II. Second Element in the rule of Estoppel the *intention* that the Plaintiff should act upon the faith of the statement.

It is *not* necessary that the party making the representation must have been under no mistake himself.

It is not necessary that the party making the representation must have acted with the intention to milead or to deceive.

19 I.A. 203.

But it is necessary that the party making the representation must have the intention that the Plaintiff should act upon the faith of the representation.

How to prove intention ?

Intention is used in two different senses :

(1) It is used to indicate as a presumption of law. A man is presumed to intend the natural or necessary consequences of his act.

(2) Intention is used to indicate a specific existing state of mind in a person.

This specific state of mind must be proved as a fact like any other fact and cannot be presumed.

Illus.—

(1) Section 225, I. P. C. whoever intentionally offers.

(2) Section 124, I. P. C whoever with the intention.

Intention here is used as a presumption of law and is not used in the second sense.

It is not therefore necessary to prove intention that the party should act as a specific fact.

If a reasonable man would take the representation to be true, and believe it was meant that he should act on it, the requirement as to intention would be satisfied.

19 I.A. 203 (219).

III. The third element in the rule of Estoppel is that the party to whom the representation was made must have acted upon the faith of it.

1. This element is really the foundation of the law of Estoppel and explains the principle underlying it. The principle underlying the rule of Estoppel is that it must be inequitable unjust; that if one person by a repersentation made or by conduct amounting to representation has induced another to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it.

2. The reason of the rule is that the man has acted upon it and altered his position. To amount to estoppel the statement must have been acted upon by the party to whom it was made.

14 Bom. 312.

13 Moo I.A. 585 (599).

Limitation on the rule of Estoppel.

1. It cannot override the law of the land.

(i) Minor—represents himself as Mojor—not estopped from proving minority.

(ii) Corporation—does Acts which are *ultra vires*—not estopped from proving that they were beyond its power.

Other distinctions between **Admissions** and **Estoppel.**

1. An admission does not prevent the party from proving that the admission is untrue. An Estoppel prevents the party from doing so.

2. An admission can be taken advantage of by any person other than the one to whom it was made. An Estoppel can be taken advantage of only by the party to whom it was made. As against a stranger he can deny its truth.

5 *W. R. 209.*

5. A. R. 209.

Plaintiff alleged that he had purchased the property in the suit for Rs. 10,000. Pressed for money he subsequently mortgaged it to his mother. That he redeemed the Mortgage a year after and took possession of the property.

The Defendant had obtained a decree against mother of the Plaintiff and in execution and satisfaction of the Decree had the property sold by Court Sale and purchased it Benamee and Plaintiff was ousted. The Plaintiff filed a suit for the recovery of the property.

The Defendant contended that Plaintiff was estopped from proving that he was the Owner because in a former suit Plaintiff had admitted that his mother was the Owner to that suit Defendant was not a party. Held there was no Estoppel.

Difference between Estoppel and Conclusive Proof.

1. Estoppel can be waived by the party in whose favour it operates. But conclusive proof cannot be waived.

Difference between Res Judication and Estoppel.

Res Judication prevents a man avering the same thing twice over in successive litigations.

Estoppel prevents a man from saying one thing at one time and the opposite at another. *36 Bom. 214.*

English and Indian Law of Estoppel.

1. Under the English Law Estoppels are usually classed under three heads.

(i) Estoppel by Record.

(ii) Estoppel by Deed.

(iii) Estoppel by Conduct

2. Estoppel by Record means estoppel by the Judgement of a competent Court.

(i) Estoppel by Record is recognised by the law of India. It is dealt with:

(a) By the Code of Civil Procedure. *Sections 11-4.*

(b) By the Evidence Act. *Sections 40-44.*

3. Estoppel by Deed.

1. Under the English Law a party to a deed cannot, in any action between him and the other party, setup the contrary of his assertion in that deed. This rule affords an illustration of the exaggerated importance of a 'seal' in English law. Neither sealing wax nor wafter is necessary to constitute a seal. Apparently, a smudge of ink on document purporting to be a deed is a seal if so intended, and it makes a greater importance in law than a deliberate and identifiable signature. **There is no estoppel in the case of ordinary signed documents.**

2. The strict technical doctrine of Estoppel by Deed cannot be said to exist in India.

3. But while the technical doctrine has no application in this country, statements in documents are, as admissions, always evidence against the parties. In some cases such a statement amounts to a mere admission of more or less evidential value according to circumstances, but not conclusive. In other cases namely those in which the other party has been induced to alter his position upon the faith of the statement contained in the document, such a statement will operate as an estoppel. In this view of the matter, an estoppel arising from a deed or other instrument is only a particular application of that estoppel by conduct or misrepresentation under Section 115.

4. An estoppel does not arise under the Evidence Act merely because a statement is contained in a deed. It can work an estoppel only when it can fall with section 115.

I All. 403.

II Bom. 708.

5. A Recital in a deed may be merely an admission or it may be estoppel according to circumstances.

§ Particular Estoppels.

1. Section 115 deals with Estoppels in general, sections 116 and 117 deal with particular Estoppels.

2. The distinction between Estoppels under Section 115 and Estoppels under 116-117 may be noted.

(i) Estoppels under section 115 can arise between any two parties. It is not necessary that they should be related by a particular legal tie. Estoppels under 116-117 arise **only** between parties who are related by a particular relationship.

(ii) Estoppel under 115 arises by reason of **misrepresentation of facts** by one party to another. Estoppel under 116, 117 arise by reason of agreement between the parties which has forged a particular relationship between them.

Section 116. deals with Estoppels between

(i) Landlord and Tenant and

(ii) Licensee and Licensor of immoveable property.

I. Landlord and Tenant.

This Estoppel applies to the tenant of immoveable property.

2. This estoppel applies also to a person claiming through the tenant. In other words, if a tenant sublets his property without the knowledge or permission of the landlord, the sub-tenant will also be estopped from denying that the landlord had the title in the beginning,

3. This Estoppel does not ensure to the benefit of a person claiming through the landlord.

There are two possible cases in which premises may be let:

(i) Where the Plaintiff has let the Defendant into possession of the land.

(ii) When Plaintiff is not himself the person who lets the Defendant into possession, but claims under a title derived from the person who did.

This section applies to the first case and estops the tenant from denying the Landlord's title. It does not apply in the second case where the title of the landlord is derivative i.e. by sale, lease or inheritance so that when the Plaintiff claims by a derivative title, the defendant is not estopped from showing that the title is not in the Plaintiff but in some other person. The tenant can show that he has no derivative title. This is the effect of the absence of the words "claiming through the landlord".

This estoppel applies to a denial of title **at the beginning of the tenancy,** so that a tenant can show that his landlord's title has expired or is determined. In such a case he does not dispute the title, but confesses and avoids it by a matter *ex-post facto*. Justice requires that the tenant should be permitted to raise this plea, for, a tenant is liable to the person who has the real title and may be faced to make payment to him, and it would be unjust if, being so liable, he could not show the expiry or determination of his landlord's title as a defence.

4. **The Scope of the Estoppel.** A tenant or his representative will not be permitted to deny that on the day on which his tenancy commenced, the landlord who granted the tenancy had title to the property.

5. **This Estoppel binds the tenant only so long as the tenancy continues.** Once the tenancy has ceased he is free to deny that his landlord had any title even on the day on which tenancy commenced.

II. Licensee and Licensor of immovable property.

1. The rule is the same as a licensee, namely, that the licensor had title to such possession at the time when such license was given.

2. Difference between a **tenant** and a **licensee.**

License means permission given by one man to another to do some act, which without such permission it would be unlawful for him to do. It is a personal right, and is not transferable, but dies with the man to whom it is given. It can as a rule be revoked by the Licensor unless the licensee has paid money for it.

Tenancy is an interest in land and is transferable and heritable.

Section 117 deals with
(1) Estoppel of acceptor of a Bill of Exchange.
(2) Estoppel of a Bailee.
(3) Estoppel of a Licensee.

(1) The Estoppel with regard the Acceptor is to the effect that he should not be permitted to deny that the drawer had an authority to draw the Bill or to endorse it.

Reason for this rule is to be found in the Agreement between the Acceptor and the holder of the Bill.

What does the agreement of acceptance impost:

(1) That he will pay the payee or the holder.

(2) That if he fails to pay the drawer will pay.

What does it mean when he says that the Drawer will pay ? It means that the drawer had the authority and capacity to bind himself.

The payee took it on the basis of this agreement. The acceptor, therefore, is not permitted to deny this agreement.

Under Explanation I, he is permitted to deny that the signature of the drawer is a forgery.

This is contrary to English Law.

(2) & (3) **Estoppel in respect of a Bailee and Licensee.**

They cannot deny the authority of the bailor to make the bailment or of the licensor to grant such a license at the time when such bailment or license commenced.

§ Matters stated without prejudice.

1. Under this head fall certain classes of admissions made by a party.

2. If the admission is made under certain circumstances mentioned in Section 23, it cannot be proved against the party who made it.

3. What are those circumstances ?

(1) If it is made on condition that evidence of it is not to be given

(a) Condition may be express or

(b) Condition may be implied from the Conduct of the parties.

(2) Agreement may be verbal or in writing.

4. **The application of Section 23.**

(1) It applies to **Civil cases** only. The rule does not extend to criminal cases.

(2) By Judicial interpretation the application of the Section has been confined to admissions made in the course of the negotiations in the same.

The mere fact that a document is stated to have been written "Without Prejudice" will not exclude it. The rule which excludes documents marked "Without Prejudice" has no application unless some person is in dispute or negotiations with another and terms are offered for the settlement of the dispute or negotiation. *23 Bom. 177 (180).*

Explanation—

This section does not apply where a person is compellable to answer.

§ Matters which are irrelevant.

1. The law of Evidence does not state what matters are irrelevant.

2. It proceeds to state what matters are relevant and thus excludes those that are not relevant.

3. It is objected that the rules of relevancy are of no use.

4. There are two problems a Judge is faced with

(i) Whether and how far he ought to believe what the witness says ?

(ii) What inference a Judge ought to draw from the facts which he believes to have been proved ?

In every judicial proceedings there are two essential questions—Is this true ? and if it is true, what then ?

5. Rules of relevancy throw no light on either of them and persons who are absolutely ignorant of these rules may give a better answer.

6. Answer to the objections.

(i) Men reason and reason well even without the study of Logic. But it does not follow that we should study Logic.

(ii) The rules of relevancy out the flood of irrelevant gossip and collateral questions which are sufficient to comprise the strongest head and distract the most attentive mind.

I. Cardinal rule of relevancy is that you can prove a fact and not opinion.

Facts fall into two classes:

Those can and those which cannot be perceived by the senses. Those which cannot be perceived by the senses are :

(1) Intention, (2) Fraud (3) Good faith and (4) Knowledge.

§ Matter of which Proof is allowed by Law.

1. Facts in Issue. 3, 5, 12.

2. Facts relevent to Facts in Issue. 3, 6, 7, 8, 9, 13-16, 52-58 45-51.

3. Facts which are consistent with facts in Issue or with Relevant Facts or which show the probability of a Fact in Issue and Relevant Fact. 34-39-46.

Note—31-32 will go under direct evidence as exceptions.

4. Facts which are inconsistent with 11(1).
Facts in Issue or with Relevant Facts. 17-31.
or which show the improbability of a Fact
in Issue or Relevant Fact. 41 -44,46.

§ Facts in Issue.

Section 3. There are two Requisites of a fact in issue :

(1) **It is a necessary fact.**

A Fact in Issue is a fact which is the foundation of right claimed or of the liability which is sought to be imposed by one party against or upon another party.

A fact in issue is a fact the proof of which is necessary for the claim being granted or the liability being imposed.

Illus—

(1) Supposing the inquiry to be **whether A is entitled to succeed to B's property as his son.**

The following facts would be necessary facts :

(a) Whether A is the son of B.

(b) Whether B is dead.

(c) Whether the property belongs to B.

They are necessary facts because unless they are proved A's claim to succeed cannot be granted. They are the foundation of his claim.

Illus—

(2) Supposing the inquiry is

Whether A caused the death of B.

The following facts would be necessary facts :

(i) Whether A caused the death of B.

(ii) Whether A had the intention to cause death.

2. Every necessary fact is not a fact in issue. A necessary fact whether it is asserted and denied becomes a fact in issue.

In Illus. 1 and 2 if any necessary fact is not denied it would base to be a fact in issue.

3. A fact in issue is, therefore, a necessary fact which is in dispute between the two parties.

2. **§ Facts which are relevant to Facts in Issue.**

Section 3. I. Relevant fact means fact connected to the fact in issue.

1. The connection must be **visible** and **open** i. e. must be **obvious.**

2. The connection must be **immediate and not remote.**

3. The connection need not be **necessary** connection that would exclude all **presumptive** evidence, but such as **is reasonable,** and not **latent** or **conjectural.**

4. Whether there is a connection is a matter of legal instinct or legal sense to be acquired by practice. A few instances may serve for illustrations.

(a) On a Criminal trial of A, the statement of B, who is not a witness that he was the real criminal and that A is innocent would be rejected for remoteness and **want of connection** apart from the danger of collusion and fabrication.

R vs. *Gray Ir. Cir. Rep. 76.*

(b) On a suit by A against B for the recovery of £ 5 lent to him, an entry made by A in his diary that B owed him £ 5 would be rejected for want of connection.

Storr vs. *Scott. 6* c & P *241.*

(c) A as Agent of B, a Merchant residing abroad bought goods of C. At the time of purchase A did not inform C who was his principal; but the invoices described the goods as "bought on account of B per A". C afterwards drew upon A for the amount. B after receiving advice for the purchase and of the acceptance of bills by A had made large remittances to A. But A had become insolvent in the meantime.

C sued B the principal.

C desired to give evidence of his account books for the purpose of showing that B had been throughout debited by him as principal.

Held that evidence was inadmissible.

Smyth vs. Anderson. 7 C-b. *21.*

II. It is not every connected fact which is relevant. It is only facts connected **in a particular** respect which are relevant. The Evidence Act lays down in what way a particular fact must be connected with the fact in issue in order that it may be treated as a relevant fact.

6. **1. § Proof is allowed of Facts forming part of the same transaction comprised in the facts in issue.**

Take Illus (a), (c) (d).

What is meant by transaction ?

A transaction is a group of facts so connected that they go by a single name such as a **crime, contract, sale** etc.,

Anything connected with the crime or contract if the connection is open and visible i.e. **obvious** and **immediate** is part of the same transaction and is relevant.

What does transaction include ?

A transaction not only includes acts done but also statement made in the course of the transaction.

Illus—

The cries of a woman when raped. The statement to be part of the same transaction must accompany the act.

What is meant by same transaction ?

1. Same does not mean similar. Evidence of series of similar transactions irrelevant.

2. Same transaction does not mean transaction which has taken place at the **same** time and **same** place. It has nothing to do with simultaneity of occurrence as to time and place.

Illus.—

Robbery may take place in January in one place, stolen goods may be entrusted with a receiver in another place in February and may be sold in March in a third place. All this would be parts of the same transaction.

3. Same transaction means **one connected transaction—parts of the same piece.**

Case Law. Cockles pp. 66-68.

53 Cal. 372.

Principle. Such evidence is allowed because it makes things intelligible. It provides context.

2. § Proof is allowed of a Fact which shows **occasion, cause, effect** or **opportunity** for a fact in issue or for a relevant fact.

1. A man is accused of **theft.** If no money is found in his possession, probability is that he did not commit theft. Every cause has effect If there was no effect no cause.

2. A man is accused of assault.—That there was a quarrel may be proved to show that there was occasion or cause.

3. A man is accused of poisoning his wife.—To show there was no opportunity for him to do so, it can be proved that the nurse was always present.

4. A is accused for murdering B.—To show there was **cause** for murder can be proved that B knew that A had married to C and that wanted hushmoney from A.

8. 3 § Proof is allowed of facts which show **Motive, Preparation** for any fact in issue or relevant fact.

Motive. Illus. (a) (b). No rational man acts without motive.

Preparation. Illus. (c) (d). No act can be done without preparation.

Case Law.

1. *61 Cal. 54*—Motive-intention-Preparation-attempt-Act.

2. *R* vs. *Palmer*—Cockle P Killed Cook.
Pecuniary embarrassment, his buying poison, attempting to avoid inquest.

3. *R* vs. *Lillyman* Cockle P. (1896) 2Q B 167.

4. § Proof is allowed of a fact which shows the conduct of a party to any suit which has reference to such suit or which has reference to any fact in issue or to any relevant fact. Similarly proof is allowed of a fact which shows the conduct of an accused if such conduct influences and is influenced by any fact in issue or by any relevant fact.

1. Conduct of persons generally.

Illus.— (d) The making of a will. Not long before the making of the will, the deceased made inquiries and drafts relevant.

Conduct of the Accused:

Illus.— (e) suborning witnesses.

Illus.— (h) absconding.

Illus.—(h) concealing things.

Explanation—

1. Conduct does not include statement unless the statement accompanies the conduct and explains the conduct.

2. If conduct is relevant then

a statement which **affects** the conduct is relevant if it was made to the person or in his presence and hearing.

Illus.—

(g) Question is whether A owed B Rs. 10, 000. The A asked C to lend his money and D said in A's presence and hearing "I advise you not to trust A, for he owes Rs. 10,000" and A went away without making any answer is **relevant.**

Case Law.

Imp. 34 om. & R. 1087.

Imp. 7 All. 385 F.E.

Cockles-P. 75. Bright vs. foe B Tatham.

5. § Proof is allowed of facts which are necessary to explain or introduce a fact in issue or a relevant fact.

Illustration—

(d) On an indictment for crime it was alleged that the Accused was absconding.

Evidence may be given to show that he had urgent business.

(f) A is tried for a riot to assault or overowe the Police Officer and is proved to have marched at the head of a mob. Evidence may be given of the cries of the mob to explain the nature of the transaction.

(b) On suit for libel—imputing disgraceful conduct. Evidence may be given of the position and relation of Parties at the time the libel was published as introductory to facts in issue.

Under this evidence may be given of:

(1) The **identy** of a person or thing whose identity is in question.

(2) Exact time and place at which a fact in issue or a relevant fact happened.

(3) of the relation of the parties, to the fact in issue or relevant fact.

4. § Proof is allowed of facts showing the existence of any state of mind.

1. **Under this,** facts may be proved which shows intention, knowledge, good faith, negligence, ill-will or good will.

knowledge, Illus. (a): **good faith** Illus. (f): **Intention,** Illus. (e) (j): **Ill-will.** Illus. (k).

2. Under this, evidence of previous conviction may be given. Illus. (b).

3. **Limitations** upon the use of the Section.

(1) The state of mind of which evidence is given is not **general state of mind-** general disposition -but a state of mind which has reference to the particular matter in question.

(2) The evidence of the previous commission of the offence must be to show his state of mind with regard to the particular matter in question and for no other purpose.

15. § Proof is allowed of facts to show that the act done was a part of a series of **similar** acts in order to show that the act in question was done **intentionally** and not **accidently.**

Illustration— (a) (b)

1. Ordinarily the evidence of similar acts is not relevant because if a person has done one act, it does not follow that he must have done the particular act in question.

16. § Proof is allowed of facts showing the existence of a course of business according to which it naturally would have been one, if the question is a particular act was done or not.

Illus.—(a) (b).

This shows probability.

Question is whether a particular letter reached A or not ? The letter was posted and was not returned through the Dead Letter Office may be proved.

13. § EVIDENCE OF TRANSACTION AND INSTANCES IN PROOF OF RIGHTS AND CUSTOMS.

1. **Scope of the word Right.**

(A) There are three kinds of rights.

Private—e.g. a private right of way.

General—A Right common to any considerable class of persons. E.G. the right of villagers of a particular village to use the water of a particular well. Sec. 48 Illus.

Public—This is not defined in the Act. Every public right in the sense of the previous definition of general right is a general one though (according to the distinction drawn by the English Law) every general right is not a public right.

The section applies to all rights whether they are Private, General, or Public by reason of the word **any.**

(B) Does the section apply to **all** kinds of rights ? This question arises because of the absence of the word **every.** There was once a conflict of decisions on this question. One view was that included **all** rights. The other view was that it included only **incorporeal** rights.

The view now held seems to be that the term includes all rights.

2. Scope of the word custom.

A custom is not limited to ancient custom but includes customs and usages. Usage would include what people are now or recently in habit of doing in a particular place. It may be that the particular habit is of a very recent origin or it may be existed for a very long time. If it is one which is ordinarily practised there is usage.

B. Custom may be

(i) Private custom—Family custom,

(ii) General Custom-—Custom common to a considerable class of people and may be

(a) local

(b) caste or class

(c) Trade customs or usages.

(iii) Public—Not defined.

C. The Section applies to all customs and to all usages.

3. The evidence to be given is to be evidence of a **transaction** or of **instances** in which the right or custom arose.

A. Meaning of **transaction** and **instance**

(1) Transaction—some business or dealing carried on between two or more persons.

(2) Instance—Case occuring—individual acting in a particular way.

B. Proof is not restricted to previous transactions in cases between the parties to the proceedings. The use of the word **any** shows that it need not be between the parties to the litigation. It may be between strangers or it may be between a party to the litigation and a stranger.

C. The word transaction and instance has given a deal of trouble and the question has been raised whether it includes a judgement decree and the litigation in which they were pronounced not being between the same parties (and not being of a public nature), as evidence of a transaction or instance.

The question was considered in the leading case *Gajju Lull* vs. *Fatteh Lal.* **6 Cal. 171.**

III. Facts which are consistent with facts in issue or with relevant facts or which makes a fact in issue or of a relevant fact **highly** probable.

1. The Section is no doubt expressed in terms so wide and so extensive that any fact which can by a chain of ratiocination be brought into connection with another so as to have a bearing upon a fact in issue or a relevant issue may possibly be held to be admissible.

2. That such an extensive meaning was not intended by the legislature is clear from the word 'highly'. The words 'highly probable' point out that the connection between the facts in issue and the fact sought to be proved must be so **mediate** as to render the co-existence of the highly probable.—*6 Cal. 665 (662).*

3. To render a collateral fact admissible under this section, it must (a) be established by reasonably conclusive evidence and (b) when established afford a reasonable presumption or inference as to the matter in dispute.—6 *Bom. L. R. 983.*

4. The terms of this section though very wide must be read subject to other sections of the Act.

Illus—

1. *Ramanujan* vs. *King Emperor.*

58 Mad. 523 F. B.

Ramanujan was charged for having murdered Seethammal. Facts given at p. 526.

There was no eye-witness to the murder. The prosecution tendered evidence of the following facts :

1. That Seethammal when she left her husband joined the prisoner taking with her some jewels and some silver vessels.

2. That Seethammal and the accused lived together at various addresses.

3. They were last seen in 24 Peddunaicken Street on the 11th January.

4. On the morning of the 12th, when the milk woman went, the room was locked.

5. That on or about the 13th he pledged certain ornaments belonged to Seethammal.

6. That he purchased a mattress like the one in which the dead body was wrapped.

2. Long continued absence of demand to prove the payment of an alleged debt.

3. The resemblance of a child to the Defendant to prove paternity in a maintenance case.

11 (2) § Facts which are inconsistent with facts in issue or relevant facts or which make them highly improbable.

Illustrations.

1. In an action for money lent, the poverty of the alleged lender is relevant as being inconsistent with the making of the loan.

2. That a witness or the accused was at another place is relevant as inconsistent with his alleged presence at the scene of the offence.

3. In a case involving the determination of the question whether the thumb impression is that of A or not. Evidence may be given of his thumb impression on another document if their dissimilarity makes the story of his thumb impression improbable.

52-55. § **Proof of facts relating to character.**

1. The rules regarding evidence of character fall into two classes.

I Those which relate to the character of witnesses.

II Those which relate to the character of parties.

Character of witnesses.

1. The character of a witness is always material as affecting his credit. The credibility of a witness is always in issue. For as witnesses are the media through which the Court is to come to its conclusion on the matters submitted to it, it is always most material and important to ascertain whether such media are trustworthy and as a test of this, questions, among others, touching character are allowed to be put to witnesses in the case—Sections 145-153.

§ **Character of a Party.**

1. In respect of the character of a party, distinctions must be drawn between

Cases where the character of the party is in issue

and

Cases where it is not in issue.

Where the character of the party is in issue, there, proof of facts relating to character is allowed irrespective of the question whether the proceedings are civil or criminal. Sec. 52.

Illus.—

(i) In a Civil Suit the issue is "whether the governess was competent, ladylike and good tempered while in her employer's service" witnesses can be allowed to assert or to deny her general competency, good manners and temper.

(ii) In a Criminal prosecution for conspiracy to carry on the business of common cheats witnesses can be allowed to assert or to deny the general character of the accused.

When such general character of a party is not in issue, proof of character is not permitted by Law. *Sec. 52.*

There are two exceptions to this rule under which evidence of character is allowed even the character is not in issue.

(i) In Civil proceedings, proof of facts relating to character is allowed if they affect amount of damages. *Sec. 55.*

(ii) In Criminal Cases.

(i) Proof of facts showing accused is of good character is always allowed. Sec. 53.

(ii) Proof of facts showing accused is of bad character is not allowed except in the following case :

Where accused has given evidence that he has a good character.

Reasons why this difference is made between civil and criminal proceedings is obvious.

(1) Bad character only creates prejudice against the accussed. It does not prove the case against the accused. It is irrelevant unless the accused makes it a matter of issue by giving evidence of his good character, then of course evidence of bad character may be given.

(2) Good character strengthens the innocence of the accused and ought on humanitarian grounds to be permitted.

Two things are to be noted.

1. What is included in the term character ?

Sec. 55.

The word Character includes both **reputation** and **disposition.** This is a departure from English law under which character is confined to reputation only.

There is a distinction between reputation and disposition. **Reputation** means what is thought of a person by others, and is constituted by public opinion. It is the general credit which a man has obtained in that opinion.

Disposition comprehends the springs and motives of action, is permanent and settled and has regard to the whole frame and texture of the mind.

2. How to prove Character ?

There are two ways of proving the character of a man. One way is to give evidence of general reputation and general disposition. The other way is to give evidence of particular acts which may then become the basis of inference for reputation and disposition.

55 Expl.

The Evidence Act permits evidence to be given **only** of **general** reputation and **general** disposition.

55 Expl.

There is only one exception to this under which evidence of previous conviction may be given as evidence of bad character.

Sec. 45-51.

§ Proof of opinions.

1. The use of witnesses is to **inform** the Court of the facts of the case. It is the duty of the Court to form its own opinion.

2. To show what the witness **thought** or **believed** would be objectionable on two grounds (I) It can show nothing at all and (2) it would be entrenching upon the province of the Judge.

3. The rule is that witness must state facts and not opinions. A strict application would create two difficulties.

(1) What a **third person** (i.e., some one who is neither a plaintiff, a defendant nor a prisoner) thinks or believes about any matter in question is not material. If such a third person be called as a witness, he must, as a rule, only state facts; his personal opinion is not evidence. But what a party thinks or believes at the time he does a material act is often a matter in issue both in Criminal and Civil proceedings.

Illus.—Carter -vs. - *Boehin. Cockle p.*

Question was whether a policy of insurance was vitiated by the concealment of facts which had not been communicated to the under writers. A broker gave evidence of the materiality of the facts. He was asked whether he would have entered into the contract if these facts were disclosed. His answer that he would not have was held to be inadmissible as it was matter of opinion. But if the question had been asked to the party then his opinion would have been admissible.

(2) A strict application of the rule is bound to create difficulties. In cases where the Court is required to form an opinion, the Court may not be competent to form an opinion cases occur in which special experience or special training is necessary before a true opinion can be formed. In such cases therefore the opinion of those who have had special experience or special training must be laid before the tribunal to enable it to arrive at a correct decision.

(3) There are certain cases where it is naturally impossible for any witness to speak positively, cases where he must speak if at all, as to his opinion or belief, the matters to which he deposes being so essentially matters of opinion or else to complex or indefinite that the Court is compelled to accept his opinion for what it is worth. The former are cases involving questions of science, art, or skill which necessarily require the opinion of the expert. The latter class of cases are cases involving question of impressions which may be those of non-experts.