive and that a human foot which might have been that of the deceased was recovered from the river, it was held by Sharpe and Chakravarti, JJ., that though the facts discovered could be deposed to, no portion of the statement related to the facts discovered and that therefore the whole statement was inadmissible.[7] It has been held by the Privy Council that the information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity, would all be admissible, no substance would remain in the ban imposed by sections 25 and 26 on confessions made to the police, or by persons in police custody.[8]

On the question whether that part of the statement in which the prisoner indicates the connection of the fact discovered with the offence under investigation is admissible, there is a great divergence of judicial opinion. The Madras High Court holds that the discovery of the material object acquires its significance and consequently its relevancy only by reason of its connection with the offence under investigation and that therefore, that part of the information in which the prisoner states the connection of the material object with the offence is admissible. In a Full Bench case[9] of that Court Beasley, C.J., put the point thus :-

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1. *Rama Shidappa Thorali* v. *State*, 1952 B 299. (FB).
2. *Rama Shidappa Thorali* v. *State*, 1952 B 299 : 54 BLR 316 : 1952 Cr LJ 1219 : ILR 1952 B 662 (FB).
3. *Public Prosecutor* v. *India China Lingiah*, 1954 M 433 : 1943 MWN 918.
4. *Amiruddin Ahmad* v. *E.*, 45 C 557.
5. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Majhi*, 57 C 1062 : 125 IC 733 : 1930 C 291.
6. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singha Roy*, 62 IC 578 : 49 C 167.
7. *Abdul Kadir* v. *E.*, 1946 C 452.
8. *Pulukuri Kottayya* v. *E.*, 1947 PC 67 : 1947 1 MLJ 219 : 51 CWN 474 : 60 MLW 258 : 230 IC 135 : 1947 ALJ 355 : 49 BLR 508 : 74 IA 65 : 48 Cr LJ 533.
9. In re *Athappa Goundan* ILR 1937 M 695 : 1937 M 618 (FB).

"The fact deposed to and the fact discovered obviously must be relevant and the fact or thing discovered can only be relevant if it is connected with the offence of which the accused is charged; and the confession in the section is a confession of the offence charged and not of anything else. Before the statement is given in evidence it must be shown that the fact discovered is a relevant fact and that the object is a material object. In cases where the things discovered as a result of the accused's information are proved to be property stolen from a person and the subject of the charge, or worn by the victim of a murder just before the murder is committed, the property so discovered is directly connected with the crime and the fact thereby discovered relevant. It can be made relevant by evidence *aliunde* and it can be made relevant by the statement of the accused itself. Suppose there is no evidence *aliunde* what warrant is there for saying the part of the statement of the accused that makes it relevant must be excluded because it amounts to a confession ? Is there any warrant for garbling the statement in order to make it innocuous to the accused and in the process causing it to be irrelevant and consequently inadmissible in evidence? That is often the effect of removing from a statement the confessional portion, as what is left is by itself meaningless. Take the present case. If the appellant's contention is correct, only the following words can be admitted :-

They buried (1) the empty bottle, a rope and the cloth gag used for gagging the mouth in a dunghill next to the cattle shed in the same compound and the other bottle with some arrack in a heap of mud near a log of wood in a corner of the compound east of the choultry at Kallipatti and that he would go and take them and produce them.

"As it stands the statement is unimportant as, without more, the empty bottle, the rope and the cloth gag are not connected with the offence. there is nothing to show that the rope was the rope used in the neck of the deceased or that the cloth was used to gag him with, and indeed there is no evidence at all otherwise to show that the victim had been gagged. I am clearly of the opinion that without the earlier portion of the statement no relevant fact was discovered by the police as a result of it. I will give an example which supports my view. A is murdered and the medical evidence shows that he died as a result of a wound which is consistent with its having been caused by a sharp cutting weapon. B, an agriculturist, is accused of the murder and whilst in custody states to the police: "I threw the *bichuva* with which I cut A into the back room of my hut". The police go to his hut and there find the *bichuva*. They have discovered a relevant fact. Strike out the words with which I cut 'A' and all that remains is 'I threw the *bichuva* in the back room of my hut.' What is there to connect the *bichuva* with the murder? Every agriculturist has one *bichuva* or more in his possession. What *bichuva* is this? There is no evidence otherwise that it was the *bichuva* with which the *murder was* committed. It is merely a *bichuva* and if the police discover it they have not discovered a relevant fact. The statement, the confessional part having been struck out, is irrelevant, and none of it would go in under section 27; and indeed, were that the law, no attempt to put it in would ever be made.

Further, it is undisputed that the information must set the police in motion, because it is in consequence of it that the discovery is made. Would the police be set in motion merely by the statement of the accused that he threw a *bichuva* in the back room of his hut if there is no evidence that it is the instrument of the crime? If there is no evidence *aliunde*, then the police will not be set in motion unless the fact discovered is con-

nected with the case under investigation, and if it is the accused's statement which connects the fact discovered with the offence and make it relevant, then even though that statement amounts to a confession of the offence, it must be admitted because it is that, that has led directly to the discovery of the fact. If this reasoning is applied to the present case, then the earlier part of it, that the accused and Gurunatha Goundan killed the victim by gagging his mouth with a cloth and throttling his neck with hands and also by putting a rope and pressing it, connects the rope and the cloth gag directly with the offence and without it they are quite unconnected".

In the case in which these observations were made the investigating officer had recorded the following statement of the accused in the indirect form :-

"That at about 11 p.m. on the night of 26th March, 1936; himself and his co-accused together killed the deceased by gagging his mouth with cloth and throttling his neck with hands and also by putting a rope and pressing it..... that night..... they got two bottles of illicit arrack by paying Rs. 2 to a person named who got it from some other place..... that a small quantity was left over in one bottle only..... that they buried (i) the empty bottle, (ii) a rope and and the cloth, which was used for gagging the mouth, in a dunghill next to the cattle shed in the same compound and the other bottle with some arrack in a heap of mud near a log of wood in a corner of the compound east of the *choultry* at Kallipatti and that he would go and take them and produce them.

The investigating officer took the accused to the dunghill from where the accused took out a rope, a cloth and an empty bottle. The accused then took the investigating officer to a compound from where he dug up and produced another bottle with some arrack in it. The relevancy of the discovery of the bottles was that at a time material to the case the accused was in the near vicinity of the murder, carrying a bottle and intoxicated, which fact was wholly denied by him at the trial. The High Court held that the portion of the statement in which the accused admitted that he and his co-accused had killed the victim by gagging his mouth with a cloth and throttling his neck with hands and also by putting a rope and pressing it, connected the rope and the cloth directly with the offence and hence was admissible. As regards the portion of the statement relating to the bottles, it was held that it constituted information leading up to the discovery of a relevant fact and was, for that reason, admissible. In *Sogiamuthu* v. *E.*[1] in which the accused was charged with the murder of the *thambiran* of a mutt and the prosecution case was that the accused had removed some property from the person of the *thambiran* and buried it on the Cauveri bank, the same Court admitted the statement by the accused that the properties stolen from the mutt were buried by him and others on the Cauvery bank and it was remarked that, if any accused person makes a statement that is admissible under section 27, the whole of the statement which leads to the discovery of the stolen property becomes admissible and sentences should not be cut up so as to reduce the statement only to the actual words which the accused may use to express the fact that he has hidden the property. In another case where the accused made a confession of his connection with a gang in a particular theft and thereafter some stolen property was recovered from him, the confession was admitted in evidence on the ground of subsequent discovery.[2] In a recent case in which the fact discovered

1. *Sogiamuthu* v. *E.*, 50 M 274 : 1926 M 638 : 93 IC 42 ; In *Mariappan* alias *Vengayan*, 1974 M 264 : 43 Cr LJ 89 ; ILR 1947 M 433.
2. In re *Subharaya Ayyar*, 1941 M 658.

was a *thali kodi* wrapped up with a piece of charcoal in a piece of rag buried in a cattle trough, Horwill J., admitted all those portions of the statement that related to the removal, disposal and identification of the *tali kodi*. Stating the grounds on which the statement was admissible he said:

"The confession need not however be confined merely to the part of it which deals with the *thali kodi*. We have to know from the portions admitted that the *thali kodi* which accused 1 disposed of and which was found as a result of his confession can be identified with the *thali kodi* of the complainant is by admitting that portion of the confession which says that the accused entered the house of the complainant and took a *thali kodi* from somewhere. Excluding all that is not absolutely necessary for the purpose of identification of *thali kodi* or which does not relate to the disposal of the *thali kodi*, we arrive at the following of the admissible portion or accused 1's confession :-

"I and Guruswami accused 2.....came to the roof of the Ayyangar's house along the upstairs and I and Guruswami got down..... four women were lying in the *nadai*. The woman who was lying to the west among them, was wearing plenty of jewels. I removed the *thali kodi* by unscrewing the screw.....Perumal accused 5 gave a torn piece of female cloth which he had tied in his waist. I tied the pieces of charcoal in it as also the jewel, placed it in a small broken chunam pot of the house of Oomayan, and I buried it underneath a cattle trough of the house of Oomayan."[1]

Similarly in a case of illegal possession of a revolver which was recovered in consequence of information given by the accused, the statement that the revolver had been given to the accused by P was held admissible to establish accused's possession of the revolver.[2] the case of *Sogiamuthu* v. *E.*, has been followed by the Nagpur High Court,[3] and it has been held that, that part of the statement of an accused person in which he describes the connection of the material object with the offence, as for example, that the property buried by him belonged to the person murdered, is admissible under Section 27.[4] The Patna High Court also has followed the Madras case of *Sogiamuthu* and held that, where the confession of the prisoner includes a statement that a weapon was used for committing the offence charged, that part of the confession can certainly go in if it leads to the discovery of the weapon. Mullick A.C.J. who dealt with this point remarked: "It is contended on the authority of some cases that the prosecution is only entitled to prove that the accused in answer to a certain question gave information which led to the discovery of the weapon; but commonsense requires that the discovery should be connected with and be relevant to the investigation. The omission to connect the weapon with the offence would render the provision of Section 27 of the Indian Evidence Act wholly nugatory".[5] The other High Courts, on the other hand, hold that the statement of a prisoner in which he indicates the connection

1. In re *Muthandi*, 1942 M 444 : 201 IC 461 : 43 Cr LJ 750.
2. *Public Prosecutor* v. *Nagbhushanam*, 1943 M 661.
3. *Mst. Jamunia Pratap Lohar* v. *E.*, ILR 1936 N 78 : 1936 N 200 : 164 IC 964.
4. *Motilal* v. *E.*, 1940 N 66 : *Neharoo Mangtu Satnami* v. *E.*, 1937 N 220 : ILR 1937 N 268 ; *Mst. Jamunia Pratap Lohar* v. *E.*, ILR 1936 N 78 : 1936 N 200 : but see *Phuluva* v. *E.*, 1936 N 23, which follows the Lahore view.
5. *Lalji Dusadh* v. *E.*, 6 P 747 : 1928 P 162 : 106 IC 698 ; see also the judgment of Agarwala, J., in *Puran Singh* v. *E.*, 1947 P 162 : 25 P 279 ; but see *Sonaram Mahton* v. *E.*, 10 P 153 : 1931 P 145 in which the Lahore (FB) case *Sukhan* v. *E.*, 10 L 283, was quoted with approval.

of the recovered article with the offence is merely a remote and not a direct or proximate cause of the subsequent discovery and, is therefore, inadmissible. The judgment that propounds this view is the Full Bench judgment of the Lahore High Court in *Sukhan* v. *E.*[1] In that case the prisoner who was charged with the murder of a boy had stated: "I removed the *karas* from the hands of the boy, pushed him into the well and pawned the *karas* with Allah Din." The *karas* was subsequently recovered from Allah Din and the question was whether the statement, "I removed the *karas* from the hands of the boy" was admissible under Section 27. Sir Shadi Lal, C.J. who delivered the leading judgment of the majority of the Full Bench held that while the statement: "I pawned the *karas* with Allah Din" related distinctly to the fact discovered inasmuch as it was the direct or proximate cause of the discovery, the statement "I removed the *karas* from the hands of the boy" did not, it being merely a remote cause of the discovery. According to the view of the majority of the Full Bench in this case, that part of the statement of the prisoner which is merely descriptive of the material object, being indicative of its connection with the offence, is not admissible under Section 27. Therefore, adjectival expressions such as "the weapon with which I committed the murder",[2] the place, where I murdered the deceased".[3] "I murdered the girl and removed her ornaments",[4] "stolen property",[5] my share of the property stolen in the dacoity",[6] "the ornaments that the deceased had on his person",[7] the hatchet with which the murder was committed",[8] "the ornaments I removed from the body of the deceased",[9] have been held to be inadmissible.

It has been stated above that the Patna and Nagpur Courts follow the Madras view; but it is necessary to mention here that these two Courts have also expressed approval of the stricter view of Section 27. Thus in *Sona Ram Mahton* v. *E.*,[10] Scroope, J., quoted with approval the judgment of the majority in the Lahore Full Bench case of *Sukhan* v. *E.*,[11] and agreed with the observations of West J., in *R.* v. *Jora Hasji*,[12] that we must not under cover of this provision allow the discovery of ordinary articles *lathis*, knives, sticks and clothes to be introduced so as to admit what are practically confessions to the police and that the discovery ought to be of a fact which is directly connected with the crime apart from the statement itself. And Pollock, A.J.C. did the same in *Phuluva* v. *E.*[13] In a recent case in the Bombay High Court where the accused had stated "I had

1. 10 L 283 (FB); see also *Naresh Chandra Das* v. *E.*, 1942 C 593, where it has been held that the information must be the proximate cause of the discovery.
2. *Khitali* v. *E.*, 146 IC 905 : 1933 O 404 : 35 Cr LJ 192 : *Chhutkao* v. *E.*, 1935 O 33 : 153 IC 52 : 36 Cr LJ 246 ; *E.* v. *Salve*, 151 IC 883 : 1934 B 233 : 35 Cr LJ 1444 ; *Illahibux* v. *E.*, 1929 S 175 ; *Santa Singh* v. E., 19 IC 190 : 14 Cr LJ 190 : *R.* v. *Jora Hasji*, 11 B HC 242.
3. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Mahji*, 57 C 1062 : 125 IC 733 : 1930 C 291 ; *Tara Singh* v. *E.*, 11 PR 1915 Cr., ; 16 Cr LJ 545 : *Santa Singh* v. *E.*, 19 IC 190 : 14 Cr LJ 190.
4. Bhikha Gober v. *E.*, 1943 B 458.
5. *Manna Lal* v. *E.*, 75 IC 753 : 1925 O 1 : 25 Cr LJ 49 ; *Q.E.* v. *Babulal*, 6 A 509 (FB).
6. *Chanda Lal Kalidas* v. *E.*, 1934 S 159 : 154 IC 1038 ; *Gurdit Singh* v. *E.*, 44 IC 967 : 19 Cr LJ 439, differed from in *Harnam Singh* v. *E.*, 9 L 626 : 111 IC 561 : 1928 L 308 : 29 Cr LJ 881 , which itself was overruled in *Sukhan* v. *E.*, 10 L 283 : 115 IC 6 : 1929 L 344 , 30 Cr LJ 414 (FB) ; *Amiruddin Ahmad* v. *E.*, 45 C 557 ; *Ganu Chandra* v. *E.*, 56 B 172 : 1932 B 286.
7. *Sukhan* v. *E.*, 10 L 283 (FB) ; *Motilal* v. *E.*, 1940 N 66 : 185 IC 310 : 41 Cr LJ 158.
8. *Alibaksh* v. *E.*, ILR (1946) Kar 191.
9. *Dasu Ram* v. *State*, 1952 Raj 20.
10. 10 P 153.
11. 10 L 283 (FB).
12. 11 Bom HC 242.
13. 1936 N 23.

gone along with some others and after breaking open the bank had stolen the amount therefrom and I will produce the amount that is with me now at my house," the Court excluded the whole statement except the portion "I will produce the amount".[1]

It will appear from the cases analysed in the preceding paragraphs that two extreme views have been taken of Section 27. On the one hand is the view taken by Lord Williams, J.,[2] that the only fact admissible is that the material object was discovered in consequence of information given by the prisoner, and that neither that part of the information in which the prisoner says what he did to the material object nor the part in which he says what he did with that object is provable. This is the only logical view of the section and as already pointed out, is in accordance with the modern English rule. But it is plainly contrary to the terms of the section which clearly contemplates cases where "so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered" may become provable. On the other hand is the Madras view, according to which not only that part of the information in which the prisoner says what he did to the material object but also the part in which he says what he did to that object is provable. In between these two extremes is the view expressed in a large number of cases of other High Courts, that whereas that part of the information in which the prisoner says what he did to the material object is provable, the part in which he says what he did with it is not provable. This view is sought to be defended on the presumed ground that "when, in consequence of information furnished by the accused, a fact is discovered, then the discovery of that fact supplies a guarantee of the truth of the information which may amount to a confession. The confession in so far as it is confirmed by the discovery should be deemed to be true".[3] But a moment's reflection will show that the statement "I pawned the *karas* with Allah Din" is not confirmed by the subsequent discovery of the *karas* with Allah Din. What the discovery proves or confirms is that the prisoner had himself pawned the *karas* to Allah Din. And that is the reason in English law for excluding statements such as "I pawned the *karas* with Allah Din" can be said to have been confirmed by what Allah Din states about the *karas*, then the discovered fact no longer remains a material object and the decision of the majority in the earlier Madras Full Bench case,[4] that there is warrant for holding that the only facts contemplated by Section 27 are actual physical material objects, remains correct.

In *Pulukuri Kottyya* v. *E.*,[5] their Lordships of the Privy Council have expressed their agreement with the view of Lahore[6] and Bombay[7] High Courts and have held that *Athappa Gaundam* v. *E.*,[8] was wrongly decided. Delivering the judgment of the board, Sir John Beaumont observed, "In their Lordship's view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the ac-

1. *E.* v. *Mareppa Ningappa Kambar*, 48 Bom LR 542 : 1947 B 90.
2. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Majhi*, 57 C 1062 : 125 IC 733 : 1930 C 291 ; see also the observations of Dalip Singh, J., in *Karam Din* v.*E.*, 115 IC 1 : 1929 L 338.
3. *Per* Sir Shadi Lal, C.J. in *Sukhan* v. *E.*, 10 L 283 (FB).
4. *E.* v. *Ramunjam Ayyangar*, 58 M 642 : 158 IC 764 : 1935 M 528.
5. *Pulukuri Kottayya* v. *E.*, 1947 PC 67 : 51 CWN 474 : 60 MLW 258 : 230 IC 135 : 1947 ALJ 355 : 74 IA 65 : 1947 1 MLJ 219.
6. *Sukhan* v. *E.*, 10 L 283.
7. *Ganu Chandra* v. *E.*, 56 B 172.
8. *Athappa Goundan* v. *E.*, ILR 1937 M 695.

cused as to this, and the information given must relate distinctly to this fact. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house, does not lead to the discovery of the knife; knife were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge,and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But, if to the statement the words be added 'with which I stabbed A', these words are inadmissible, since they do not relate to the discovery of the knife in the house of the informant'. In this case the accused said to a Police Sub-Inspector: "I stabbed Sivayya with a spear. I hid the spear in a yard in my village. I will show you the place." The first sentence was held to be inadmissible.

In *Ramkishan Mitanlal* v. *State*,[1] evidence of the investigating officer was that on a certain day the accused made a certain statement, in consequence of which he took him to a place where he pointed out to a person who, at the instance of the accused, dug out from mud house a tin box containing three revolvers and two tins containing live cartridges. It was held that the statement was admissible.

In *Udai Bhan* v. *The State of Uttar Pradesh* the Supreme Court clearly laid down the extent of the admissible information in these words :-

> "a discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence".[2]

Where the accused stated before the Police that he could show the *katarna* with which he assaulted the deceased, the Supreme Court said: "The first part..... would be inadmissible because the fact that the accused.....assaulted the deceased "is not discovered in pursuance of the information given by (the) accused. It would be a confessional statement (made) to police officer (and) hit by Section 25.[3]

Information and discovery must be connected as cause and effect.—A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made.

It is clear therefore that what should be discovered is the material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as 'cause and effect'. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under Section 27 and cannot be proved. Section 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the crime of which the informant is the accused. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden or sold or kept and which is unknown to the police can be said to be discovered

1. 1955 SC 104.
2. 1952 CJ (1) 545.
3. *Baboo* v. *State of M.P.*, 1979 SC 1042 (para 13).

as a consequence of the information furnished by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the information furnished by the accused and information which disclosed the identity of the witness will not be admissible.[1]

'Fact discovered'–statement of accused that the articles were kept by him in one of the rooms in P.W. 32's house–Articles not found on search–subsequently articles were recovered on the basis of a statement given by P.W. 31. Recovery could not be treated as a recovery in pursuance of the information supplied by the accused–Recovery not one under Section 27.–In this case the recovery was virtually a recovery made on the statement of the witness and not of the accused. The 'fact discovered' in Section 27 of the Evidence Act embraces the place from which the object is produced and does not relate to the object produced. The object produced might have been discovered long ago. So much of the information given by the accused distinctly connected with the fact discovered, alone can be proved against him. The information supplied by the accused was that he had kept the article in a room in the house. But nothing was found there and the statement of the accused must therefore end here. There the chain connecting the accused with recovery is broken. The intervention of the witness thereafter and her production of the article cannot in any way be connected with the accused or the information alleged to have been supplied by him.[2]

A statement made to the Police by an accused explaining the production of property is not admissible.[3]

Meaning of the expression 'fact thereby discovered' in Section 27.–It embraces not only the object found but also the knowledge of the accused as to its being hidden in the place from which it was found.[4]

Statement that the article was given to another person, whether admissible?–It has been held in a Madras case that where one of the accused persons makes a statement that the incriminating article is in the possession of the other accused, and the article is subsequently found in the possession of the latter, the statement is not admissible under Section 27 against the former.[5] In a Nagpur case, where the accused stated that he had given the revolver to B, and B stated that he had given it to C, and C stated that he had given it D and D stated that he had given it E, and recovery was made from E, it was held statements of the accused A, B, C and D were inadmissible.[6] It is submitted that this view of the section is erroneous. Provided that the article is recovered directly in consequence of information given by an accused person, it is immaterial whether the information leads to its discovery from a place or from the possession of another person, accused or not. In most of the cases, the information given by the accused is that the article was given by him to another person,[7] and it is obviously impossible to draw a distinction between such cases and those where the information is that the article was deposited in a certain place. the accused told the police officer that

1. *Himachal Pradesh Administration* v. *Shri Om Prakash*, 1972(1) SCJ 691.
2. *Bhaskaran Nair* v. *Kerala*, 1970 MLJ (Cr) 123.
3. *Vokkabgara Yengtappa*, In re, 1952 M 535 : 1952 Cr LJ 1150 : 1952, 1 MLJ 62.
4. *Pershadi* v. *State of Uttar Pradesh*, 1957 Cr LJ 328.
5. *Ramasami Boyan* v. *E.*, 54 IC 479 : 21 Cr LJ 79.
6. *Maganlal Bagdi* v. *E.*, 150 IC 623 : 1934 N 71 : 35 Cr LJ 1097.
7. See *Sukhan* v. *E.*, 10 L 283 : 115 IC 6 : 1929 L 344 : 30 Cr LJ 414 (FB) ; *E.* v. *Faujdar*, 55 A 463 : 144 IC 1021 : 1933 A 440 : 34 Cr LJ 875.

he would show the spot were he had thrown the knife with which he killed the deceased. The police officer along with the accused and other persons went to the spot but no knife was found. Thereupon the Police Officer broadcast that whoever had taken the knife away should return it or houses would be searched. Then A came forward and stated, in the presence of the accused, that he had picked up the knife from the very spot mentioned by the accused at which he had seen it being thrown and that he had himself thrown it away at some other place. The knife was found at the place mentioned by A. It was held, that the statement by the accused to the Police Officer was admissible since it led not only to the discovery of the fact that a knife had been seen to be thrown away and was later found by A at the spot indicated, but also the discovery of the knife itself'.[1] Of course, where the person from whose possession the article is recovered is a co-accused, the admissibility of the information given against him by another accused would depend upon the terms in which the information was given and the applicability of Section 30 to such information. See note to this section under the heading "can a confession admissible under Section 27 affect a co-accused ? See also notes to Section 30.

Whether information should be stated in the exact words of the accused?—A Division Bench of the Lahore High Court had at one time held that the information given by the accused should be proved in the precise terms in which it was given.[2] As pointed out in the subsequent Full Bench decision,[3] in some cases this course, if adopted, would have the effect of bringing on the record portions of the information which, not being the immediate cause of the discovery, are inadmissible. Where this result is apprehended, the Full Bench decision not only declares it permissible for the Police Officer, but requires him, to give the information in his own language. In some earlier cases of the Punjab Chief Court, where the accused stated "I will point out the place where I committed the murder," the Court paraphrased the statement by "I will point out a certain spot where blood will be found."[4] In a case before a Division Bench of the Calcutta High Court where the accused had stated that he had thrown the bag of opium at Sukhunpukhuri, one Judge held that what could be proved was that the accused stated that the bag of opium was thrown at Sukhunpukhuri while the other Judge thought that the statement as made was admissible.[5] Where the accused stated that he had murdered the girl, removed her ornaments and deposited them in a place that he could show, the Bombay High Court held that all that the investigating officer could be permitted to depose was that the accused stated that he would show the ornaments of the deceased.[6] The principle that portions of a statement may be admitted is recognized in section 27;[7] rather, what the section declares admissible is not the statement but the "information" given by the statement, which leads to the discovery.[8] The practice in England now is,

1. In re *Ravupalli Rama Murthy*, 1941 M 290 : 193 IC 347 : 42 Cr LJ 407.
2. *Harnam Singh* v. *E.*,9 L 626: 111 IC 561 : 1928 L 308 : 29 Cr LJ 881.
3. *Sukhan* v. *E.*, 10 L 283 : 115 IC 6 : 1929 L 344 : 30 Cr LJ 414 (FB).
4. *Tara Singh* v. *E.*, 11 PR 1915 Cr ; *Santa Singh* v. *E.*,19 IC 190 : 14 Cr LJ 190 : 171 PLR 1913.
5. *Naresh Chandra Das* v. *E.*, 1942 C 593.
6. *Bhikha Gober* v. *E.*, 1943 B 458.
7. *Ghandalal Kalidas* v. *E.*, 1934 S. 159 ; *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singha Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr LJ 562.
8. *Amiruddin Ahmed* v. *E.*, 45 C 557 : 44 IC 321 ; 19 Cr LJ 305 : see *Karam Din* v. *E.*, 115 IC 1 : 1929 L 338 : 29 Cr LJ 385.

and was at the time the Indian Evidence Act was passed, to allow to be stated in evidence only this much that in consequence of information received from the prisoner, certain facts were discovered, thus to that extent fixing the prisoner with knowledge. Where in a murder case certain articles belonging to the deceased and some blood marks were discovered at a place pointed out by the accused, and the witnesses to the prosecution deposed to the following effect : "The accused showed us a spot saying that he murdered B there. The accused further said that he threw the body in the river", it was held that the statement that he had killed the deceased and thrown his body in the river was inadmissible, and that all that could be proved was that, in consequence of information given by the accused, blood stains were found on the bank of the river and some clothes in the bed of the river.[1] Even if this view of the section be considered to be too strict, the wording of the section clearly lends itself to the construction, that the officer deposing to the discovery, of the fact may give the substance of the information which led to the discovery. This is clear from the fact that section 27 uses the word "information" whereas in all other sections of this group[2] the fact, the relevancy of which is under consideration, is a statement. The Madras High Court has held that statements made by an accused person, containing information provable in evidence under section 27, should be clearly and carefully recorded by the Police Officers concerned and that they should be recorded in the first person, *i.e.*, as far as possible in the actual words of the accused. They should not be paraphrased. If what a man says is to be used in evidence, his exact words must be used and not what a policeman or anyone else says he said. When the police have recorded the statement, it will be in each case for the trial Judge who has the record before him to decide how much of the statement is admissible under section 27, *i.e.*,how much of such information as relates distinctly to the facts discovered may be proved. And in considering that the Court should bear in mind the fact that so much of such information, whether it amounts to a confession or not, may be proved as relates distinctly to the facts thereby discovered.[3] Where the accused gives information in a form which divides such information into several parts, the admissible part can be easily separated. But where information is given in the form of a compound sentence, the Court must divide the sentence into what are really its component parts and only admit that part which led to the discovery of the particular fact. It would be unreasonable to suggest that a statement which would be inadmissible if it were placed in a separate sentence, would be admissible if it were amalgamated with some other admissible statement. The protection given by sections 24 to 26 should not be dependent on the ingenuity of a Police Officer or the folly of the prisoner in composing the sentence which conveys the information leading to the discovery. But at the same time the statement should not be so garbled as to make it altogether innocuous to the prisoner and remove it entirely from the nature of an incriminating statement.[4]

1. *Supdt. & Remembrancer of Legal Affairs, Bengal* v. *Bhajoo Majhi*, 57 C 1062 : 125 IC 733 : 1930 C 291.
2. Sections 17 to 31.
3. *Public Prosecutor* v. *Venkaba Rao*, 171 IC 225 : 38 Cr LJ 1025 ; *Public Prosecutor* v. *Pasala Venkata Reddi*, 1945 M 202 ; see also *Naresh Chandra Das* v. *E.*, 1942 C 593 ; In re *Athappa Goundan*, ILR 1937 M 695 : 1937 M 618 : 171 IC 245 : 38 Cr LJ 1027 (FB) ; *Kattameedi Chenna Reddi*, In re, 1940 M 71 ; In re *Ravupalli Ramamurthy*, 1941 M 290.
4. *Namdeo Margu Kakadi* v. *E.*,1944 B 331 ; *Sukhan* v. *E.*,ILR 10 L 283 ; *Naresh Chandra Das* v. *E.*,1942 C 593 : ILR (1942) IC 436 ; *Ganu Chandra Kashid* v. *E.*, 1932 B 286 : 56 B 172 ; see also *Satish Chandra Seal* v. *E.*,1945 C 137.

The Nagpur High Court has held that it is for the investigating officer to record the words of the accused persons and it is for the court to see what portion or portions should be allowed to be proved. These two functions have to be kept distinct. It is not for the investigating officer to make a selection. He must record the information given by the accused. It is for the Court to consider the admissibility of the information.[1]

Other cases illustrative of the section.—A Police Officer can depose that the accused went to him and stated that his wife was lying wounded with a sword on the bed, but the statement that he wounded her will not be admissible.[2] The accused stated to the police that he had thrown the *darri* and the *gandasa* into the canal. The police went to the canal and discovered from a boy the fact that he had found the *darri* and the *gandasa* in the place pointed out by the accused and had taken them to a neighbouring village, from where they were eventually recovered. Held, that the discovery having been made in consequence of the information given by the accused, the statement made by him was admissible.[3] G charged with the murder of C by poison, stated that he had administered to the deceased a drug and that he had applied the same drug to a sore on the leg of H. The Police Officer went to H who produced the drug given by the accused. The evidence was held inadmissible, as the fact discovered was not relevant to the inquiry.[4] The statement of the accused amounted to the following : The throat was cut with the knife and the knife was on a *paniara* of the *mori* in the kitchen. Held, that the first part of the statement was not admissible but that the latter part was admissible.[5] When the body of the murdered man was discovered in consequence of a statement made by the prisoner, the preamble to that statement in which the prisoner stated that his co-accused had instigated him to take the deceased to the hills in order to murder him was held inadmissible.[6] Where the statement of the accused was to the effect that they had cut up the dead body in a *khasia* field, that they had thrown the pieces of the body into the river and that they had buried the clothes of the deceased, and the facts alleged to have been discovered in consequences of the statement were that at a place in the *Khasia* field were found a bloodstained log of wood, some pieces of bone and a string said to have been worn by the deceased, that a place on the river bank were found the clothes said to have been worn by the deceased when he was last seen alive and that a human foot which might have been that of the deceased was recovered from the river, it was held that the statement the accused cut up the dead body or that they buried the clothes or that they threw the pieces of the dead body into the river did not relate distinctly to the facts discovered and were entirely inadmissible in evidence.[7]

Ban under sections 26 and 27 compared.—The expression 'accused of any offence' in section 27, as in section 25, is also descriptive of the person concerned *i.e.* against a person who is accused of an offence. Section 27 renders provable certain

1. *Mangal Singh Sonelal* v. *E.*,1948 N 78 : 49 Cr LJ 66 : 1948 NLJ 36 : ILR 1948 N 57.
2. *Suptd.& Remembrancer of Legal Affairs, Bengal* v. *Lalit Mohan Singha Roy*, 49 C 167 : 62 IC 578 : 1922 C 342 : 22 Cr LJ 562 ; but see *Surendra Nath Mukerji* v. *E.*,47 IC 659 : 419 Cr LJ 935 : see also *Deonandan Dusadh* v. *E.*,47 IC 659 : 19 Cr LJ P. 491 : 29 Cr LJ 790, where a statement in similar circumstances was entirely excluded on the ground that the informant was not accused of any offence at the time of making the statement.
3. *Kapur Singh* v. *E.*, 50 IC 481 : 20 Cr LJ 305.
4. *Gokul Chamar* v. *E.*, 6 P 611 : 105 IC 683 : 1928 P. 22 : 28 Cr LJ 971.
5. *E.* v. *Salve*, 151 IC 883 : 1934 B 233 : 35 Cr LJ 1444.
6. *Veerana Kone* v. *E.*,1939 MWN 519 : 1939 M 593 : 50 MLW 518.
7. *Abdul Kader* v. *E.*,CWN 88 : 1946 C 452.

statements made by him while he was in the custody of a Police Officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person whilst he is in the custody of a Police Officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the form of a proviso to section 26, the two sections do not necessarily deal with evidence of the same character. The ban imposed by section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By section 26, a confession made in the presence of a Magistrate is made provable in its entirely.[1]

Can a confession admissible under section 27 affect a co-accused under section 30?—A confession made by one accused can be taken into consideration against another accused under section 30 when such confession is the immediate cause of the discovery of some relevant fact.[2] The word "affect" used in section 30 is very wide one; and, though the ordinary case contemplated by that section is where the confessing accused directly implicates another accused as well as himself, the section is not limited to such cases and covers also a case where the confession indirectly affects a co-accused.[3] The Calcutta High Court, however, has held that section 27 does not sanction the letting in of the statement of one person made to a Police Officer, while in police custody, as evidence against another person and that the use of such statement against a person other than the maker thereof is illegal and erroneous.[4] Of course where the statement sought to be admitted under the combined provisions of sections 27 and 30 does not relate to the fact discovered, the statement would not be admissible against the other accused.[5]

The Bombay High Court has held that a statement by an accused admissible under section 27 would not be admissible against his co-accused.[6] Extra Judicial confessior is a weak piece of evidence, hardly of any consequence.[7]

Section not affected by S. 162 Cr.P.Code.—There was considerable conflict on the question whether the provisions of section 27, Evidence Act, were repealed *pro tanto* by the amendment in 1923 of section 162 of the Code of Criminal Procedure. The point was raised before the Privy Council in *Narayana Swami's Case*[8] but was not decided.

1. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504 : 1960 (2) SCA 371.
2. In re *Pullanangari Rami Reddi*, 1941 M 238 ; *Sankappa Rai* v. *E.*, 31 M 127 ; In re *Athappa Goundan*, ILR 1937 M 695 : 1937 M 618 : 171 IC 245 : 38 Cr LJ 1027.
3. *Harnam Singh* v. *E.*, 9 L 626 : 111 IC 561 : 1928 L 308 : 29 Cr LJ 881, per Florde, J ; *Shivabhai Becharbhai* v. *E.*, 50 B 683 : 97 IC 660 : 1926 B 513 : 27 Cr LJ 1140 ; see also *Sankappa Rai* v. *E.*, 31 M 127 and *E.* v. *Rama Birapa*, 3 B 12.
4. *Satish Chandra Seal* v. *E.*, 1945 C 137 : see also *Babulal* v. *E.*, 1946 N 120 ; *Ramhit* v. *E.*, 65 IC 849 : 1922 A 24 : In re *Vodde Nagappa*. 1948 M 104 (2) : 60 MLW 596 : 1947, 2 MLJ 295 : 49 Cr LJ 48 ; *Narayan Dinba* v. *E.*, 1947 M 57.
5. In re *Abdul Basha*, 1941 M 316.
6. *Mathurdhana* v. *State*, 1956 Bom 393.
7. *Makhan Singh* v. *State of Punjab*, AIR 1988 S.C. 1705.
8. 1939 PC 47.

The amendment of section 162 of the Code by Act XV of 1941 which enacts that nothing in that section of the Code affects the provisions of section 27 of the Evidence Act, has now set that conflict at rest.

Section 27 and Section 8.–The accused after stabbing the deceased went to the police station and made a confession and stated *inter alia* that he would show the place where the deceased fell, and also the tree where the dagger and the stick were kept. It was held that the statement was admissible under this section, and even otherwise, in as much the conduct of the accused immediately after the death of the deceased was relevant under section 8 of the Act, that conduct was admissible, and also the statement "I shall show the place where Venkamma fell and the date tree where Kaizar and stick were kept" which affected or influenced that conduct.[1]

Evidential value of the discovery and the accompanying statement.–The discovery of a fact in consequence of information given by the accused always adds something to the knowledge of the investigation officer.[2] Where an incriminating article has been discovered by reason of information given by the accused, the conviction based upon that evidence is legally sound;[3] but a conviction on such evidence alone is unsafe where the place pointed out by the accused is in the possession of other persons,[4] or accessible to the public,[5] as in such cases the inference is reasonably possible that the article might have been put there by somebody else and the accused might merely have had knowledge of the place where it was put.[6] It has, however, been held in an Allahabad case that where the accused has buried an incriminating article in a place so that no member of the public can ordinarily get at it, the accused should be deemed to be in possession of the article.[7] The mere fact that an accused gives information of a place from where an incriminating article is found does not show that he put the article there himself,[8] and is insufficient to support a conviction.[9]

According to the Supreme Court, the recovery of a blood stained spear becomes incriminating not because of its recovery at the instance of the accused, there being more than one accused in the case, but the element of criminality tending to connect the accused with the crime has in the authorship of the concealment, namely, that the appellant who gave information leading to its discovery was the person who concealed it. There being another accused with him, the one whose statement led to the discovery of the blood-stained spear, may have had only knowledge of the place where it was hidden. To make such a circumstance incriminating it must be shown that he himself had concealed the weapon of offence, and on this point the language of the contemporaneous record of his statement being not free from doubt, and two constructions of it being possible, the Supreme Court adopted the one beneficial to the accused and acquitted him on the ground that the recovery of the blood stained spear at the instance

1. In re *Bandi Murugelu*, ILR 1961 (1) AP 123.
2. *Mata Din* v. *E.*, 132 IC 228 : 1931 O 166 : 32 Cr LJ 854.
3. *Naurang Singh* v. *E.*, 100 IC 122 : 1927 L 900 : 28 Cr. LJ 250 : but see *E.* v. *Shivputraya Baslingaya*, 126 IC 876 : 1930 B. 244 : 31 Cr. LJ 1104.
4. *Sohan Singh* v. *E.*, 125 IC 181 : 1930 L 91 : 31 Cr LJ 774.
5. *Public Prosecutor* v. *Pakkiriswami*, 1929 M. 846 ; Samambu, In re, 1952 M. 564 : (1953) 1 MLJ 467.
6. *Sohan Singh* v. *E.*, 125 IC 181 : 1930 L. 91 : 31 Cr. LJ 774 ; *E.* v. *Buta Singh*, 1 PR 1917 Cr : 39 IC 330 : 18 Cr. LJ 490 ; *Das Ram* v. *E.*, 1941 L 471.
7. *E.* v. *Chokhey*, ILR 1937 A. 710 : 1937 A. 497.
8. *Khuda Bakhsh* v. *The Crown*, 1923 L. 238 ; see also *Motilal* v. *E.*, 1940 N. 66.
9. *Rangappa Goundan* v. *E.*, 1936 M. 426.

of the accused which was the linchpin of the prosecution case did not provide any incriminating evidence against him.[1]

In another case the Supreme Court observed:

> "Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is wilfully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellants' knowledge as to where the weapon was kept. The evidence of the Ballistic expert carries the proof of the change a significant stop ahead, but not near enough, because at the highest, it shows that the shot which killed....was fixed from the pistol which was pointed out by the appellant".[2]

But where the accused produces stolen property from his house, there is a presumption that he is either the thief or a receiver of stolen property knowing it to be stolen.[3] The discovery of the dead body of a person, alleged to have been murdered, at a place indicated in a confession, would be material corroboration of the confession: but where it is difficult to say whether the discovery was made before the confession or afterwards, the confession ought not to be accepted.[4] Where an accused gives information leading to discovery, and the exact spot where the ornaments are buried is shown and the articles dug out by him from beneath, the question is not so much whether the accused was in physical possession of the ornaments buried in the field, though as a matter of fact a person who buries treasures in a spot unknown to others is really in possession of it, whether it is in a field accessible to everyone or in his own house. The important point is that the circumstances and conduct of the accused point clearly to his knowledge of the exact spot where the ornaments were and, in the absence of any explanation, the reasonable inference is that he put them there himself. Such conduct taken in conjunction with other evidence is enough to warrant a presumption of complicity in murder.[5]

The discovery of an incriminating article in consequence of information given by an accused person merely confirms the fact that the accused had knowledge of the whereabouts of the article, but it cannot lead to an inference that the accused had participated in the commission of the crime.[6] The statement that he did something to or with the article is not at all confirmed by the discovery; and this aspect of the matter of has been responsible in some systems of evidence and some Indian decisions for entirely excluding from evidence the statement preceding or accompanying the discovery that he did something with or to the incriminating article.[7] Therefore, even where that part of the statement in which the accused states that he did something with or to the incriminating article is held to be admissible, it should not generally carry much weight, as that part

1. *Pohalya* v. *State of Maharashtra* 1979 SC 1949, (para 15).
2. *Dudh Nath Pandey* v. *State of U.P.* 1981 SC 911 (para 15).
3. *E.* v. *Shivputraya Baslingaya*, 126 IC 876 : 1930 B 244 : 31 Cr LJ 1104.
4. *Hinga* v. *E.*, 68 IC 17 : 1922 O 202 : 23 Cr LJ 481.
5. *Mst. Jamunia Pratap Lohar* v. *E.*, ILR 1936 N. 78 : 1936 N 200 : 164 IC 964.
6. *Mohammad Jamsher Tadui* v. *State*, 1956 B. 186.
7. See notes to this section under the heading "How much of information is admissible; so much of such information as 'relates distinctly' to the fact thereby discovered".

of the statement cannot be said to have been confirmed by the subsequent discovery, which merely shows that the accused knew where the thing was and not that he himself did something to or with it. The evidence of a confession introduced under cover of section 27 ought to receive very little credence by the Court.[1] An involuntary confession that becomes admissible under section 27 by reason of the discovery of some fact has little evidential value.[2]

Ordinarily, in a case of circumstantial evidence where there has been a discovery as a result of a confession made under section 27 of the Act, we expect to find the discovery of something which can be associated with the deceased and not with the accused. A mere fact that a weapon, which could have been used for commission of a murder was discovered with blood-stains on it on information given by the accused, would not, by itself, be sufficient to show that the accused was the murderer.[3]

In *Nachhettar Singh* v.*State of Punjab* the Supreme Court observed that the recovery of fire arms and cartridges from the person of the accused at the time of arrest and findings of the empties from the place of occurrence had assumed importance in view of the serious infirmities in the main version of the occurrence, and in the circumstances, the recovery (of the fire arms and cartridgies from the person of the accused) ought to have been proved by examining the witnesses who had witnessed the recovery.[4] This observation could not be applied to the case of a recovery of weapons at the instance of the accused and in *Dalbir Kaur* v.*State of Punjab*. The Supreme Court distinguished the above case and held that the examination of only the Police officers was sufficient to prove the search, and non-examination of the other witness of the search did not by itself "introduce any serious infirmity in the evidence furnished by the recoveries which at least is only a corroborative piece of evidence".[5]

Evidentiary value of confession; Discovery held to amount to possession and not mere knowledge.—With regard to the recovery of the gold ear-rings, the appellant said that the ornaments fell down and were given to another accused. It was true that the confession of the appellant did not specifically say that he retained the gold ear-rings. The appellant, however, made a statement to the Sub-Inspector of Police to the effect that he had buried the gold ear-rings near a pipal tree and the ear-rings were recovered from the place pointed out by the appellant. The learned Session Judge drew a distinction between possession and knowledge and held that the appellant merely knew where the ear-rings had been concealed but he did not possess them. This distinction drawn by the learned Sessions Judge was not justified on the evidence in the record, and the statement of the appellant that he had buried the gold ear-rings was admissible in evidence under section 27 of the Evidence Act. The High Court rightly held that the recovery of the gold ear-rings was a circumstance which connected the appellant with the crime in question, The learned Sessions Judge gave a fantastic reason for not accepting the evidence as to the recovery of the ornaments against the appellant. He said that as there was no evidence that the woman was wearing the ornaments at the time when the crime was committed, the evidence of their recovery did not show that

1. See *Shamlal* v. *E.*, 120 IC 210 : 1929 N, 350 : 31 Cr. LJ 15.
2. *E.* v. *Taduturu Poligadu*, 50 LW 435 : 1939 MWN 873 : 1940 M. 12.
3. In re *Periyaswami Thevan*, 1950 M 714 : 1950, 1 MLJ 663 : 1950 MWN 333.
4. *Nachhettar Singh* v. *State of Punjab*, 1976 SC. 951.
5. *Dalbir Kaur* v. *State of Punjab*, 1977 SC. 472.

the appellant was in any way connected with the crime. The reason is fantastic. The woman was dead; obviously she could not give evidence to show that she was wearing the ornaments at the time when she was killed. The husband gave evidence to the effect that before he left for Kartarpur he had seen the gold ear rings being worn by his wife three or four days prior to his departure for Kartarpur. The prosecution examined the goldsmith who had prepared the ornaments. It is difficult to understand what better evidence the prosecution could give.[1]

Disclosure: Accompanying statement — A distinction should be made between cases where a discovery is made in consequence of an information given and a disclosure by an accused accompanying a statement. Where an accused while describing to the police the murder and the part played by the other accused almost simultaneously produces ear rings worm by the deceased, the discovery cannot be said to have been due to any information given by the accused and the statement is inadmissible.[2]

Section 27 unaffected by Sections 161, 162, Cr.P.C. — In *Deoman Upadhyaya's* case, it was held that the amendment of section 162, Cr P.C. that nothing in that section affects the provisions of Section 27 has now set an old conflict at rest. Section 162 of the Code of Criminal Procedure also enacts a rule of evidence. "By the combined operation of Section 27 of the Evidence Act and Section 162 of the Code of Criminal Procedure, the admissibility in evidence against the person in a criminal proceeding of a statement made to a Police Officer leading to the discovery of a fact, depends for its determination on the question whether he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not."[3]

The embargo placed by Section 162 Cr.P.C. on the use of statements made to a Police Officer in the course of an investigation, does not apply to such of them as are provable under this section. (vide Section 162(2) Cr.P.C.)[4]

Section does not offend against Article 14 — If Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the Legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the Legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination because the rule of admissibility of the evidence is not extended to a possible but an uncommon or abnormal class of cases.[5]

Section 27 does not offend against the Constitution: Section 27 and Article 14 (Equal protection of the laws) — The first objection raised against the validity of Section 27 was that it was unconstitutional as it militates against Article 14 of the Constitution.

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1 *Balbir Singh* v. *State of Punjab*, 1957 Cr LJ 481.

2 In re Singampilli, A 1941 M 306; In re Annika, A 1942 M 237 see also *Mahabir Biswas* v. *State of W. Bengal*, (1995) 2 SCC 25 at page 30.

3 *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1961 (2) SCJ 334: 1960 Cr LJ 1504.

4 *Hazari Lal* v. *State*, AIR 1980 SC 873.

5 *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1960 Cr LJ 1504: 1960 (2) SCA 371.

guaranteeing equal protection of the laws as Section 27 makes an unjust discrimination between statements made by persons in custody, and persons not in custody, inasmuch as statements made by persons in custody, leading to the discovery of a fact are made admissible under Section 27. While statements made by persons not in custody under similar circumstances are not provable and hence persons not in custody enjoy better protection against self-incrimination. This distinction appears to be somewhat paradoxical. A Full Bench of the Allahabad High Court upheld this contention and declared Section 27 to be void as offending against Article 14. But the Supreme Court, in appeal negatived the contention and held that the classification between persons in custody and persons not in custody was manifestly reasonable and refused to strike down Section 27.[1]

Section 27 and Article 20 (3) (Self-incrimination)—In *Bombay* v. *Kathi Kalu Oghad* it was urged that Section 27 was ultra vires as it offends against the protection guaranteed under Article 20 (3) against testimonial compulsion. The Supreme Court of India held that compulsion not being inherent or implicit in the fact of the information having been received from a person in custody, the contention that Section 27 of the Evidence Act necessarily infringes Article 20 (3) of the Constitution cannot be accepted, Sinha, C.J. observed whether compulsion was used or not "will be question of fact in each case to be determined by the Court on weighing the facts and circumstances disclosed, in the evidence before it".[2]

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

COMMENTARY

Fully removed.—When once the existence of improper inducement, threat or promise has been established so as to bring the case within the provisions of Section 24, there is a presumption of its continuance, and it is the duty of the prosecution to satisfy the Court that the impression caused by the original inducement, threat or promise was fully removed when the prisoner made the confession.[3] If an accused person makes a confession in consequence of an inducement and the confession is repeated before a Magistrate after due warning, the confession will be inadmissible if the impression caused by the original inducement had not disappeared at the time the confession was repeated before the Magistrate.[4] Where a Police Inspector told the accused that he would be let off if he confessed, and thereupon the accused made a confession to the Inspector and subsequently to a Magistrate, which was recorded under Section 164, Cr. P. Code, the Court, declaring the latter confession inadmissible, observed: "It must be recognised by everybody, and Judges must never allow themselves to lose sight of the fact, that whatever other incidents may follow, an incident of this kind...is a continuing

1. *State of Uttar Pradesh* v. *Deoman Upadhyaya*, 1961 (2) SCJ 334 : 1960 Cr LJ 1504.
2. *Bombay* v. *Kathi Kalu Oghad*, 1962-63 Cr LJ 856 : 1963 (1) SCJ 195.
3. See *E.* v. *Ganesh Chandra Goldar*, 50 C 127 : 74 IC 264 : 1923 C 458 : 24 Cr LJ 760.
4. *Nazir* v. *E.*, 55 A 91 : 143 IC 67 : 1933 A 31 : 34 Cr LJ 489.

offer. It does not differ from any other bargain which may be made by men in the ordinary course of life. If a man is told by a person in authority that if he gives a true account of the matter he will be pardoned, that is a continuing offer the thread of which continues unbroken until it is accepted by the confession which completes the bargain, unless there is some circumstance which breaks it so as to show that the inducement no longer operates and that the person confessing has no longer any hope of gaining anything from the authorities by making a confession".[1] Similarly, where a police constable assured the prisoner that nothing would happen to her if she confessed, and the prisoner confessed to the constable and subsequently repeated the confession before a Magistrate and the Sessions Judge, the Court did not feel satisfied that the impression caused by the original inducement had been fully removed.[2] A Railway Auditor found certain defalcations in the accounts of a booking clerk, and telling him in his house that he had better pay the money than go to jail, took him before the Traffic Manager, where he confessed and signed a receipt for the amount misappropriated by him. Held, that the impression had not been removed in the short interval which elapsed between the conversation at the prisoner's house and the signing of the receipt.[3]

A confession must be discarded if the accused at time of making it is not only in the custody of the police present in the Magistrate's room but is actually fettered and has the policeman standing by his side. [4] One method to bring about satisfaction as to the voluntary nature of a confession is to give enough time to the person concerned to compose himself.[5] Sufficient time should be allowed to elapse between the discontinuance of the police custody and the recording of the confession.[6]

The question whether the confession was made after the impression caused by the inducement, threat or promise had been fully removed is one fact and depends for decision on the facts and circumstances of each particular case. Where the accused was for 12 days in Police custody, during which he had time to reflect, it was held, that this detention did not necessarily lessen the influence which had been brought to bear on him.[7]

29. Confession otherwise relevant not to become irrelevant because of promise of secrecy. etc.— 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.

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1. *Fateh Chand* v. *E.*, 86 IC 1001 : 1925 A 606 : 26 Cr LJ 937.
2. 5 NWP 86.
3. *Reg. N Navroji Dadabhai*, 9 Bom. HC 358.
4. *Haider* v. *Crown*, 1937 PLR 663 (2) . *Bhukhin* v. *E* 1948 N 344 : 49 Cr LJ 561 : ILR 1948 N 147.
5. *Kirpa* v. *State*, 1952 HP 68 : 1952 Cr LJ 1495.
6. *Jagmal* v. *E, 1948* A 211 : 1948 ALJ 106 : 49 Cr LJ 243.
7. *Naran* v. *Kutch Government*, 1951 Kutch 27 : 52 Cr LJ 257.

COMMENTARY

Scope.–Section 29 refers to such confessions only as are not governed by or contemplated in Section 24 to 28, that is to say, confessions made not to Magistrates or Police Officers or persons in authority having some relation to the charge against the maker of the confession. The section is meant to dispel doubts with regard to extra-judicial confessions made under circumstances similar to those which make judicial confessions inadmissible.[1] If a confession is not inadmissible under any of the preceding sections it does not become inadmissible by reason of any of the circumstances mentioned in this section.

In *Rangappa* v. *State*.–It has been held that in the context, this opening clause refers to confessions which have been dealt with in the preceding sections and it postulates that they are admissible under the said sections. It is with such confessions that Section 29 deals.[2]

Promise of secrecy.–The accused made a confession to an officer of his regiment who stated to him that he had already obtained information from another person and promised secrecy if the truth were told. Held, that the confession was admissible.[3]

Deception –Deception may be practised on the accused in many a way for the purpose of obtaining a confession. He may be told that information has been obtained from other sources, or that he was seen committing the offence and that there is no use denying it, or he may be tempted to write to his friends and relations, and the letters intercepted. Thus, where the confession was obtained from the prisoner on his being given to understand that his brother-in-law had given out that he (prisoner) was guilty, the confession was held admissible.[4]

Confession in answer to questions.–Under Sections 342, 164 and 364 Criminal Procedure Code, the examination of the accused has to be in the form of questions and answers and though the accused is not bound to answer the questions asked, the answers, if given, cannot be ignored on the ground that the accused need not have answered them. Similarly, if the accused has made a confession to any private person in answer to questions, the confession is not inadmissible for that reason. But severe interrogation or lengthy cross-examination of the accused may, in certain circumstances, affect the voluntary character of the confession. See notes to Section 24

Want of warning –When an accused person is examined under Section 342, Cr. P. Code, he need not be warned that he is not bound to make a statement. But when the confession of an accused person is recorded under Section 164, Cr. P. Code, in the course of police investigation the recording Magistrate is required by law to warn the accused that he is not bound to make a confession and that if he makes a confession it will be treated as evidence against him. The decision of the Privy Council in *Nazir Ahmad's Case* [5] has ruled in unmistakable terms that the Magistrate recording the confession must comply with the provisions of Section 164 of the Code of Criminal Procedure. Therefore, if the warning required by the section of the Code is not given, it appears the confession would be inadmissible.[6] Where the requirements of Section 164

1. *E.* v *Jamuna Singh*, 1947 P 305 : 25 P 612.
2. 1954 Bom.285, 56 Bom. LR 115.
3. *E.* v. *Muhammadbuksh Karim Baksh*, 8 Bom. LR 507.
4. *Q.* v. *Ram Churn Ghose*, 20, WR Cr 33.
5. *Nazir Ahmad* v. *E.*, 63 IA. 372 : 17 L 629.
6. See *The King* v. *Saw Min*, 1939 Rang. LR 97 ; *Pratap Singh* v. *E*, 6 L 415 ; *Punia Mallah* v. *E.*, 1946 P 169 : 24 P 646 : 228 IC 51 : 48 CrLJ 30; *E* v. *Kommoju*, 1940 P 163 : 19 P 301 : 188 IC 57 : 41 CrLJ 533 ; *Kandhai* v. *State*, 1953 VP 38, but see *Rangappa Hanamappa* v. *State*, 1954 B 285 : *Rampuri* v. *E*, 1937 MWN

of the Code of Criminal Procedure have not been substantially complied with the confessional statement cannot be treated as validly recorded confession and must, therefore, be disregarded.[1]

The Rajasthan High Court has held that although in view of the specific provisions of Section 29 the mere absence of warnings would not make the confession recorded under Section 164 Criminal Procedure Code inadmissible, the Court has to be satisfied that the accused knew that he was not bound to make the confession and that if he did so, it would be given in evidence against him before he made the confession.[2]

In *Rangappa* v. *State*, also, it was observed that though mere non-compliance with the provisions of Section 164 (3) Cr. P.C. does not render the confession inadmissible if the irregularity appears to the Court to introduce an element of doubt as to whether the confession was voluntary, the Court would not hesitate to reject a confession as being inadmissible on the ground that it is not voluntary.[3]

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.– 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 may take into consideration such confession as against such other person as well as against the person who makes such confession.

[4][*Explanation* –"Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.[5]]

Illustrations

(a) *A* and *B* are jointly tried for the murder of C. It is proved that *A* said –"*B* and I murdered *C*". The Court may consider the effect of this confession as against *B*.

(b) *A* is on his trial for the murder of *C*. There is evidence to show that *C* was murdered by *A* and *B*, and that *B* said –"*A* and I murdered *C*".

This statement may not be taken into consideration by the Court against *A*, as *B* is not being jointly tried.

COMMENTARY

Principle. – This section is an exception to the general rule that a confession is only

1325 ; contra *E.* v. *Nanua*, 1941 A 145, and *E* v. *Jamuna Singh*, 1947 P 305 : 25 P 612.

1. *Bala Majhi* v. *State*, 1951 Orissa 168 (FB) *Karunthambi, In re*, 1950 M 579 : 1950 MWN 293 : 1950, 1 MLJ 659 : 63 MLW 449 : 51 Cr LJ 1047.
2. *Dhula* v. *State*, 19 7 Raj LW 223.
3. 1954 Bom. 285, 56 Bom LR 115.
4. *Ins by* Section 4 of the Indian Evidence Act, 1891 (3 of 1891).
5. Cf. Explanation 4 to Section 108 of the Indian Penal Code (Act 45 of 1860).

evidence against the confessor and not against others. The section has been described as a "needless tampering with the whole, some rule of the English Law, that a confession is only evidence against the person who makes it,"[1] and has been subjected to severe criticism both by Judges and commentators, and its terms have been very strictly construed.[2] The principle underlying the section is that the consequences of self-implication in an offence afford some sort of guarantee for the truth of the statement, and when the maker of such statement also implicates another prisoner, it is very difficult, if not practically impossible, to require the Court to exclude that statement altogether from its mind when it comes to consider the case against the other accused.[3] An admission by an accused person of his own guilt affords some sort of sanction in support of the truth of the confession against others as well as himself.[4]

Section 30 of the Indian Evidence Act, 1872, does not limit itself to confessions made to Magistrates, nor do the earlier sections do so.[5]

"Are being jointly tried for the same offence." —The law relating to joint trial of persons is contained in Section 239, Cr. P. Code. In order to make the confession of one accused admissible against another, there should not only be a joint trial in fact, but such joint trial should be legal. i.e., permitted by the law.[6] If the maker of the statement is dead and, therefore, not on trial with the person against whom it is sought to be given in evidence, the section will not be applicable.[7] The section will, however, apply if the confession is made in the progress of a joint trial but the confessor dies before judgment is delivered.[8] A statement made by one of two co-accused should not be used against the other, where later on their cases are tried separately. If such a statement is to be relied on as evidence, the accused person who made it must be examined as a witness in the other case.[9] An approver cannot be deemed as being jointly tried with the accused; his confession is not, therefore, admissible under Section 30 against the accused.[10] The joint trial must be for the same offence, or for its abetment or attempt. Proceedings under Sections 110 and 117, Cr. P. Code,do not constitute trial for an "offence" and, therefore, the confession of one person in such proceedings implicating himself and others is not admissible against the latter under Section 30,[11] though it may be admissible under the fourth sub-clause of Section 117, Cr.Code.[12] A confession made by an accused in a dacoity case implicating himself and a co-accused is not admissible against the latter in proceedings under Section 110, Cr. P. Code.[13] A confession made by a

1. *Baboo Singh* v. *E.*, 1936 O 156 : 159 IC 875 : 37 Cr LJ 163 : *In re Lilaram Ganganmull*, 81 IC 817 : 1924 M 805 : 25 Cr LJ 1041.
2. See *In re Periyaswami Moopan*, 54 M 75 : 129 IC 645 : 1931 M 177 : 32 Cr LJ 448 ; *Baboo Singh* v. *E.*, 1936 O 156 : 156 IC 875 : 37 Cr LJ 163.
3. *Khuban* v. *E.*, 120 IC 257 1930 A 29 : 31 Cr LJ 26 ; *Sarju* v. *E*, 41 A 231 : 49 IC 654 : 20 Cr LJ 206 ; *Tikaram Ratiram Kurmi* v. *E*, 1939 NLJ 469.
4. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 51 PLR 311 : 76 IA 147 : 1949 ALJ 283.
5. *Haroon Haji Abdulla* v. *State of Maharshtra*, 70 Bom LR 540.
6. *Q.E.* v. *Jagat Chandra Mali*, 22 C 50.
7. *Dengo Kandero* v. *E.*, 1938 S 94.
8. *Ram Sarup Singh* v. *E.*, 1937 C 39
9. *Ramudu Aiyar* v. *E.*, 72 IC 1923 M 365 : 24 Cr LJ 426.
10. *Sheobhajan Ahir* v. *E.*, 1921 P 499.
11. *Sarju* v. *E*,. 41 A 231 : 49 IC 654 : 20 Cr LJ 206 ; *Amirulla Pramanik* v. *E.*, 49 IC 649 : 20 Cr LJ 201 : contra *Richpal Singh* v. *E*,152 IC 881 : 1934 A 927 : 36 Cr LJ 198.
12. *Sarju* v. *E.*, 41 A 231 : 49 IC 654 : 20 Cr LJ 206.
13. *Mafizuddin* v. *E.*, 61 IC 793 : 22 Cr LJ 441 ; but see *Richpal Singh* v. *E*, 152 IC 881 : 1934 A 927 : 36 Cr LJ 198.

person in an inquiry under Section 476, Cr. P. Code, is admissible against the other accused at a subsequent trial for the offence regarding which inquiry under Section 476, Cr. P. Code, was made.[1] The expression "same offence" means the identical offence and not an offence of the same kind. [2] It means offences falling within the same definition and arising out of the same transaction.[3] If the trial is not for the same offence or for its attempt or abetment, e.g., where one accused is being tried for theft and the other for receiving stolen property,[4] or where one accused is being tried for selling minor girls and the other for buying them for purposes of prostitution,[5] or where one accused is being tried for rape and the other for abduction,[6] or where one accused is being tried for murder and the other for concealing the evidence of murder,[7] the confession of one is not admissible against the other. A confession by an accused, who is being jointly tried for murder with another that he merely concealed the evidence of the murder is not admissible against the other on the charge of murder.[8] Where more persons than one are being tried jointly for offences, one of which is a major and the other is a minor offence, and those offences are inter-connected, if the person who makes the confession does not incriminate himself so far as the major offence is concerned, it cannot be said that the confession affects him as well as the others.[9] But a trial for a major offence, e.g., murder, also includes trial for a minor offence, e.g., hurt; therefore a confession of a minor offence, where both the accused are being tried for the major offence, will be admissible on the implied minor charge, and perhaps on the major charge also.[10] Where two accused persons, who are being tried for robbery and murder, make statements accusing each other of the murder but confessing that each of them had taken part in the dacoity, the statements are admissible against each other on the charge of robbery, but not on the charge of murder.[11] A statement made by a person who is being tried under Sections 379, 457 and 411 is not admissible against another who is being jointly tried with the former for an offence under Section 414. I.P.Code.[12] Where a statement made by a person who is being jointly tried with another is admissible for or against the former but inadmissible against the latter, the statement may be proved at the trial but the jury must be warned that they must not take the statement into consideration against the accused against whom it is inadmissible.[13]

Joint trial in warrant cases: plea of guilty; admissibility of the confession of the accused pleading guilty–In a warrant case the trial covers the whole of the proceed-

1. *Anaji Venkatesh Mujumdar* v. *E.*, 87 IC 593 : 1924 B 445 : 26 Cr. LJ 993.
2. *Kundan* v. *E.*, 1948 S 65 ; *Gour Candra Das* v. *E.*, 115 IC 359 : 1929 C 14 : 30 Cr LJ 475.
3. *Bhansali Babu* v. *Kutch State*, 1951 Kutch 74 : 52 Cr LJ 1473
4. *Bishnu Banwar* v. *The Empress*, 1 CWN 35 : In the matter of A. David, 5 CLR 574.
5. Deputy Legal Remembrancer on behalf of the *Government of Bengal* v. *Karuna Baistobi*, 22 C 164.
6. *Naresh Chandra* v. *E.*, (1938) 42 CWN 814.
7. *Reg.* v. *Amrita Govinda*, 10 Bom HC 497.
8. Gangavya In *re*, 1946 M 124 : 1945 MWN 722 (2) ; *Dr. Jai Nand* v. *Rex.*, 1949 A 291 : 1949 ALJ 60 :50 Cr LJ 498.
9. *Dr. Jai Nand* v. *Rex*, 1949 A 291 : 1949 ALJ 60 : 50 Cr LJ 498, wherein *E*, v. *Shambhu*, 1932 A 228 : 33 Cr LJ 201 : 1932 ALJ 162 followed, and *Zahid Beg* v. *E.*, 1938 A 91 : 1937 ALJ 1253 : 1937 AWN 1099 not approved.
10. In *re Manicka Padayachi*, .2 IC 497 : 24 Cr LJ 385 : 1921 M 490 : but see *In re Periyaswami Moopan*, 54 M 75 : 129 IC 645 : 1931 M 177 : 32 Cr LJ. 448.
11. *Mian Khan* v. *E.*, 85 IC 836 : 1923 L 293 : 26 Cr LJ 612.
12. *Mewa Badal* v. *E.*, 1936 S 236 : 166 IC 37.
13. *Daniel Youth* v. *The King*, 1945 ALJ 269 (PC).

ings. Therefore a confession made by an accused in the course of the trial of a warrant case by a Magistrate, in which the confessor implicates himself and others who are being tried with him, is admissible against the latter,even if the confession takes the form of a plea of guilty.[1]

Sessions trials; plea of guilty accepted; no joint trial; inadmissibility of the confession of the accused pleading guilty –In Sessions cases, however, the plea of the accused is recorded at the very outset, and the trial starts after the plea is recorded. If the accused pleads guilty at the very outset and is convicted on his own plea, the trial as against him comes to an end. Therefore, where out of the accused persons committed to the Court of Sessions some plead guilty, and this plea being accepted, they are convicted, they can no longer be treated as being jointly tried with the rest of the accused who have not pleaded guilty and against whom the case proceeds, and any confession made by the former will not be admissible against the latter.[2]

Sessions trials; plea of guilty not accepted, joint trial, admissibility of the confession of the accused pleading guilty.–The Sessions Judge is not, however, bound to accept the plea of 'guilty' and may refuse to accept it and proceed to hear the prosecution evidence. Where this procedure is adopted, the accused pleading guilty is still on his trial, and any confession made by him will be admissible against others who have not pleaded guilty.[3] In a case of the Calcutta High Court, however, it has been observed that the practice of refusing to accept the plea of guilty and proceeding to try the accused in order that his confession may be taken into consideration against his co-accused is illegal and an abuse of the process of the Court.[4] A plea of guilty at the commencement of a Sessions trial is not such a confession as is contemplated by the Evidence Act.[5]

Sessions trial, plea of guilty neither accepted nor refused to be accepted, confession inadmissible.–Where the plea of 'guilty' is neither expressly accepted nor expressly refused to be accepted, and the accused pleading guilty is allowed to stand in the trial, but the Court intends ultimately to convict him on his plea of guilty, it is improper to take the confession of the accused pleading guilty into consideration against those of the accused who take their trial.[6] As soon as a person pleads guilty, there is not issue to be tried between the Crown and him and the person so pleading ceases to be an

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1. *Amdumiyan Gulzar* v. *E.*, ILR 1937 N 315 : 1937 N 17 (FB) : *Ram Kishen* v. *E.*, 111 IC 387 : 1928 L 880 : 29 Cr LJ 835 : *Fakhruddin* v. *E.*, 6 L 176 : 95 IC 63 : 1925 L 435 : 27 Cr LJ 735 ; *In re Vempalli Bali Reddy*, 38 M 302 : 22 IC 157 : 15 Cr LJ 13, see also *Nirmal Chandra De* v. *E.*, 100 IC 113 : 1927 C 265 : 28 Cr LJ 241 ; but see *Sitao Jholia Dhimar* v. *E.*, 1943 N 36 where it has been held that the trial begins only after the accused is called upon to plead to the charge.
2. *Amuduniyan Gulzar* v. *E.*, ILR 1937 N 315 : 1937 N 17(FB) : *Muhammad Yusuf* v. *E.*, 58 C 1214 : 131 IC 142 : 1931 C 341 : 32 Cr LJ 667 ; *E*, v. *Keramat Sirdar*, 38 C 446 : 12 Cr LJ 479 : *Q. E.* v. *Pirbhu*, 17 A 524 : *Venkataswami* v. *Q.*, 7 M 102 : *Reg* v. *Kalu Patil*. 11 Bom. HC 146 : see observations in *Fakhruddin* v. *E.*, 6 L 176 : 95 IC 63 : 1925 L 435 : 27 Cr LJ 735 : *In re Vempalli Bali Reddy*, 38 M 302 : 22 IC 157 : 15 Cr LJ 13.
3. *Shankar* v. *E.*, 93 IC 241 : 1926 A 318 : 27 Cr LJ 449 ; *Sukdev Tewari* v. *E.*, 4 IC 57 : 9 CLJ 291 : 10 Cr LJ 484 : 13 CWN 552 ; *Q E.* v. *Pultua, etc.*, 23 A 53, per Henderson. J., *Q.E*, v. *Chinna Pavuchi*, 23 M 151 ; but see *Muhammad Yusuf* v. *E.*, 58 C 1214 : 131 IC 142 : 1931 C 341 : 32 Cr LJ 667.
4. *Muhammad Yusuf* v. *E.*, 58 C 1214 : 131 IC 142 : 1931 C 341 : 32 Cr LJ 667 ; *Amdumiyan Gulzar* v. *E.*, ILR 1937 N 315 : 1937 N 17 (FB).
5. *Amduniyan Yusuf* v. *E.*, ILR 1937 N 315 : 1937 N 17 (FB) ; *Shyama Charan Bharthvar* v. *E.*, 1934 P 330.
6. See *Shankar* v *E.*, 93 IC 241 : 1926 A 318 : 27 Cr LJ 449 ; *E.* v *Kheoraj, etc.*, 30 A 540 : *Q E.* v. *Pultua*, 23 A 53 : *Q E.* v. *Chinna Pavuchi*, 23 M 151 ; *Q E.* v. *Pahuji*, 19 B 195.

accused person on trial and, therefore, the Court has no power to take the confession of such a prisoner into consideration against those against whom the trial proceeds.[1]

Joint trial; summons cases: plea of guilty.—As in Sessions trials,so in summons cases, the plea of the accused is recorded at the outset of the trial, and, therefore, a plea of guilty in summons cases has the effect on the question of joint trial as in Sessions cases.[2]

"Confession affecting himself and some other of such persons", test of admissibility. —The section applies to confessions, and not to statements which do not admit the guilt of the confessing party.[3] The word confession as used in the Evidence Act cannot be construed as meaning a statement by an accused "suggesting the inference that he committed" the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession.[4] In order to be admissible under Section 30, the inherent quality of a statement must be that of a confession,[5] and it must amount to a distinct confession of the offence charged.[6] The test to determine whether a statement amounts to a confession under Section 30 is whether the statement by itself is sufficient for the conviction of its maker of the offence for which he is being tried jointly with those against whom that statement is sought to be given.[7] The word "confession" in Section 30 means confession of the offence for which the accused persons are being tried.[8] It cannot reasonably be interpreted to mean a confession of any offence, nor even of any minor offence included in the offence for which the accused persons are being tried, nor of any offence connected with that offence, nor of any other offence which may be disclosed by the evidence. Where *A* and *B* were accused of murder and *A* made a statement before a Magistrate that he did not take any part in the murder but was compelled by *B* by a threat to assist *B* in disposing of the body, it was held that the statement could not be taken into consideration against *B*, as it was not a confession of murder for which *A* and *B* were being tried.[9] A confession of the offence of concealing the evidence of murder will,

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1. *Amdumiyan Gulzar* v. *E.*, ILR 1937 N 315 : 1937 N 17 (FB) ; *Muhammad Yusuf* v. *E.*, 58 C 1214 : 131 IC 142 : 1931 C 341 : 32 Cr LJ 667.
2. *See* Sections 242, 243, Cr. P. Code.
3. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 51 PLR 311 : 76 IA 147 : 1949 ALJ 283.
4. *Narayana Swami* v. *E.*, 1939 PC 47 ; *Dhanpati De* v. *E.*, ILR 1944 (2) C 312 : 1946 C 156.
5. *Amarnath* v. *E.*, 42 PLR 378 ; *Sewakram* v. *E.*,1939 S 130 ; *Santa Bandu* v. *E.*, 3 IC 742 : 10 Cr LJ 369 ; *Reg.* v. *Amrita Govinda*, 10 Bom. HC 497.
6. *Khimji Khetse* v. *E.*, 156 IC 972 ; *Bhadreswar Sardar* v. *E.*, 109 IC 351 : 1928 C 416 : 29 Cr LJ 527 ; *Sheo Ambar* v. *E.*, 77 IC 439 : 1925 O 295 : 25 Cr LJ 391 ; *Santa Bandu* v. *E.*, 11 Bom LR 633 : 3 IC 742 : 10 Cr LJ 369 ; *E.*, v. *Daji Narsu*. 6 B 288 ; See also *Bigna Kumhar* v. *E.*, 94 IC 258 : 1926 P 440 : 27 Cr LJ 594.
7. *Fakhruddin* v. *E.*, 6 L 176 : 95 IC 63 : 1925 L 435 : 27 Cr LJ 735 ; *Sheocharan* v. *E.*, 90 IC 385 : 1926 N 117 : 26 Cr LJ 1537 ; *Raghunath* v. *E.*, 89 IC 516 : 1926 N 119 : 26 Cr LJ 1380 ; In re *Manicka Padayachi* 72 IC 497 : 1921 M 490 : 24 Cr LJ 335 ; *Chuni Lal* v. *E.*, 60 IC 660 : 22 Cr LJ 260 ; *E.*, v. *Ganraj*, 2 A 444 ; *E.*, v. *Sadasivo Majhi*, 1938 PWN 754.
8. *Khimji Khetsi* v. *E.*, 156 IC 972, *In re* Periyaswami *Moopan*, 54 M 75 : 129 IC 645 : 1931 M 177 : 32 Cr LJ 448 ; *Bhadreswar Sardar* v. *E.*, 109 IC 351 : 1928 C 416 : 29 Cr LJ 527.
9. *In re Periyaswami Moopan*, 54 M 75 : 129 IC 645 : 1931 M 177 : 32 Cr LJ 488 ; *Tikaram Ratiram* v. *E.*, 1939 NLJ 469 ; See also *In re Govindan Subbaramaya*, 1937 M 321 ; *Mangol Singh* v. *E.*, 17 L 547 : 38 PLR 1018 ; but see *In re Manicka Padayachi*, 72 IC 497 : 1921 M 490 : 24 Cr LJ 385, where trial for a major offence, e.g., murder, has been held to include trial for a minor offence, e.g., grievous hurt.

however, be admissible against the co-accused on the charge under Section 210, I.P.C.[1] But where two accused persons who were charged with murder accused each other of murder but admitted their participation in robbery, it was held by the Lahore High Court that the confessions were not admissible on the charge of murder, but that they were admissible on the charge of robbery and as furnishing material for the inference that the robbery and the murder were parts of the same transaction and were committed by the same persons.[2] It has, however, been remarked in some cases that a statement is not inadmissible against a co-accused merely because it is not a complete and detailed confession up to the hilt,[3] and that though the ordinary case contemplated by Section 30 is where the confessing prisoner directly implicates another as well as himself, there is no reason for holding that the section is limited to such cases and does not also cover a case where a confession indirectly affects a co-accused,[4] or minimises the guilt of the maker and exaggerates the guilt of co-accused.[5] But all these cases were decided before the judgment of the Privy Council in *Narayana Swami's case*,[6] and their correctness is open to question. It is not necessary that the confession should claim for its maker the leading part in the crime.[7] When an accused in his confession states that he gagged the deceased and his other co-accused removed her jewels after stabbing her to death, the confession can be taken into consideration not only against him but also against his co-accused.[8] The confessing prisoner must implicate himself in the commission of the offence charged substantially to the same extent as he implicates the co-prisoners who are being jointly tried with him and against whom his statement is sought to be given in evidence.[9] To use a popular and well understood phrase, 'the confessing prisoner must tar himself and the person or persons he implicates with one and the same brush'.[10] The statement of one accused cannot be taken as evidence against another accused under Section 30 of the Act, unless the parties are admittedly *paridelicto*, that is, unless the confessing accused implicates himself to the full or as much as his co-accused whom he criminates.[11] It follows, therefore, that exculpatory or explanatory statements are inadmissible under the section,[12] as they cannot be said to "affect" their

1. *Syed Husain Sahib* v. *E.*, 1937 MWN 1233 ; *Mangal Singh* v. *E.*, 17 L 547 : 38 PLR 1018.
2. *Mian Khan* v. *E.*, 85 IC 836 : 1923 L 293 : 26 Cr LJ 612.
3. *Lakhan* v. *E.*, 84 IC 548 : 1924 A 511 : 26 Cr LJ 324 ; *Suka Raut* v. *E.*, 75 IC 705 : 1924 P 347 : 25 Cr LJ 17 ; *Jasoda* v. *E.*, 53 IC 691 : 20 Cr LJ 787.
4. *Shivabhai Becharbhai* v. *E.*, 50 B 683 : 97 IC 660 : 1926 B 513 : 27 Cr LJ 1140.
5. *Zahid Beg* v. *E.*, 1938 A 91 : 1937 ALJ 1253 : 1937 AWN 1099 ; *Dhanpati De* v. *E.*, ILR 1944 (2) C 312 : *Singaram, In re*, 1954 M 152 : 1954 Cr LJ 115 : 66 MLW 795 : 1953 2 MLJ 526 : 1953 MWN 572.
6. 1939 PC 47.
7. *E.* v. *Sadasivo Majhi*, 1938 PWN 754.
8. *In re Mariappan alias Vengayan*, 1947 M 264 : 48 Cr LJ 89 : ILR 1947 M 433.
9. *E.* v. *Bhagwandas Bisesar*, 42 Bom LR 938 ; *Barnabas Christian* v. *E.*, 152 IC 275 : 1934 P 586 : 36 Cr LJ 12 ; *Sheroo* v. *E.*, 81 IC 981 : 1925 N 78 : 25 Cr LJ 1067 ; *Sheo Ambar* v. *E.*, 77 IC 439 : 1925 O 295 : 25 Cr LJ 391 : *E.*, v. *Mulu*, 2 A 646 ; *Q.* v. *Belat Ali Moonshi*, 19 WR 67 Cr ; contra *Dhanpat De* v. *E.*, ILR 1944 (2) C 312.
10. *E.* v. *Ganraj*, 2 A 444, 446 per Straight, J. *Akhtar Ali* v. *Crown*, PLD 1954 L 210.
11. *Dr. Jai Nand* v. *Rex*. 1949 A 291 : 1949 ALJ 60 : 50 Cr LJ 498 ; *Ram Bharose* v. *Rex.*, 1949 A 132 : 50 Cr LJ 144 ; *E.*, v. *Shambhu*,135 IC 838 : 1932 A 228 : 33 Cr LJ 201 : 54 A 350 ; *Diwan Dhimar* v. *E.*, 91 IC 1002 :1926 N 229 (2) : 27 Cr LJ 186 ; *Sheocharan* v. *E.*, 90 IC 385 : 1926 N 117 : 26 Cr LJ 1537 ; *Q.* v. *Baijoo Nilmadhub Bose*, 25 WR 43 Cr.
12. *Bhimapha* v. *E.*, 1945 B 484 ; *Shyam Lal* v. *E.*, 156 IC 978 : 36 Cr LJ 1086 ; *Chhutkao* v. *E.*, 1935 O 33 : 153 IC 52 : 36 Cr LJ 246 ; *E.*, v. *Ramsidh Rai*, 1938 P 352 ; *Jogendra Nath Banerjee* v. *E.*, 152 IC 924 : 1934 C 724 : 36 Cr LJ 194 ; *Dito* v. *E.*, 135 IC 267 : 1931 S 154 : 33 Cr LJ 106 ; *Abdul Jalil Khan* v. *E.*, 128 IC 593 : 1930 A 746 : 32 Cr LJ 152 ; *Ring* v. *E.*, 53 B 479 : 120 IC 340 : 1929 B 296 : 31 Cr LJ 65 ; *Bhadreswar Sardar* v. *E.*, 109 IC 351 : 1928 C 416 : 29 Cr LJ 527 ; *Vallabhram Ganpatram* v. *E.*, 94 IC

maker. An admission which falls short of a confession is admissible only against its maker, and not against a co-accused.[1] Where the maker of a statement entirely exonerates himself, or throws the principal blame on others, the statement is self-servicing according to the ideas of the person making it, and is entirely excluded from consideration.[2] Statements which inculpate the maker more than or equally with others alone can afford any satisfactory guarantee of their truth. This necessarily means that less weight should be attached to statements which implicate the maker in the lesser degree than others.[3]

Applicability of the section to confessions made at the trial as well as to those made before the trial.—The section is not limited in its application to confessions made before the trial or inquiry. Confessions made in the course of the trial are equally admissible.[4] In fact, most of the reported cases decided under the section relate to confessions made at the trial. In a case of the Allahabad High Court, however, it has been held that the section contemplates confessions made before the trial, which require formal proof by the prosecution.[5] The same view was expressed *obiter* by Garth, C. J., in an earlier Calcutta Case,[6] and has been considered in Madras to be the correct view,[7] and has been followed by the Oudh[8] and the Nagpur Courts.[9] A statement made by an accused when examined, under section 342 of the Code of Criminal Procedure, is not admissible against a co-accused.[10] It is not necessary that the confession should have been made in the presence of the co-accused, provided it is formally offered against him.[11] There is nothing in section 30 to restrict a confession to one recorded before a Magistrate.[12]

Mode of proof of a confession.—See notes to section 24 under the headings "proof of an extra-judicial confession" and "proof of a judicial confession."

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881 : 1926 B 122 : 27 LJ 689 ; *Batan Singh* v. *E.*, 86 IC 219 : 1925 L 334 : 26 Cr LJ 731 ; *Maulu* v. *E.*, 85 IC 371 : 1925 L 532 : 26 Cr LJ 531 ; *Topandas* v. *E.*, 81 IC 249 : 1925 S 116 : 25 Cr LJ 761 ; *E.*, v. *Pramatha Nath Bagchi*, 55 IC 282 : 30 CLJ 503 : 21 Cr LJ 266 : *Ah Foong C Chinaman* v. *E.*, 46 C 411 : 48 IC 504 : 26 Cr LJ 24 ; *E.* v. *Daji Narsu*, 6 B 288 ; *Amina* v. *E.*, 130 IC 641 : 1931 L 196 : 32 Cr LJ 579 ; *Wahid Bux Bhutto* v. *E.*, 120 IC 81 : 1929 S 250 : 30 Cr LJ 1121.

1. *Rajkumar Singh* v. *E.*, 111 IC 721 : 1928 P 473 : 29 Cr LJ 913 ; *Ramhit* v. *E.*, 65 IC 849 : 1922 A 24 : 23 Cr LJ 193 ; *Sital Singh* v. *E.*, 46 C 710 : 54 IC 53 : 21 Cr LJ 5.
2. *Sheocharan* v. *E.*, 90 IC 385 : 1926 N 117 : 26 Cr LJ 1537 ; See *E.*, v. *Kausar Ali*, 1944 C 249 ; *Abdul Aziz* v. *E.*, 99 IC 1009 : 28 Cr LJ 209 ; *Ashiq Ali* v. *E.*, 1936 OWN 671 ; *Tikaram Ratiram Kurmi* v. *E.*, 1939 NLJ 469.
3. *Kunja Subudhi* v. *E.*, 8 P 289 : 116 IC 770 : 1929 P 275 : 30 Cr LJ 675 ; *Sheocharan* v. *E.*, 90 IC 385 : 1926 N 117 : 20 Cr LJ 1537.
4. *Rijumal Kundanmal* v. *E.*, 1937 S . 218 : 170 IC 746 : 38 Cr LJ 965 ; *E.*, v. *Velu Naicken*, 1939 MWN 611 : 1939 M 737 ; *Dial Singh* v. *E.*, 1936 L 337 : 16 L 651 ; *Cooper* v. *E.*, 54 B 531 : 127 IC 105 : 1930 B 354 : 31 Cr LJ 1137 ; *Ram Kishen* v. *E.*, 111 IC 387 : 1928 L 880 : 29 Cr LJ 835 ; *Fakhruddin* v. *E.*, 6 L 176 : 95 IC 63 : 1925 L 435 : 27 Cr LJ 735 ; In re *Vempallai Bali Reddy*, 38 M 302 : 22 IC 157 : 15 Cr LJ 13 ; *see* also *Nirmal Chandra De* v. *E.*, 1927 C 265 : 100 IC 113.
5. *Mahadeo Prasad* v. *E.*, 45 A 323 : 76 IC 1025 : 1923 A 322 : 25 Cr LJ 305.
6. *E.*, v. *Ashootosh Chuckerbutty*, 4 C 483 (FB).
7. In re *Marudamutha Padayachi*, 54 M 788 : 134 IC 63 : 1931 M 820 : 32 Cr LJ 1099 ; In re *Govinda Naidu*, 118 IC 512 : 1929 M 285 : 30 Cr LJ 932.
8. *Kunwar Sen* v. *E.*, 8 Luck 286 : 141 IC 192 : 1933 O 86 : 34 Cr LJ 124.
9. *Sumitra* v. *E.*, 1940 N 287 : followed in *Malla Mahmadoo* v. *State*, 1952 J & K 49 : 1953 Cr LJ 107.
10. *Des Raj Sharma* v. *State*. 1951 Punj. 14.
11. *E.*, v. *Lakshman Bala*, 6 B 124 ; see *Q. E.*, v. *Bepin Biswas*, 10 C 970 ; but see *E.*, v. *Chandra Nath Sirkar*, 7 C 65.
12. In re *Athappa Goundan*, 1937 N 695 : 1937 M 618 : 171 IC 245 : 38 Cr LJ 1027 (FB).

Confession made to a Magistrate in a Native State.—A confession recorded by a Magistrate in a Native State, if admissible against its maker, is also admissible against a co-accused under section 30.[1]

Section 30 and 32 (1) Confession of a dead accused is relevant against a co-accused, though it is inadmissible under section 30.—Two accused were tried jointly with others for offences under section 120 B of the Indian Penal Code read with section 167 (8) of the Sea, Customs Act, but before judgment convicting both these was pronounced one of them died. The deceased had made a confessional statement implicating the other accused in answer to a notice under section 711-A of the Sea Customs Act. On the question of the relevancy of this statement:—

Held, that the statement was relevant under Section 30 read with Section 32 (3) of the Indian Evidence Act. The confession of a person who is dead and has never been brought for trial is not admissible under Section 30 which insists upon a joint trial. The statement becomes relevant under Section 30 read with Section 32 (3) of the Evidence Act because Bengali was fully tried jointly with Haroon.[2]

"May take into consideration"; evidentiary value of the confession of a co-accused; conviction on such confession, whether legal ?—Confession of a co-accused is not "evidence" as defined by Section 3;[3] nor does this section declare it to be "relevant". The Act requires a judgment to be based on facts declared by it to be relevant. Therefore, a conviction which proceeds on the confession of a co-prisoner alone would not be justified by law.[4] The language of the section is guarded, and the history of the Act leaves me in no doubt that this section was designedly framed in these terms. While admissions, a word which embraces confessions, are by Section 21 relevant, and may be proved as against the person making them, all that Section 30 provides is that the Court may take them into consideration as against other persons. This distinction of language is significant, and it appears to me that its true effect is that the Court can only treat a confession as lending assurance to other evidence against a co-accused. Thus, to illustrate my meaning, in the view I take a conviction on the confession of a co-accused would be bad in law. This reading of the section appears to me to gain confirmation from the language of Section 5."[5] The words "take into consideration" do not mean that the confession of a co-accused is to have the force of sworn evidence,[6] or to take the place of proof;[7] on the contrary, they show that such a

1. *Govinda* v. *E.*, 69 IC 257 : 1921 N 39 : 23 Cr LJ 673.
2. *Haroon Haji Abdulla* v. *State of Maharashtra*, 70 Bom LR 540.
3. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 1949 ALJ 283 : 51 PLR 311 : 76 IA 147 ; *Mustafa Maracair*, In re, 1951 M 787 : 52 Cr LJ 514 ; *Kashmira Singh* v. *State*, 1952 SC 159 ; *Mahamnad Jamsher Tadvi* v. *State*, 1956 B 186 ; In re *Singampilli Yerranna*, 1941 M 306 ; Savlimiya Miyabhai v. E., 1944 B 338 ; *E.*, v. *Laxman Jairam*, 1937 B 31 : 166 IC 569 ; but see *Khimji* Khetsi v. E., 156 IC 972.
4. *Manohar Singh* v. *E.*, 1946 A 15 ; *E.* v. *Laxman Jairam*, 1937 B 31 ; Gobarya v. E., 125 IC 673 : 1930 N 242 : 31 Cr LJ 881 ; *Abdul Gafoor* v. E., 1941 N 145 ; *E.* v. *Lalit Mohan Chakerbutty*, 38 C 559 : 10 IC 582 : 12 Cr LJ 286 ; *Nita Chandra Jana* v. *E.*, 1937 C 433 : 170 IC 201 : 38 Cr LJ 52 (SB) ; *Narayan Dinba* v. *E.*, 1947 N 57 : 226 IC 78 : 47 Cr LJ 822 ; *Birey Singh* v. State, 1953 A 785 ; *Bhansali Babu* v. *Kutch State*, 1951 Kutch 74 : 52 Cr LJ 1473 ; *Parvatibai Ramji* v. State, 1951 Kutch 12 ; Kashmira Singh v. State, 1952 SC 159.
5. Per Jenkins C. J., in *E.*, v. *Lalit Mohan Chakerbutty*, 38 C 559 : 10 IC 582 : 12 Cr LJ 286 ; *Nitai Chandra Jana* v. *E.*, 1937 C 433 : 170 IC 201 (SB) : See also *Karuppan Chetty* v. E., 1940 MWN 767.
6. *Q. E.*, v. Nirmal Das, 22 A 445 ; *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr LJ 485 ; *Gobarya* v. *E.*, 125 IC 673 : 1930 N 242 : 31 Cr LJ 881 (FB) ; *Sapku* v. *E.*, 65 IC 561 : 1922 N 146 : 23 Cr LJ 129 ; See also *Baliram Singh* v. E., 1939 NLJ 442 ; *Jahangir Lal* v. *E.*, 150 IC 1056 : 35 Cr LJ 1180 : 1935 L 230 ; but see *Aung Hla* v. *E.*, 9 R 404 : 135 IC 849 : 1931 R 235 : 33 Cr LJ 205.
7. *Kasimuddin* v *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr LJ 485

confession is no more than an element in the consideration of all the facts of the case, and they do not have the effect of doing away with the necessity of other evidence.[1] A confession of a co-accused is evidence of a very weak type. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of these infirmities. The section provides that the Court may take the confession into consideration and thereby makes it evidence on which the Court may act; but it does not say that the confession is to amount to a proof. Clearly there must be other evidence.[2] The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. A confession can be used against a co-accused where the evidence against him lacks certainty or there is some lingering doubt about his guilt.[3] It cannot be used to fill up a gap in the evidence aginst him.[4] It can be used to support other evidence. In other words, it can be used to corroborate other evidence. It might assist the Court in coming to the conclusion that the other evidence is true. Conviction is to be based on the other evidence supported by the confession and not on the confession corroborated by the other evidence.[5] There must be sufficient evidence independently of the confession which would warrant a conviction of the co-accused. It is only when there is such evidence that the Court may proceed further and look at the confession of the accused and consider it as additional evidence that would further weigh the balance against the co-accused.[6] The proper way to approach a case of this kind is, first, to marshall the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence, and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.[7] Therefore, where there is no other evidence against an accused person except the confession of a co-accused, his commitment or conviction would be illegal.[8] A different

1. In re *Bhagavathar*, 1946 M 271 ; In re *Rajgopal*, 1944 M 117 ; *Chavadappa Pujari* v. *E.*, 1945 B 292 ; In re *Giddigadu*, 33 M 46 : 1 IC 867 : 9 Cr LJ 404 ; *Nizam Din* v. *E.*, 148 IC 8 : 1934 Pesh. 11 : 35 Cr LJ 719.
2. *Bhuboni* Sahu v. *The King*, 1949 PC 257 : 1949 ALJ 283 : 51 PLR 311 : 76 IA 147 ; See also *Mustafa Maracair*, In re, 1951 M 787 : 52 Cr LJ 514.
3. *Abdul Gafoor* v. *E.*, 1941 N 145 ; In re *Muthandi*, 1942 M 444.
4. *Maroti Jago Kunbi* v. *E.*, 1940 N 230 ; but see *Abdul Gafoor* v. *E.*, 1941 N 145; where it has been remarked that such confession may be used where the evidence lacks the requisite volume.
5. *Gunadhar Das* v. *State*, 1952 C 618 : 1952 Cr LJ 1343.
6. *L.S. Raju* v. State, 1953 B 297 : ILR 1953 B 670 : 55 BLR 191 : 1953 Cr LJ 1352 ; *Paily Jacob* v. *State*, 1953 Cr LJ 1670 : 1953 TC 466; *Abhayaguna Vardana* v. *State*, 6 DLR (TC) 371.
7. *Kashmira Singh* v. *State*, 1952 SC 159.
8. In re *Mukky Moithu*, 1943 M 278 ; *Abdul Gafoor* v. *E.*, 1941 N 145 ; *Marotigago Kunbi* v. *E.*, 1940 N 230 ; *Ramaswamy Goundan* v. E., 1938 M 675 : 177 IC 494 : 39 Cr LJ 894 : 1938 MWN 577 ; *E.*, v. *Laxman Jairam*, 1937 B 31 : 166 IC 569 ; *Jahangiri Lal* v. *E.*, 1935 L 230 : 150 IC 1056 : 35 Cr LJ 1180 ; *Nizam Din* v. *E.*, 148 IC 18 : 1934 Pesh. 11 : 36 Cr LJ 719 ; *Gobarya* v. E., 125 IC 676 : 1930 N 242 : 31 Cr LJ 881 (FB) ; In re *Govinda Naidu*, 118 IC 512 : 1929 M 285 : 30 Cr LJ 932 ; *Necha* v. *E.*, 109 IC 801 : 1928 N 213 : 29 CR LJ 609 ; *Devendra* Bhattacharya v. *E.*, 101 IC 881 : 1927 P

view of this matter seems to have been taken by Macleod, J., in *E.* v. *Gangappa Kardeppa*,[1] and by the Allahabad High Court in *E.*, v. *Kheri*,[2] but the Allahabad case, though approved in the Punjab,[3] has been disapproved in a later decision of the Allahabad Court itself.[4] The rule which says that a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice[5] only applies to the testimony of an accomplice examined as a witness and does not apply to a confession made from the dock by a co-accused.[6] While the statement of an accomplice is substantive evidence that of a co-accused is not.[7]

Before the confession of one accused is taken into consideration against another, there must be corroboration, not only as to the factum of the crime, but also as to the identity of the accused against whom it is intended to be taken into consideration.[8]

The proper way to approach a case of this kind is, first to marshall the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief, independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands, even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept".[9]

Confession of a co-accused is not substantive evidence against the other accused.— Two accused, H and K, were charged under Section 302/34 Penal Code. The case against them was that one night when one M and his munim G were sitting in their shop, the accused who were wearing masks rushed in, and H fired a shot from his pistol at M and killed him. The case rested on the following items of evidence, (a) a full confession made by H which implicated himself as well as K, (b) the evidence of G that the man who fired the shot was wearing blue shirt and shorts, and (c) the recovery of several incriminating articles from H, such as, a pistol and cartridges, blue shirt and shorts, a mask and a torch. During the proceedings, H retracted his confession, but the trial Court accepted it to be true and voluntary, and relying upon it and the other

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257 : 28 Cr LJ 497 ; *Nga Po Kauk* v. *E.*, 4 R 45 : 95 IC 71 : 1925 R 127 : 27 Cr LJ 743 ; In re Lilaram Ganganmull, 81 IC 817 : 1924 M 805 : 25 Cr LJ 1041 ; *Sapku* v. *E.*, 65 IC 561 : 1922 N 146 : 23 Cr LJ 129 ; *E.*, v. *Sabitkhan Bahadurkhan*, 43 B 739 : 51 IC 657 : 20 Cr LJ 497 ; *E.*, v. *Gangappa Kardeppa*, 38 B 156 : 21 IC 673 : 14 CR LJ 625 , per Shah J, ; *E.*, v. *Noni Gopal Gupta*, 38 C 559 : 10 IC 582 : 12 Cr LJ 286 . in re *Giddigadu*, 33 M 46 : 1 IC 867 : 9 Cr LJ 404 ; *Q.E.* v. *Nirmal Das*, 22 A 445 ; *Q. E.* v. *Khandia Pandu*, 15 B 66 ; *E.* v. *Ashootosh Chuckerbutty*, 4 C 483 (FB) ; *Reg.* v. *Ambigara Hulagu*, 1 M 163.

1. 38 B 156 : 21 IC 673 : 14 Cr LJ 625 ; See also *Kalijiban Bhattacharjee* v. *E.*, 63 C 1053 : 1936 C 316.
2. 29 A 434.
3. *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *Ataya* v. *E.*, 5 PR 1911 Cr.: 10 IC 857 : 12 Cr LJ 276 ; See also *Amina* v. *E.*, 130 IC 641 : 1931 L 196 : 32 Cr LJ 579.
4. *Kalwa* v. *E.*,, 48 A 409 : 95 IC 74 : 1926 A 377 : 27 Cr LJ 746.
5. Section 133, Ev., Act.
6. *Necha* v. *E.*, 109 IC 801 : 1928 N 213 : 29 Cr LJ 600 ; In re *Giddigadu*, 33 M 46 : 1 IC 867 : 9 Cr LJ 404; *E.*, v. *Ashootosh Chuckerbutty*, 4 C 483 (FB).
7. *Savlimiya Miyabhai* v. *E.*, 1944 B 338 ; In re *Singampilli Yerranna*, 1941 M 306 ; *Gobarya* v. *E.*, 125 IC 673 : 1930 N 242 : 31 Cr LJ 881.
8. *Ismail* v. *E.*, 1943 S 43.
9. *Kashmira Singh* v. *State of Madhya Pradesh*, 1952 SC 159.

evidence, convicted both the accused. On appeal, the High Court confirmed the conviction of H, but acquitted K, giving him the benefit of doubt as to his identity. H appealed to the Supreme Court against his conviction and the State also appealed against the acquittal of K. The confession of H could not be used as substantive evidence against K. The other evidence was not sufficient to prove beyond doubt that he was the companion of H at the time when the murder was committed. The articles recovered from H could not be of any use as evidence against K, and nothing had been recovered from K himself. He had been seen with H before the incident, but that in itself did not establish that he was the other participant in the murder. Since the other evidence was not sufficent in itself to prove his guilt, the confession of the co-accused H could not be of any use by way of lending assurance to that evidence. Under these circumstances, it had to be held that the charge against him had remained unproved. K's acquittal was upheld and the appeal filed by the State was dismissed.[1]

Confession of co-accused-Admissibility and weight of.—When only circumstantial evidence is available and when other features are broadly proved by trustworthy evidence, then confessional statements lending assurance to the same conclusions can be deemed as relevant material.[2]

The confession of a co-accused is not evidence within Section 3 of this Act.[3] It can be considered under this section, only after other evidence has been considered and found to be satisfactory.[4]

Accused making confession exculpating himself and throwing blame on co-accused.—Confession is not admissible against co-accused.[5]

Death after confession.—Where an accused who was being jointly tried died sometime before the judgment and his confession was put on the record-held that it was admissible against his co-accused and could be used only for corroborating the other evidence on the record and not as substantive evidence.

Use of confession in one case, in another case.—In a case under Section 110 Cr. P. Code against petitioner, the confession made by a person who was the co-accused of the petitioner in a dacoity case but not in the present case is inadmissible.[6]

Corroboration of the confession of a co-accused necessary.—The question whether a conviction can be legally based on the uncorroborated confession of a co-accused is of merely academic interest, since the universal practice of the High Courts in India is to require corroboration of such a confession.[7] There is hardly any reported

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1. *Hem Raj* v. *Ajmer*, 1954 SCJ 449 : 1954 LJ 1313.
2. *Babu Rao Bajirao Patil* v. *State of Maharashtra*, 1971 SCD 347.
3. *Mohan Singh* v. *State*, 66 PLR 1230.
4. *State of Kerala* v. *Mathai*, 1969 Ker. LT 566.
5. *Haroon Haji* v. *State of Maharashtra*, 70 Bom. LR 540
6. *Mafizuddin* v. *R.*, 25 CWN 239 : 61 IC 793.
7. *Bhuboni Sahu* v. *The King*, 1949 PC 257 ; *Mahamad Jamsher Tadvi* v. *State*, 156 IC 978 : 36 Cr LJ 1086 ; *Mewo Bado* v. *E.*, 1936 S 236 ; *Ramzan* v. *E.*, 1956 B 186 ; *E.*, v. *Sadasibo Majhi*, 1938 PWN 754 ; *E.* v. *Mangru Kisan*, 16 P 612 ; *Shyam Lal* v. *E.*, 157 IC 1054 : 36 Cr LJ 1305 : 37 PLR 345 ; *Khermji Khetsi* v. *E.*, 156 IC 972 : 36 Cr LJ 1037 ; *M. Hein* v. *E.*, 144 IC 829 ; 1933 R 134 ; *Musabeb Ali* v. *E.*, 137 IC 665 : 33 Cr LJ 502 ; *Aung Hla* v. *E.*, 9 R 404 : 135 2C 849 : 1931 R 235 : 33 Cr LJ 502 : *Ambica Charan Roy* v. *E.*, 134 IC 1211 ; 1931 C 697 : 33 Cr LJ 19 ; *Khatir Jama Khan* v. *E.*, 123 IC 393 : 1930 P 385 ; 31 Cr LJ 492 ; *Man Singh* v. *E.*, 121 IC 103 : 1929 A 928 ; *Rama Kariyappa Pichi* v. *E.*, 120 IC 350 : 1929 B 327 ; 81 Cr LJ 97 ; *Karam Din* v. *E.*, 115 IC 1 : 1929 L 338 ; 30 CR LJ 385 ; *Pala Singh* v. *E.*, 107 IC 614 : 1928 L 329 : 29 Cr LJ 267 ; *Nga Po Kauk* v. *E.*, 4 R 45 : 95 IC 71 : 1926 R 127 : 27 Cr LJ 743 ; *Dunger* v. *E.*, 95 IC 938 ; 1926 A 603 : 27 Cr LJ 858 In re *Lilaram Ganganmull*, 81 IC 817 : 1924 M 805 ; 25 Cr LJ 1041 ; In *Manicka Padayachi*, 72 IC 497 : 1921 M 490 : 24 Cr LJ 385 ; *Kher Singh* v. *E.*, 59 IC 913 : 22 Cr LJ 161 ; *Ramaswami Boyam* v. *E.*, 54 IC 479 ;

case in which a conviction was upheld by any High Court where it proceeded only on the uncorroborated confession of a co-accused, Even where the most liberal view of the provisions of Section 30 has been taken; it has been distinctly pointed out that the rule which prohibits a conviction being based on the uncorroborated confession of a co-accused though a rule of prudence, has all the reverence of a rule and law and should not be departed from.[1] See notes to Section 24 under the heading "admissibility and value of retracted confession."

Recovery of ornaments as corrob :tion of confession.—Recovery of the ornaments of the deceased at the instance of the appellant incriminated him to the fullest extent and lent the strongest corroboration to the confession of the co-accused from which it was apparent that no other person than the appellant could have murdered the deceased.[2]

Reasons for requiring corroboration.—Though a conviction based on the uncorroborated testimony of an accomplice is not illegal, the Courts almost invariably in 999 cases out of 1,000, approach the testimony of an accomplice with the presumption that he is unworthy of credit, unless he is corroborated in material particulars.[3] The confession of a co-accused stands on a lower footing than the evidence of an accomplice, as a confessing prisoner neither speaks under the sanction of oath, nor can his statement be tested by cross-examination.[4] While the statement of an accomplice is "evidence," that of a confessing prisoner is not.[5] If the evidence of an approver, who is examined on oath and is liable to cross-examination, cannot ordinarily be accepted without coroboration on a material point a *fortiori* there is greater need for corroboration of the statement of a person who is naturally desirous of earning the favour of the court in the hope of a lenient sentence, who makes a statement which does not expose him to the penalties of perjury, and who cannot be cross-examined by the other accused.[6] The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character, who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue.[7]

Nature and extent of corroboration.—In an old case, the rule as to the evidentiary function of the confession of a co-accused was thus stated by Jackson, J.: " When, as

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21 Cr LJ 79 ; *E.*, v. *Sabitkhan Bahadurkhan*, 43 B 739 : 51 IC 657 : 20 Cr LJ 491 ; *E.* v. *Babar Ali Gazi*, 42 C 789 : 28 IC 657 : 16 Cr. LJ 321 ; *E.*, v. *Gangappa Kardeppa*, 38 B 156 : 21 IC 673 : 14 Cr LJ 625 ; *Ataya* v. *E.*, 5 PR 1911 Cr : 10 IC 857 : 12 Cr LJ 276 ; *Q. E.*, v. *Dosa Jiva*, 10 B 231 ; *E.* v. *Bhawani*, 1 A 664.

1. Per Macleod J., in *E.*, v. *Gangappa Kardeppa*, 38 B 156 : 21 IC 673 : 14 Cr LJ 625.
2. *Ram Prakash* v. *State of Punjab*, 1959 SCR 1219 : 1959 Cr LJ 90.
3. *Balmokand* v. *E.*, 17 PR 1915 Cr 28 IC 738 : 16 Cr LJ 354.
4. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 1949 ALJ 283 : 51 PLR 311 ; 76 IA B 31 : 166 IC 569 147 ; In re *Muneyya*, 1937 M 755 ; *Mewo Badal* v. *E.*, 1936 S 236 ; *E.*, v. *Laxman Jairam*, 1937 ; *Kasmuddin* v. *E.*, 62 C 312 ; 154 IC 273 ; 1934 C 853 ; 36 Cr LJ 485 ; In re *Giddigadu*, 33 M 46 : 1 IC 867 : 9 Cr LJ 404 ; *Q. E.* v. *Dosa Jiva*, 10 B 231 ; *E.* v. *Ashootosh Chuckerbutty*, 4 C 483 (FB) ; *Khimiji Khetsi* v. *E.*, 156 IC 972.
5. *Gobarya* v. *E.*, 125 IC 673 : 1930 N 242 : 31 Cr LJ 881 (FB) ; but see *Khimiji Khetsi* v. *E.*, 156 IC 972.
6. *E.*, v. *Bhawani*, 1 A 664 ; *see* also *Khimiji Khetsi* v. *E.*, 156 IC 972 ; *E.*, v. *Sadasivo Majhi*, 1938 PWN 754 ; *Ah Phut* v. *E.*, 1939 R 402.

against any such person, there is evidence tending to his conviction, truth or completeness of this evidence being the matter in question, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him should be taken into consideration as bearing upon the truth or sufficiency of such evidence."[1] This is merely another way of saying that "a Court can only treat a confession as lending assurance to other evidence against a co-accused."[2] According to this view, the foundation of the case against a co-accused is the other evidence in the case, and confession of the another co-accused can be used merely to corroborate the other evidence, and not as the basis of proof or to fill up a gap in the prosecution case. In follows, that if the other evidence against him, if believed; is not by itself sufficient for conviction, his conviction would be illegal,[3] In other, case, the rule as stated above has been considered to be too narrow and the true view has been stated to be to consider and not to divide the material into compartments,[4] and to apply to the question of corroboration of the confession of a co-accused the same rules as are applicable to the corroboration of accomplice evidence,[5] bearing in mind the fact that the confession of a co-accused to such confessions must depend on the circumstances of each case.[6] It is, however, possible to consider this matter in the light of certain general principles which are indicated below.

Firstly, corroboration must be on material particulars.—If there is no other evidence against a prisoner, or the other evidence is rejected as untrustworthy or inadmissible,[7] the conviction would be illegal according to the rulings of the Calcutta, Madras and Patna High Courts, and improper according to the rulings of the other High Courts. The same would be the result if the other evidence is of a trivial and unimportant character, for so to convict would be in reality to disregard the rule which requires corroboration on material particulars.[8] The corroborative evidence must be such as implicates the non-confessing prisoner, that is, which confirms in some materal particular not only the statement of the confessing prisoner that the crime was committed but also the statement that the non-confessing prisoner commmitted it.[9] Corroboration must

7. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 76 IA 147.
1. *Q.* v. *Chunder Bhuttahcarjee*, 24 WR 42 Cr.
2. *E.* v. *Noni Gopal Gupta*, 38 C 559 : 10 IC 582 : 12 Cr LJ 286 ; *see* also *Abdul Gafoor* v. *E.*, 1941 N 145 ; In re *Muthandi*, 1912 M 444.
3. Jackson & McDonnel, JJ., in *E.* v. *Ashootosh Chuckerbutty*, 4 C 483 (FB); Scroope, J., in *Devendra Bhattacharya* v. *E.*, 101 IC 881 : 1927 P 257 : 28 CR LJ 497 ; *Gobarya* v. *E.*, 125 IC 673 : 1930 N 242 : 31 CR LJ 881 (FB) ; *Ram Sarup Singh* v. *E.*, 1937 C 39 : 167 IC 162 ; *Makunda Hira Korku* v. *E.*, 146 IC 17 : 1933 N 249 : 34 Cr LJ 1141 ; *see* also *E.* v. *Laxman Jairam*, 1937 B 31 ; In re *Periyaswami Moopan*, 54 M 75 ; 129 IC 645 ; 1931 M 177 ; 32 CR LJ 448 ; but see *Uggappa Pujari* v. *E.*, 119 IC 474 ; 1929 M 498 ; 30 Cr LJ 1071 ; *see* also *Maroti Jago Kunbi* v. *E.*, 1940 N 230 ; *Ismail* v. *E.*, 1943 S 43.
4. Per Heaton J., in *E.*, v. *Sabithkhan Bahadurkhan*, 43 B 739 ; 51 IC 657 ; 20 Cr LJ 497 ; *E.*, v, *Sadasivo Majhi*, 1938 PWN 754.
5. Scott, C J., in *E.*, v. *Sabitkhan Bhadurkhan*, 43 B 739 ; *Mahadeo* v. *E.*, 1924 O 65.
6. *E.*, v. *Mangru Kisan*, 16 P 612 ; *Kasimuddin* v. *E.*, 62 C 312 ; 154 JC 273 ; 1934 C 853 ; 36 Cr LJ 485 ; *Mi Hein* v. *S.*, 144 IC 829 ; 1933 R 134 ; 34 Cr LJ 835 ; *Nga Nyein* v. *E.*, 11 R 4 : 142 IC 87 : 1933 R 57 : 144 IC 829 ; 1933 R 134 ; 34 Cr LJ 286 ; *Aung Illa* v. *E.*, 9 R 404 ; 135 IC 849 ; 1931 R 235 ; 33 Cr LJ 205 ; *Uggappa Pujari* v. *E.*, 119 IC 474 ; 1929 M 498 ; 30 Cr LJ 1071 ; *Pratap Singh* v. *E.*, 6 L 415 ; 93 IC 978 ; 1925 L 605 ; 27 Cr LJ 514 ; *Vaz* v. *E.*, 83 IC 889 ; 1921 S 57 ; 26 Cr LJ 185; *Ataya* v. *E.*, 5 PR 1911 Cr : 10 IC 857 ; 12 Cr LJ 276.
7. *Reg.* v. *Ambigara Hulagu*, 1 M 163.
8. Heaton, J., in *E.*, v. *Sabitkhan Bahdukhan*, 43 739 : 51 IC 657 ; 20 Cr LJ 497.
9. Scott, C J., *E.*, v. *Sabitkhan Bahdukhan*, 43 739 : 51 IC 657 ; 20 Cr LJ 497 ; *See* also *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 ; 1934 C 853 ; 36 Cr LJ 485 ; *Allah Baksh* v. *E.*, 1933 L 956 ; *Surjan Singh*

point indubitably to the identification of the person charged with the particular act with which the confession of the co-accused connects him. The existence of general hostility, general enmity, and a desire, however strong, or a motive, however effective, to procure the death of another person, is not corroboration of a statement of participation in a particular crime;[1] nor does evidence of the fact that the accused were seen together on the night of the murder and ornaments which had been pledged with the murdered person were found in the possession of one of them, consititute sufficient corroboration on a charge of murder.[2] Mere pointing out of stolen property some months after the theft is not sufficient corroboration of such confession on a charge of house-breaking,[3] nor is the finding of stolen property in a shed belonging to the accused but accessible to others corroboration on a charge of dacoity.[4] It is, however, not necessary that there should be corroboration on each and every detail, nor is it necessary that the corroborative evidence should itself be sufficient for conviction.[5] The confession of a co-accused is intended to be used to corroborate and even to supplement the evidence in those exceptional cases in which, without its aid, the other evidence falls short by a very narrow margin of that standard of proof which is requisite for a conviction. It is not possible to lay down any hard and fast rule as to the extent to which such a confession may be used to supplement the substantive evidence in a case, and it must be left open to the Court, in each case, in the exercise of judicial discretion, to decide for itself under what circumstances and to what extent it should be so used.[6] If there is any other relevant matter implicating the co-accused, the Judge is permitted by Section 30 to consider the confession along with that matter and as a result of such consideration to convict accused.[7] A confession receives confirmation when it leads to the arrest and indentification of the other accused.[8] See also notes to Sections 133 and 24.

Secondly corroboration must be by independent evidence and not by the testimony of an accomplice, nor by the confession of another co-accused.—The confession of a co-accused stands on a lower footing than the statement of an accomplice, which is made on oath and is tested by cross-examination.[9] The general rule being that the statement of an accomplice requires corroboration, the need for corroboration of the confession of a co-accused is still greater. And since generally one accomplice cannot corroborate another accomplice, the confession of a co-accused, which carries an inferior evidentiary value, cannot be used to corroborate the statement of an accom-

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v. *E.*, 136 IC 27 ; 1932 L 298 ; 33 Cr LJ 251 ; *Arjan Singh* v. *E.*, 11 L 106 ; 119 IC 325 ; 1930 L 257 ; 30 Cr LJ 1046 ; *Kalwa* v. *E.*, 48 A 409 ; 95 IC 74 ; 1926 A 377 ; 27 Cr LJ 746.

1. *Gobarya* v. *E.* 125 IC 673 ; 1930 N 242 ; 31 Cr LJ 881 (FB) ; *Kalwa* v. *E.*, 48 A 409 ; 95 IC 74 ; 1926 A 377 ; 27 Cr LJ 746.
2. E. v. *Babar Ali Gazi*, 42 C 789 ; 28 IC 657 ; 16 Cr LJ 321.
3. *Q. E.*, v. *Dosa Jiva*, 10 B 231.
4. *Q. E.* v. *Kirshnabhat*, 10 B 319.
5. *Uggappa Punari* v. *E.*, 119 IC 474 : 1929 M 498 : 230 Cr LJ 1071 ; but see the note under the heading "nature and extent of corroboration".
6. *Gobarya* v. *E.*, 125 IC 673 ; 1930 N 242 ; 31 Cr LJ 881(FB) ; per Subhedar, AJC.
7. *Gobarya* v. *E.*, 125 IC 673 ; 1930 N 242 ; 31 Cr LJ 881(FB) ; per Findlay, JC and Macnair, AJC.
8. *Ishar Singh* v. *E.*, ILR 1939 L 67.
9. *E.*, v. *Laxman Jairam*, 1937 B 31 ; *Baboo Singh* v. *E.*, 1936 O 156 ; 159 IC 875 ; 378 Cr LJ 163 ; *Mewo Badal* v. *E.*, 1936 S 236 ; *Q. E.*, v. *Dosa Jiva*, 10 B 231; *E.* v. *Ashootosh Chuckerbutty*, 4 C 483 (FB) ; In re *Giddigadu*, 33 M 46 ; 1 IC 867 ; 9 Cr LJ 404 ; *Gobarya* v. *E.*, 125 IC 673 ; 1930 N 242 ; 31 Cr LJ 881 (FB) ; *See Faqir Singh* v. *E.*, 1939 L 429.

plice nor can it itself be corroborated by the statement of an accomplice.[1] Similarly, the confesion of one co-accused cannot corroborate the confession of another co-accused, as against a non-confessing accused.[2] Tainted evidence is not made better by being doubled in quantity,[3] and when there are two sets of evidence, each requiring corroboration, one cannot be used to corroborate the other.[4] But the prisoner's own retracted confession may constitute, as against himself, sufficient corroboration of the confession of a co-accused,[5] or of the testimony of an approver.[6] See also notes to Section 133 and 24.

In dealing with a case against an accused person, the Court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by the Supreme Court in *Kashmira Singh* v. *State of Madhya Pradesh*, 1952 SCR 526: (AIR 1952 SC 159), where the decision of Privy Council in *Bhuboni Sahu's case*, 76 Ind App 147 (AIR 1949 PC 257) has been cited with approval. It has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so he is entitled to the benefit of doubt.[7]

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1. *Sharif* v. *E.*, 1944 L 472; *Provincial Govt* v. *Raghurau*, 1942 N 127; *Kashem Ali* v. *E.*, 140 IC 379; 1933 C 6; 34 Cr LJ 23; *Gehna* v. *E.*, 137 IC 95; 1932 L 180; 33 CR LJ 414; *Surjan Singh* v. *E.*, 136 IC 27; 1932 L 298; 33 Cr LJ 251; *Nanak Chand* v. *E.*, 133 IC 435 : 1932 L 73 : 32 Cr LJ 1036; *Daulat* v. *E.*, 120 IC 721; 1930 N 97 ;31 Cr LJ 153; *Latafat Hussain Biswas* v. *E.*, 116 IC 174 : 1928 C 745 : 30 Cr LJ 586; *Partap Singh* v. *E.*, 96 IC 127 : 1926 A 705 : 27 Cr LJ 879; *Narain Das* v. *E.*, 3 L 144 : 68 IC 113 : 1922 L 1 : 23 Cr LJ 513; *Q.E.* v. *Krishnabhat*, 10 B 319; *Q. E.* v. *Ram Saran*, 8 A 306; *Q. E.* v. *Bepin Biswas*, 10 C 970; *Reg.* v. *Malapa Bin Kapana*, 11 Bom. HC 196; *Reg.* v. *Budhu Nanku*, 1 B 475; but see *Nga Nyein* v. *E.*, 11 R 4 : 142 IC 87 : 1933 R 57 : 34 Cr LJ 286; *Beni Madho* v. *E.*, 1933 O 355; *Anug Hla* v. *E.*, 9 R 404 : 135 IC 849 : 1931 R 235 : 33 Cr LJ 205; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514; but *see* In re *Rajegopal*, 1944 M 117 (FB); *Aung Hla* v. *E.*, 9 R 404 and the obiter dictum in *Faqir Singh* v. *E.*, 1939 L 429, where a retracted confession of a co-accused was considered a possible corroboration of the statemet of an aprover at the trial; *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 1949 ALJ 283 : 51 PLR 311 : 76 IA 147; *Ganesh Gogoi* v. *State*, 1955 Assam 51.
2. *Rama Kariyappa Pichi* v. *E.*, 120 IC 350 : 1929 b 327 : 31 Cr LJ 97; *Ganga Ram* v. *Crown*, 60 IC 786 : 22 Cr LJ Cr LJ 290; *E.*, v. *Gangappa Kardeppa*, 38 B 156 : 21 IC 673 : 14 CR LJ 625 : 10 CWN XVI; but see *Khuban* v. *E.*, 120 I C 257 : 1930 A 29 : 31 Cr LJ 26.
3. *Latafat Hussain Biswas* v. *E.*, 116 IC 174 : 1928 C 745 : 30 Cr LJ 586; *Q.* v. *Baijoo Chowdhury*, 25 WR 43 Cr; *Q.* v. *Joffer Ali*, 19 WR 57 Cr.
4. *Devendra Bhattacharya* v. *E.*, 101 IC 881 : 1927 p 257; 28 Cr LJ 497; *Q.* v. *Jabud Das*, 27 C 295.
5. *Q.* v. *Bajioo Chowdhry* 25 WR 43 Cr; *Ganga Ram* v. *Crown*, 60 IC 786 : 22 Cr LJ 290.
6. *Gehna* v. *E.*, 137 IC 95 : 1932 L 180 : 33 Cr LJ 414.
7. *Hari Charan Kurmi* v. *State of Bihar*, (1964) (2) SC J 454 (1964) (2) Cr LJ 344.

Evidentiary value of confession of co-accused.—Under Section 30, Evidence Act, confession of a co-accused can only be taken into consideration, but is not in itself to sustain conviction.[1]

Confession of a co-accused can be used only for the limited purpose of lending assurance to the belief in other evidence, provided that evidence is sufficent in itself to sustain conviction.[2]

The only use to which a confession of a co-accused can be put is to lend assurance to the substantive evidence on record. If that evidence is not sufficient in itself for being made the basis of a conviction, the confession of a co-accused has no use at all.[3]

Retracted confession-Use of retracted confession of the co-accused.—Where the proved facts in the case are themselves sufficient to establish the guilt of the accused, it is permissible to the Court to take into consideration the retracted confessions of the co-accused which have been accepted as being voluntary and true, for the limited purpose of lending assurance to the other evidence about the participation of the accused with the others in the commission of the crime.

Four accused person were prosecuted for the murder of eight boys in a forest. Three of the accused had made confessions which were held to be voluntary and true. Relying upon these confessions and the corroborative evidence which supported them in material particulars the trial court had convicted the three accused under Section 302, Indian Penal Code, and the High Court had confirmed the conviction. In the appeal the court upheld their conviction,. The fourth accused L. did not make a confession. He also had been convicted under Section 302 and both the Courts below had relied upon the number of circumstances, namely his presence with the other three accused at the scene of the offence, and the recovery from his room of part of the booty taken from the murdered boys, and a blood stained shirt and underwear after he had made a statement that he had kept these things there. In the circumstances, it was proper and permissible to take into consideration the statements made in the retracted confessions of the other accused as regards the part taken by L in the killing. These statements supplied whatever assurance was needed to convince the Court that L had taken part in the killing of the eight boys in furtherance of the common intention of himself and others, His conviction under Section 302, Penal Code, was therefore fully justified.[4]

Although a retracted confession may be taken into consideration against a co-accused by virtue of the provisons of section 30 of the Indian Evidence Act, its value was extremely weak and there could be no conviction without the fullest and strongest corroboration on material particulars, The corroboration in the full sense implies corroboration not only as to the factum of the crime but also as to the connection of the co-accused with the crime.[5]

A retracted confession has very weak evidentiary value against a co-accused. Hence a great amount of corroboration is necessary for conviction.[6]

Retracted confession of co-accused.—Though it can be taken into consideration against the other accused it can be used only in support of other evidence—it cannot

1. *Ram Chandra* v. *State of Uttar Pradesh*, 1957 Cr LJ 559.
2. *Kashmira Singh* v. *State of Madhya Pradesh*, 1952 SCB 526 : 1952 SCJ 201 : 1952 Cr LJ 839.
3. *Nathu* v. *State of Uttar Pradesh*, 1956 Cr LJ 152.
4. *Nand Kumar* v. *Rajasthan*, 1963 (2) SCJ 422 ; 1963 (2) Cr LJ 702.
5. *Ram Prakash* v. *State of Punjab*, 1959 SCR 1219 ; 1959 Cr LJ 90.
6. *Bhukliram Koiri* v. *State*, 1970 Cr LJ 473 (Cal).

be made the foundation of a conviction.[1]

The position of the retracted confession is a fortiori still worse.[2]

The legal position is well settled that the statements of a co-accused cannot be utilised against the person tried along with him, and his conviction cannnot be based upon such statements.[3]

Retracted confession admissible,against maker and the co-accused.—It will be clear from the terms of this section that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any of his co-accused can be taken into consideration by the court not only against the maker of the confession but also against his co-accused. The Evidence Act nowhere provides that if the confession is retracted, it cannot be taken into consideration against the co-accused or the confessing accused. Accordingly, the provisions of the Evidence Act do not prevent the Court from taking into consideration a retracted confession against the confessing accused and his co-accused.[4] Confession by one of the accused can be used against other when conspiracy on their part is proved.[4a]

Number of confession by several accused retracted appreciation and extent of corroboration—Every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial, which connects the co-accused with the crime independently of the accomplice. One such circumstance may be the making of confessions without a chance for prior consultation between the confessing co-accused. Even if there are more than one such confessions and they are proved to be given independently and without an opportunity for a prior concert the probative value may increase but the need for caution remains because a number of suspects may be prompted by the same or different motives to embroil a particular individual. It is only when false implication is excluded after close scrutiny that confession of a co-accused can be used to lend assurance to other evidence.[5]

So far as mere admissiblity of a confession against a co-accused is concerned a retracted confession does not differ from one that is not retracted[6] provided the confession is not open to any objection under sections 24, 25 and 26. But the evidentiary value of a retracted confession against co-accused is considerably less and the very fullest corroboration of such a confession is necessary.[7] The weight to be attached to a retracted confession must depend upon whether the Court thinks that the persons retracted

1. *Mohd Hussain Umar* v. *K. S. Dalipsinghji*, 1970 Cr LJ 9.
2. *Metar Pal* v. *The State*, 66 , PLR 530.
3. *Vankata Rao* v. *State*, (1971) 37 CLT 1123.
4. *Ram Prakash* v. *State of Punjab*, 1959 SCR 1219 ; 1959 Cr LJ 90.

4a. *State of Kerala* v. *Ammini*, AIR 1988 Ker. 1 (FB).

5. *Haroon Haji Abdulla* v. *State of Maharashtra*, 70 Bom. LR 540.
6. *Nag Pyaung* v. *E.*, 148 IC 1064: 1934 R 30 : 35 Cr LJ 863 ; *Surjan Singh* v. *E.*, 136 IC 27 : 1932 L 298 : 33 Cr LJ 251 ; *Indar Datt* v. *E.*, 132 IC 185 : 1931 L 408 : 32 Cr LJ 818 ; *Sardara* v. *E.*, 125 IC 639 : 1930 L 667 : 31 Cr LJ 877 ; *Gaur Chandra Das* v. *E.*, 115 IC 359 : 1929 C 14 : 30 Cr LJ 475 ; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *E.v.Gangarappa Kardepa*, 38 B 156 : 21 IC 673 : 14 Cr LJ 625 : *Ataya* v. *E.*, 5 PR 1911 Cr : 10 IC 857 : 12 Cr LJ 276.
7. *Kasimuddin* v. *E.*, 62 C 321 : 154 IC 273 : 1934 C 853 : 36 Cr LJ 485 ; *Barnabas Christian* v. *E.*, 152 IC 275 ; 1934 P 586 : 36 Cr LJ 12 ; *Sheoratan* v. *E.*, 51 IC 298 ; 1934 O 418 : 35 Cr LJ 1290 ; *Surjan Singh* v. *E.*, 136 IC 27 : 1932 L 298 : 33 Cr LJ 251 ; *Sheo Narain Singh* v. *E.*, 8 P 262 117 IC 43 : 1929 P 212 : 30 Cr LJ 716 ; *Gour Chandra Das* v. *E.*, 115 IC 359 : 1929 C 14 : 30 Cr LJ 475 ; *Sher Muhammad* v. *E.*,

by the consideration that the confession was untrue, or by realization that it had failed to secure the benefits the hope of which inspired it.[1] The confession of a co-accused is admitted in evidence because of the guarantee of truth afforded by-self-implication but where this guarantee is rendered nugatory by the confessing accused himself retracting his confession and denying the truth of the statements made therein, then little or no reliance can be placed upon such confession so far as the co-accused are concerned.[2] A retracted confession should carry practically no weight as against a person other than its maker; it is not made on oath, it is not tested by cross examination, and its truth is denied by the maker himself, who has thus lied on one or other of the occasions. The very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath. The[3] retracted confession of an accused is not sufficient alone to justify the conviction of a co-accused; but where such confession stands unrebutted, and there is nothing to show that the accused had any reason for naming other men falsely, and his story fits in exactly with the facts known or proved and is corroborated sufficiently by material evidence against the co-accused, the confession is strong piece of evidence against the co-accused.[4] As against its maker, however, retracted confession may constitute a sufficient basis for conviction, provided it is true and voluntary[5] though even in such a case it is safer and usual to require corroboration.[6] See notes to section 24.

Probative value of retracted confession.—A retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance (not for retraction as erroneously stated in some cases) are on the face of them false. Once the confession is proved satisfactorily any admission made therein must be satisfactorily withdrawn or the making of it explained as having proceeded from fear, duress, promise or the like from some one in authority. A retracted confession is a weak link against the maker and more so against a co-accused.[7]

Sections 30 and 3—Probative value of confession of co-accused.—As a result of the provisions contained in Section 30 of the Evidence Act the confession has no doubt to be regarded as amounting to evidence in general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act.[8]

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104 IC 630 : 1927 L 765 : 28 Cr LJ 854 ; *Devendra Bhattacharya* v. *E.*, 101 IC 881 : 1927 P 257 : 28 Cr LJ 497 ; *Yasin* v. *E.*, 28 C 689 ; *Dr jai Nand* v. Rex, 1949 A 291 : 1949 ALJ 60 : 50 Cr LJ 498 ; *Kanai Lal* v. *State*, 1950 C 413 : 85 CLJ 196 : 51 Cr LJ 1507.

1. *Bhuboni Sahu* v. *The King*, 1949 PC 257 : 76 IA 147 : 51 PLR 311.
2. *Baboo Singh* v. *E.*, 1936 O 156 : 159 IC 875 : 37 Cr LJ 163.
3. *Ghulam Mohammad* v. *E.*, 1942 L 27 ; *Kasimuddin* v. *E.*, 62 C 312 : 154 IC 273 : 1934 C 853 : 36 Cr LJ 485 ; *Nga Po Hlaing* v. *E.*, 146 IC 303 : 1933 R 320 : 35 Cr LJ 39 ; *Yasin* v. *E.*, 28 C 689 ; *Rattan Lal* v. *State*, 1955 Punj 110.
4. *Wajid* v. *E.*, 127 IC 871 : 1930 O 412 : 32 Cr LJ 42 ; *Hazari* v. *E.*, 127 IC 247 : 1930 O 353 : 31 Cr LJ 1210.
5. *Bhlamppa* v. *E.*, 1945 B 484 ; *Khuban* v. *E.*, 120 IC 257 : 1930 A 29 : 31 Cr LJ 26 ; *Mohar Singh* v. *E.*, 96 IC 647 : 27 Cr LJ 983 ; *Nga po Kauk* v. *E.*, 4 R 45 : 95 IC 71 : 1926 R 127 : 27 Cr LJ 743 ; *Partap Singh* v. *E.*, 6 L 415 : 93 IC 978 : 1925 L 605 : 27 Cr LJ 514 ; *Ganesh Gogol* v. *State*, 1955 Assam 51.
6. *Bhimappa* v. *E.*, 1945 B 484 : *Ghulam Mohammad* v. *E.*, 1942 L 271 : *Dikson Mali* v. *E.*, 1942 P 90 ; *In re Perla Chelliah Nadar*, 1942 M 450 ; *Sheikh Shafi* v. *E.*, 124 IC 459 : 1939 N 259 : 31 Cr LJ 661 ; *Kubja Subudhi* v. *E.*, 8 P 289 : 116 IC 770 : 1929 P 275 30 Cr LJ 675 ; *Q.E.* v. *Jadub Das*, 27 C 295.
7. *Haroon Haji Abdulla* v. *State of Maharashtra*, 70 Bom,. LR 540.
8. *Haricharan Kurmi* v. *State of Bihar*, (1964) (2) Cr LJ 344.

Sections 30 and 24-Self exculpatory confession subsequently retracted-use of such confession.—So far as the confessional statement of one accused is concerned, it may be taken into consideration against the co-accused if it fulfills the conditions laid down in Section 30. One of the conditions is that the confession must implicate the maker substantially to the same extent as the other accused person against whom it is sought to be taken into consideration. The accused was trying to throw the main blame on the co-accused and to prove that he was an unwilling spectator of the crime. The confession was retracted subsequently. The proper approach in case of this nature is to consider the confession as a whole on its merits and use it against the maker thereof, provided the court is in a position to come to an unhesitating conclusion that the confession was voluntary and true; and though a retracted confession, if believed to be true and voluntarily made, may form the basis of a conviction. The rule of practice and prudence requires that it should be corroborated by independent evidence.[1]

Sections 30, 114, 133.—A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the 'evidence' is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accomplice is regarded by the Judge as having no greater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of caution, which experience dictates in mind and gives reasons why he thinks it would be safe in a given case to disregard it. It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed. The tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions and it is very difficult for the Court to guard against the danger...The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused. Save in exceptional circumstances, one accomplice cannot be used to corroborate another, nor can he be used to corroborate a person who though not an accomplice is no more reliab'. than one.[2]

Statements made in answer to notice under Section 171-A, Sea Customs Act-No bar to application of Section 30 to such statements, if same are considered to be voluntary.—As the statements made in answer to a notice under Section 171-A of the Sea Customs Act are not made subject to the safeguards under which confessions are recorded by Magistrate they must be specially scrutinised to finding out if they were made under threat or promise from someone in authority. If after such scrutiny they are considered to be voluntary, they may be received and also against a co-accused jointly tried with him. Section 30 of the Evidence Act does not limit itself to confessions made to Magistrates, nor do the earlier sections do so, and hence there is no bar to its proper application to such statement.[3]

Section 27 and Section 30; confession inadmissible against its maker is also inadmissible against a co-accused.—A confession which is inadmissible against its maker

1. *Balbir Singh* v. *State of Punjab*, 1957 Cr LJ 481.
2. *Kashmira Singh* v. *The State of Madhya Pradesh*, 1952 SCR 526 : 1952 SCJ 201 : 1952 Cr. LJ 839.
3. *Haroon Haji Abdulla* v. *State of Maharashtra*, (1968) (2) SCJ 534.

by reason of Section 24, Section 25 or Section 26 is also inadmissible against a co-accused, but if it becomes admissible against its maker by reason of any discovery under Section 27, it would be admissible also against the co-accused provided it is a "confession" in the sense in which this word is used in Section 30 and it affects its maker and the co-accused.[1] See notes to Section 32 (3) and to Section 27 and to Section 27 under the heading "Can a confession admissible under Section 27 affect a co-accused under Section 30."

Confessions made to the police.—It has been noticed already that a confession to the police can neither be used against its maker nor against a co-accused.[2] In fact, a statement to the police, whether it be a confession or not, cannot, be used against another accused.[3] There are, however, cases where a confession made to the police by a deceased accomplice has been used against another accomplice on trial under the provisions of section 32 (3) ; but the correctness of this view is open to serious doubt. See notes to Section 32(3).

Section 30 and Article 20(3).—Under the Evidence Act, a confession is required to be voluntary before it can be accepted against the accused, and if an accused who retracts his confession alleges that it was obtained from him under compulsion or threat, it is open to him to show the circumstances which throw a doubt on its voluntary character. But that is a matter under the ordinary law, and not under Article 20(3) of the Constitution, which prohibits testimonial compulsion against the accused. This article only says that an accused person shall not be compelled 'to be a witness against himself' and it has no application whatever to confessions made by accused persons. It cannot possibly be invoked for the purpose of challenging the validity of a confession.[4]

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

COMMENTARY

Admissions are not conclusive and may be proved to be untrue or mistaken.—Conclusive proof is defined in Section 4. When a fact is declared to be conclusive proof of another, a Court cannot allow evidence to be given for the purpose of disproving the fact conclusively proved. Section 31 provides that an admission, unless it operates as an estoppel, is not conclusive. An admission though not conclusive proof raises a presumption that it is true until the contrary is shown.[5]

In cases, where it is proved that a party had made certain admissions, it is necessary for him to prove that the admissions were erroneous and did not bind him. Indeed, an admission is the best evidence that an opposite party can rely upon, and, though not

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1. In re *Athappa Goundan*, ILR 1937 M 695 : 1937 M 618 ; *Harnam Singh* v. *E.*, 9 L 626 : 111 IC 561 : 1928 L 308 : 29 Cr. LJ 881 ; *Shivabhai Becharbhai* v. *E.*, 50 B 683 : 97 IC 660 : 1926 B 513 : 27 Cr. LJ 1140 ; *Sankappa Rai* v. *E.*, 31 M 127 ; *E* v. *Rama Birapa*, 3 B 12 ; see also *Keratali* v. *E.*, 61 C 967: 150 IC 980 : 1934 C 616 : 35 Cr. LJ 1178 ; contra *Satish Chandra Seal* v. *E.*, 1945 C 137.
2. See notes to Section 25.
3. *Sewakram* v. *E.*, 1939 S 130 ; *Kala Singh* v. *E.*, 146 IC 27 : 1933 L 167 : 34 Cr. LJ 1175.
4. *Kalawati* v. *State of Himachal Pradesh*, 1953 SCJ 144, 1953 Cr LJ 668.
5. *Nathoolal* v. *Durga*, 1954 SC 355, *Kishore* v. *Chaltibai* 1959 SC 504.

conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.[1] The law of estoppel is thus stated in Section 115 of the Act: "When, one person has by his declaration, act or omission intentionally caused 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." In every case of estoppel there is a representation and consequently an admission of the existence of a fact, and if this admission is accepted and acted upon by the person to whom it is made, its maker cannot be permitted to show that the admission he made was false. But, except where an estoppel can be found on it, an admission is no more than a relevant piece of evidence; more or less weighty according to circumstances, but not conclusive.[2] Therefore a person who has made an admission may show that he made the admission in ignorance or under a mistake and that the admission was in reality untrue.[3] He may even show that the admission was made with a fraudulent purpose.[4] Admissions may become foundations of rights coupled with other facts. Short of those facts, they do not ripen into estoppels, and unless they reach that status admissions are nothing more than items of evidence which are not in any sense final. They show at the most a party's inconsistency. Their value or weight is to be judged according to circumstances.[5] Their value of admissions must depend upon the circumstances in which they are made and possible motives for incorrect statements by interested parties should not be ignored. The nature of the facts admitted is also a material point to be considered. If the fact admitted is one within the personal knowledge of the party admitting and there is no evidence or convincing explanation forthcoming, its value is considerable. If, on the other hand, the fact admitted is an inference from evidence and circumstances, the weight of the admission may be very little.[6] An admission is of no evidential value, once it is proved untrue.[7] An admission made in a suit is proved to be untrue and is therefore of no value where a decree opposed to it is passed.[8] An admission made under a wrong impression of the

1. *Narayan Bhagwant Rao* v. *Gopal*, (1960) (1) SCR 773 : (1960) (2) SCA 153 : 1960 SCJ 263.
2. *Dulat Singhji* v. *Khachar Mansur*, 1936 PC 150 : 63 IA 248 : 162 IC 17 : 60 B 634 ; *The King* v. *Saw Min*, 1939 R 219 ; *Madho Singh* v. *Kaloo Singh*, 140 IC 580 : 1933 O 28 ; *Sada* v. *Jallu*, 134 IC 128 : 1932 L 126 ; *Abdul Kareem* v. *Rashiduddin*, 131 IC 903 : 1931 O 246 ; *Jagannath Marwari* v. *Kalidas Raha*, 8 P 776 : 120 IC 626 : 1929 P 245 ; *Bai Devnami* v. *Ravishankar Oghedbhai*, 53 B 321 : 116 IC 236 : 1929 B 147 ; *Gokul Prasad* v. *Kailash Nath*, 65 IC 345 : 1922 O 55 ; *Ayetun and others* v. *Ramsebuk Poddar*, 12 WR 156 ; *Sarvabhotla Thotapalle Chendikamba* v. *Kanala Iadrakanti Vishwanathamayya'*, 1939M 446 ; *Sheokumar Tewari* v. *Central Co-operative Bank*, 1947 P 447 ; *Rehman-ul Hasan* v. *Zahur-ul-Hasan*, 1947 A 281 ; *S. Bhattacharjee* v. *Sentinel Assurance Co. Ltd.*, 1955 C 594.
3. *Mania* v. *Manoharlal*, 1941 O 429 ; *The King* v. *Saw Min*, 1939 Rang. LR 97; *Latafat Hussain* v. *Onkar Mal*, 1935 O 41 : 152 IC 1042 ; *Trailokya Nath Das* v. *Kenaram Das*, 61 CLJ 551 ; *Mam Chand* v. *Rupa*, 142 IC 720 : 1932 L 651 ; *Abdul Kareem* v. *Rashiduddin*, 131 IC 903 : 1931 O 246 ; *Sita Ram* v. *Pir Baksh*, 130 IC 406 : 1931 L 6 ; *Mangru Rai* v. *Shivanand Lal*, 77 IC 875 : 1923 A 575 ; *Mohammad Yusuf* v. *Pirmohamad*, 65 IC 368 : 1922 N 67 ; *Gokul Prasad* v. *Kailash Nath*, 65 IC 345 : 1922 O 55 ; *Sheo Dayal* v. *Lalta Prasad*, 58 IC 608 ; *Dinabandhu Nandi Choudhury* v. *Mannulal Parik*, 52 IC 443 ; *Chandra Kunwar* v. *Ch. Narpat Singh*, 29 A 184 ; *Brojendra Coomar Roy* v. *Chairman of the Decca Municipality*, 20 WR 223 ; *Rahman-ul-Hasan* v. *Zahur-ul-Hasan*, 1947 A 281 ; *Mst. Ulfat* v. *Zabaida Khatoon*, 1955 A 361.
4. *Sreenath Roy* v. *Bindoo Bishnee Debia*, 20 WR 112.
5. *Baghel Singh* v. *Mihan Singh*, 1953 Punj. 171.
6. *Mahadeo* v. *Baleshwar Prasad*, 1939 A 626.
7. *Baz Bahadur Singh* v. *Raghubir Prasad*, 49 A 707 : 100 IC 1037 : 1927 A 385.
8. *Surendra Prasad Lahiri* v. *Gobinda Das*, 48 CWN 15.

law does not, unless it operates as an estoppel, bind a party.[1] The maker of an admission is, however, under a clear obligation to get rid of it, and where an admission is not explained away, the Court may treat it as sufficient proof of the fact admitted.[2] See notes to Section 17 under the heading "evidentiary function of admission."

Admission—if conclusive proof—Section 4.—Ignoring the provisions of Section 31 of the Evidence Act the Court cannot assume that whatever is written down in the form of admissions is conclusive proof of the words and happenings mentioned therein.[3]

Admission—Evidentiary value of.—An admission is the best evidence of a point of issue, and though not conclusive, is decisive of the matter unless successfully withdrawn and proved erroneous.[4]

An admission, however is the best evidence which an opposing party can rely on; and though not conclusive, it is decisive, unless gone back upon or proved erroneous.[5]

A statement made before the High Court in a Criminal Revision that the party making it would not interfere with the rights of the other party, was found by the Supreme Court to be not an unqualified admission of the facts in issue, and that it was made in terrorem after the party making it had been convicted and the conviction would have been upheld if the admission was not made. Therefore, according to the Supreme Court, the admission "loses much of its significance", and that at any rate since the party had filed a suit under Section 95 of the Code of Civil Procedure for the framing of a scheme it could not be said to have acted against the admission because it had only availed of a remedy which was open to it under the law.[6]

Effect of admissions.—This section deals with the effect, in respect of conclusiveness, of admissions when proved. "An admission is not conclusive as the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend upon the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might be conclusive by way of estoppel.[7]

Admission-Binding effect.—To bind down a party by his own admission, the admission must be clear and unequivocal.[8]

Mutual admissions.—Where each party makes admissions detrimental to himself, the mutual admissions cancel each other with the result that the question for consideration may have to be decided on the material on record irrespective of such alleged admission.[9]

Evidentiary value of admission made under suspicious circumstances.—It was necessary for the defendant in his own interest to make the admission. The admission was made under somewhat suspicious circumstances at the end of the trial of the case when the arguments had begun. The admission has weak evidentiary value. Title cannot

1. *Nachiappa* v. *Muthu Karuppan*, 1946 M 398.
2. *Sadiqa Bagum* v. *Ata Ullah*, 144IC 497 : 1933 L 885 ; *Sirajuddin* v. *Johur Jan Bewa*, 134 IC 888 : 53 CLJ 222 ; *Abdul Rafiq* v. *Bhajan*, 53 A 963 : 137 IC 243 : 1932 A 199 ; *Shankaracharya Swamigal* v. *Manali Saravana Mudaliar*, 51 IC 876.
3. *Dr. Narayan Ganesh* v. *Mrs. Sucheta*, 71 Bombay LR 569 : ILR (1969) Bom 1024.
4. *Narasingmal Premchand* v. *Commissioner of Income Tax Bihar and Orissa*, (1969) 35 Cut. LT 1039.
5. *Narayan* v. *Gopal*, (1960) (1) SCR 773.
6. *Mohd. S. Labbai* v. *Mohd Hanifa*, 1976 SC 1596. (Para 20).
7. *Nagubai Ammal* v. *Shama Rao*, 1956 SC 593 : 1956 SCR 451.
8. *Dula Ganda* v. *Senapati Ganda*, (1971) (1) CWR 329.
9. *Kedar Nath* v. *Prahlad Rai*, (1960) (1) SCR 801.

pass by mere admission.[1]

Gratutious admissions.—An erroneous admission, if gratuitous, may be withdrawn at any time by the person making it.[2]

Admissions shift onus.—The burden of proving that an admission is untrue is on the person who wishes to get rid of it and a fact admitted to be true will be presumed to be true until the contrary is proved.[3] An admission in a bond as to the receipt of consideration binds the executant and his representative, and the onus lies on them to disprove consideration.[4] Where a mortgate bond contains a recital of the payment of consideration, the recital is admissible against the subsequent purchaser and the onus of proving want of consideration lies on him.[5] An admission of adoption is an admission of both the fact and the validity of the adoption, and the burden of proving the contrary lies on the person making such admission.[6] Where the mortgagee is described in the mortgage-deed as a member of an agricultural tribe, the onus is on the mortgagor to show that this description of the mortgagee is incorrect.[7] Where a donor states in a deed of gift that possession of the property gifted has been given to the donee, the burden of showing that the statement was untrue is on the donor.[8] See notes to Section 17.

Admissions by conduct.—See notes to Section 17.

Admissions by possession of documents.—See notes to Section 17.

Admissions and confessions.—See notes to Section 17.

An admission must be taken as a whole.—See notes to Section 17.

Form of admissions.—See notes to Section 17.

Mode of proof of admissions; should an admission be put to the party making it.—See notes to Section 17 and 145.

Admissions by minors.—See notes to Sections 17 and 18.

Admissions on questions of law.—See notes to Section 17.

Admissions founded on hearsay.—See notes to Section 17.

Admissions in pleadings.—Admissions which are relevant under this section should be distinguished from admissions in pleadings. Section 31 is not applicable to admissions in pleadings, which are conclusive for purposes of the suit in which they are made.[9] Similarly, admissions made in execution proceedings must be held to be binding

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1. *Ambika Prasad Thakur* v. *Ram Ekbal Rai*, (1966) 1 SCA 35.
2. *Sita Ram* v. *Pir Baksh*, 130 IC 406 : 1931 L 6 ; *Badhu Ram* v. *Uttam Chand*, 109 IC 26 : 1928 L 726 : *Mangru Rai* v. *Shivanand Lal*, 77 IC 875 : 1923 A 575.
3. *Des Raj Fakir Chand* v. *Piara Lal Aya Ram*, 1946 L 65 ; *Rahmat Ali Shah* v. *Harbhajan Singh*, 223 IC 505 ; *Sunder Koer* v. *Shah Udey Ram*, 1944 A 42 ; *Dukharam Zutshi* v. *Commercial Credit Corp.*, 1940 O35 : *Trailokya Nath Das* v. *Kenaram Das*, 61 CLJ 551 ; *Sarvabhotla Thotapalle Chendikemba* v. *Kanala Indrakanti Vishwanathamayya*, 1939 M 446 ; *Mst Abadi* v. *Mumtazuddin*, 1934 L 662 ; *Miran Baksh* v. *Ghulam Nabi*, 1933 L 725 (2) ; *Aminuddin Munshi* v. *Tajaddin*, 59 C 541 : 138 IC 761 : 1932 C 588 ; *Bai Devmoni* v. *Ravishankar Oghabhai*, 53 B 321 : 116 IC 236 : 1929 B 147 ; *Bhab Singh* v. *Jai Singh*, 10 L 694 : 116 IC 903 : 1929 L 318; *Wasakhi Ram* v. *Hussain Khan*, 75 IC 1027 : 1924 L 650; *Ghulam Sarwar Khan* v. *Mohammad Ali Khan*, 65 IC 398 : 1922 O 98 ; *Sheo Dayal* v. *Lalta Prasad*, 58 IC 608 ; *Vir Singh* v. *Harnam Singh*, 1 L 137 : 56 IC 191 ; *Lal Shah* v. *Hira Lal*, 106 PR 1917 : 41 IC 163 ; *Alexander John Forbes* v. *Meer Mahomed Tuquee*, 14 WR 28 : 13 MIA 438 (PC).
4. *Davindar Singh* v. *Lachhmi Devi*, 12 L 239 : 129 IC 281 : 1930 L 985 ; *Khetu Ram* v. *Hargopal*, 105 IC 847 : 1927 L 800,
5. *Jamuna Prasad Shah* v. *Faujdar Shahni*, 8 P 766 : 1929 P 254.
6. *Sooratha Singha* v. *Kanaka Singa*, 43 M 867 : 59 IC 585.
7. *Shib Narain Singh* v. *Badhawa Singh*, 38 PLR 427.
8. *Mst. Zura* v. *Mohd. Ayub*, 1943 Pesh. 17.
9. *Abdul Aziz* v. *Maryam Bibi*, 49 A 219 : 97 IC 176 : 1926 A 710.

when the unsuccessful party proceeds to a suit.[1] But an admission made in a prior litigation is not conclusive and may be proved to be wrong.[2] A party is not bound by an admission in his pleading except for the purposes of the suit in which the pleading is delivered. It frequently happens that a party is prepared in a particular suit to deal with the case on a particular ground and to make an admission, but that admission is not binding in any other suit, and certainly not for all time.[3] A party who makes an admission for certain purposes in summary proceeding does not necessarily admit the correctness of the claim of the other party. He may be compelled in summary proceedings to admit the claim, but that does not mean that he admits it for all purposes.[4]

Admission in a pleading of a former litigation-evidence value.—The admission contained in a pleading of a former litigation, if it is indeed an admission in the true sense, is certainly available to be used for all purposes, and it cannot be kept out by saying that it was an admission in a former litigation and was meant for that proceeding alone and cannot be taken to be an admission binding in any other suit or for all time to come. Such a distinction is not open in law to be made. If it is an admission, it is so and is certainly an admission for all times to come. Unless explained away properly an admission is the best available support for the adversary.[5]

Deposition of witness in other litigations-Not admissible against other defendants.—The deposition of witnesses in other litigations do not carry the matter further. Though admissible against the defendant making the admission, it is not admissible against the other defendants.[6]

Admission in writ petition-Applicability.—Admission in writ petition before Supreme Court that certain lands in possession of petitioner were pasture lands and that they were used by him for grazing his cattle. It is not open to petitioner in subsequent writ petition before High Court to turn round and say that the admission is not correct. He has to abide by that admission.[7]

Admission of payment of a creditor.—A creditor's admission as to payment of interest is not of much weight, as he might have been induced to make the admission to save limitation.[8]

Admission by a widow.—An admission by a widow that her husband adopted her daughter's son is not of much value, as she would naturally support her daughter's son against the collaterals.[9]

In *Kishorilal* v. *Mt. Chaltibai* the Supreme Court declined to act on the admission made by a widow who had been deserted by her relations, about an adoption which had plainly been foisted on her by interested relatives.[10]

Admission in a registered deed.—The value of an admission, contained in a registered deed, formally executed by a party, with an endorsement showing that the executant was fully aware of the contents of the deed and executed it with due delibera-

1. *Gordhan Das* v. *Husaina*, 103 IC 34 : 1927 A 659.
2. *Sarvabhotla Thotapalle Chendikamba* v. *Kananla Indrakanti Vishwanthamayya*, 1939 M 446.
3. *Ramabai Shriniwas Nadgir* v. *Govt. of Bombay*, 1941 B 144 : 194 IC 431.
4. *Ramrup Rai* v. *Firm Mahadeo Lal Nathmal*, 1940 P 653.
5. *Biswanathan Rana* v. *Laxman Rana*, (1971) I CWR 253.
6. *Ambika Prasad Thakur* v. *Ram Ekbal Rai*, (1966) (1) SCA 35.
7. *Gulabbhai Vallabhai* v. *M.A. Khan, Collector of Daman*, AIR 1970 Goa, 59.
8. *Ammalu Amma* v. *Narayanam Nair*, 51 M 549 : 111 IC 210 : 1928 M 509.
9. *Arjan Singh* v. *Darbara Singh*, 32 IC 312 ; 193 PLR 1915.
10. *Kishorilal* v. *Mt. Chaltibai*, 1959 SCJ 560.

tion and full understanding, is considerable unless it is explained satisfactorily, and shifts the burden of proving the contrary on to the party which made that admission.[1]

Admission in a gift deed.—Where a donor makes the statement in a deed of gift that he or she was in possession and put the donee in possession, that is an admission of the donor of the fact of delivery of possession, to the donee. The effect of this is only, that the person who contends to the contrary, namely, that no possession was delivered should establish the contention. The admission is not "rebuttable or conclusive" on the question of delivery of possession.[2]

Admission of marriage.--There are several instances in Mohammadan Law where, notwithstanding the indubitable proof or clear admission of marriage the Court has found against the acknowledgee and held the marriage disproved.[3]

Admission in divorce proceedings.—The admissions of a party, in divorce proceedings should, in the absence of corroborative evidence, be received with the utmost circumspection and caution.[4]

Admission as to the construction of a document.—When a party, to his own prejudice, has put a manifestly wrong construction on a document, he is not, unless an estoppel has arisen in the circumstances, bound by that construction, and the Court should apply the right construction to the document.[5]

Confession not excluded by Sections 24-25 are admissible under Section 31.—See notes to Section 17 and Sections 24, 25, 26.

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1. *Bhola* v. *Man Matum*, 1964 ALJ 749.
2. *Johara Bibi* v. *Subera Bibi*, ILR (1964) (2) Mad. 540.
3. *Hakima* v. *Jiandi*, 103 IC 870 : 1927 S. 209.
4. *Mrs. L.* v. *W.L.* 105 IC 416 : 1928 S. 55 ; but see *Mrs. M.* v. *O. Donnell*, 1927 L 491.
5. *Firm Ram Kunwar Rameshwar Das* v. *Firm Narain Das Lachman Das*, 1921 A 399 ; but see *Mohammad Khalil Khan* v. *Mohboob Ali*, 1942 A 122.