

(5) The Evidence Act therefore makes the following exceptions to the general rule that the opinion of a witness is not admissible.

Sec. 45.

(1) The opinions of **skilled** or **scientific witnesses** (Experts) are admissible evidence to elucidate matters which are strictly of a **professional** or **scientific** character.

For instance.

- (i) Question of foreign law.
- (ii) Question of Science or Art (working of a gun machine).
- (iii) Question of as to identity of handwriting or finger impression.

Sec. 47.

(2) On questions of identification of a person by whom any document was written or signed, the opinion of the person acquainted with the handwriting of the person is relevant.

Sec. 48.

(3) Where the Court has to form an opinion as to the existence of any **general custom or right**, the opinion of persons **likely** to know of its existence is relevant.

Sec. 49.

- (4) When the Court has to form an opinion as to :
- 1. The usages and tenets of anybody of men or family.
 - 2. The constitution and government of any religions or charitable foundation.
 - 3. The meaning of words or terms used in particular districts or particular classes of people.

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

Sec. 50.

(5) When the Court has to form an opinion as to the relationship between two persons, the opinion of persons based on the conduct of parties and having special means of knowledge on the subject.

Illus—(a) (b)

Proviso. Such opinion shall not be sufficient to prove marriage under Indian Divorce Act or the prosecutions under sections 494, 495, 497, 498 of the I. P. C.

Nature of Evidence Required for Proof

Summary of the Law

I. THE RULE OF BEST EVIDENCE.

II. REQUIREMENTS OF THE RULE OF BEST EVIDENCE.

(i) The rule of Best Evidence requires.

(a) That if the Evidence is oral then it must be direct.

(b) Exceptions.

(ii) The rule of Best Evidence requires that if the Evidence is documentary then.

(i) It must be original,

(a) Exceptions,

(ii) it be exclusive,

(a) Exceptions.

§ The Rule of Best Evidence :

1. It is an incontrovertible proposition of law that the party who is to prove any fact must do it by the **best** evidence of which the nature of the case is capable.

2. This rule, really speaking, underlies the whole law of Evidence.

(i) It is because of this rule that the law requires as a condition precedent to the admissibility of Evidence that there should be an open and visible connection between the principal and evidentiary facts.

(ii) It is because of this rule that the law requires that Evidence in order to be receivable should come through proper instruments.

(iii) It is because of this rule that the law requires that the evidence to be admissible should be original and not derivative.

3. At one time the rule of Best Evidence was very strictly applied. But its application is now greatly relaxed and what were once objections to admissibility now went merely to sufficiency on weight.

4. But the rule still survives and is illustrated by the requirements of the law of evidence in respect of oral Evidence and documentary evidence.

§ Oral Evidence :

1. The rule of best Evidence requires that if the evidence is oral then it must be direct.

2. This rule is embodied in section 60 of the Evidence Act.

3. What is meant by Direct Evidence ?

4. The answer that is commonly given is that oral evidence must not be hearsay evidence. This leads to the consideration of hearsay evidence.

The rule excluding Hearsay is subject to three main classes of Exceptions:

(i) Admissions and Confessions: Statements made in the presence of the party.

(ii) Statements made by persons since deceased,

(iii) Statements made in public Documents.

§ What is hearsay evidence:

1. Hearsay evidence has been defined in many different ways :

(i) All Evidence which does not derive its value solely from the credit given to the witness himself, but which rests also in part on the veracity and competence of some other person.

(ii) The statement as to the existence or non-existence of a fact which is being enquired into, made otherwise than by a witness whilst under examination in Court can be used as evidence.

2. Hearsay evidence is evidence reported by witnesses of statements made by non-witnesses.

§ Why hearsay evidence is excluded ?

1. When A sworn in Court, details something which he did not see with his own eyes **immediately** but which he **heard** from B **mediately** he is not giving expression to the evidence of his own bodily senses, but is the **medium** merely of communicating that which some third unsworn person has said he saw. He is bringing evidence to birth, *obstetricante manu*, with the hand of a midwife; and is a mere channel or conduct pipe for communicating the information of a party not before the Court. A may most correctly and truthfully

report what has been related to him, but it is never the less apparent that the real truth of the original statement cannot under such circumstances be tested. The originator of the report is not subjected to an oath or to Cross Examination *Non Constat* but he may have spoken idly or jocularly ; and he would be unwilling to repeat on oath what he had not hesitated to narrate in ordinary conversation. *Non constat* that he might not have wilfully fabricated a story or been the dupe of some one still farther hid behind the scenes or that though perfectly veracious as to intention, he might have been the victim of his faulty impressions or unretentive memory ; and so have utterly broken down, if only exposed to the test of Cross Examination. Therefore the law determines that such evidence shall not be receivable; that if it is important to the party calling A, to establish the facts which A has heard from B, B himself shall be produced, make his own statement in Court, be subjected to the two tests of oath and Cross Examination and the scarcely less terrible detector of inaccurate or fallacious evidence, the observation to which a Judge, experienced in forensic practice, and skilled in the knowledge of human nature, subjects the demeanour, the deportment, the manner, of every witness who comes before him.

§ Does the rule of Exclusion apply to all Hearsay Evidence ?

1. Hearsay is the statement of a person who is not a witness in the Court and which is sought to be tendered as evidence through another person who comes as a witness.

2. The question is, does the rule of exclusion apply to all statements of a person who is not a witness in Court.

3. To understand this question it is necessary to realise that a statement when tendered in evidence wears two different aspects. **A statement is a fact and it is also the statement of a fact.**

Illus—

When A gives Evidence that B said this or that

- (i) taken as a fact the question is **did say so or did he Not**
- (ii) taken as a statement of a fact the question is Is what said false or true.

4. The Evidence of a statement by a person who is not a witness may be given for two purposes :

(i) To prove that such a statement was made.

(ii) To prove that a statement made is a true statement.

In its former aspect it is merely a fact in issue. In its latter aspect it is an assertion to prove the truth of the matter stated.

5. Whether a statement by a non-witness sought to be tendered in evidence and the admissibility is in question is tendered merely as a fact in issue or relevant fact and is tendered as an assertion to prove the truth of the matter, depends upon the purpose for which it is tendered. The test is the purpose.

6. The Rule of Exclusion of hearsay is stated in a narrow sense as well as in a wider sense. In its narrower sense, it is confined to unsworn statements used to prove the truth of the facts stated. In its wider sense, it is used to include all statements by unsworn witnesses for whatever purposes tendered i.e. including statements used merely as facts.

The Rule adopted in the Evidence Act.

1. The Indian Evidence Act does not recognise the rule that “no statement as to the existence or non-existence of a fact which is being enquired into, made otherwise than by a witness whilst under examination in Court can be used as evidence” — Markby.

2. Under the Indian Evidence Act statements by non-witnesses are admissible where the making of the statements not its accuracy is the material point.

3. Therefore

(i) Statements which are parts of the **res gestee**, whether as actually constituting a fact in issue or accompanying it (ss 5, 8),

(ii) Statements amounting to acts of ownership, as leases, licenses and grants (Sec. 13),

(iii) Statements which corroborate or contradict the testimony of witness (ss. 155, 157, 158)

are admissible even though they are statements by non-witness.

4. The rule of the exclusion of hearsay applies only to statements made by non-witnesses which are used to prove the truth of the facts stated.

4. What are the exceptions to the rule ?

1. Under the rule of evidence contained in the Evidence Act a statement made by a non-witness to prove the truth of the facts stated therein is inadmissible.

2. There are exceptions to this rule.

§ Exceptions contained in Section 32.

1. When a person is dead or cannot be found or has become incapable of giving evidence or whose attendance cannot be procured without delay or expense, statements written or verbal made by such persons may be proved if the statements fall under any one of the 8 categories mentioned in Section 32.

(i) When it relates to the cause of his death (a)

(ii) When it is made in the course of business. *Illus* (b) (j)

(iii) When it is against the pecuniary or proprietary interest of the maker or which if true would have exposed him to criminal prosecution or suit for damages. *Illus* (e) (f)

(iv) When the statement gives his opinion as to public right or custom or matters of general interest provided such opinion was given before controversy had arisen. (*Illus*) (i)

(v) When it relates to the existence of relationship by blood, marriage or adoption and the person had special knowledge and was made before controversy.

(vi) When it relates to the existence of relationship between persons deceased and is made in any will or deed relating to family affairs, in a family pedigree, upon any tombstone, family portrait etc., and is made before controversy.

(vii) When it is contained in any deed, will or other document which relates to any transactions as is mentioned in Sec. 13, clause (a).

(viii) When it is made by a number of persons expressing feelings or impressions. *Illus*. V.

§ Exceptions contained in Section 33.

1. When a person is dead, or cannot be found, or is incapable of giving evidence or is kept out of the way by the adverse party or if his presence cannot be obtained without unreasonable delay on expense then

the Evidence given by such a person as a witness in a former judicial proceeding or before any person authorised by law to take it,

can be tendered in a subsequent judicial proceedings or in a later stage of the same judicial proceedings to prove the truth of the facts which it states.

PROVIDED

(i) That the proceeding was between the same parties or their representative in interest

(ii) That the adverse party in the first proceeding had the right and opportunity to cross examine

(iii) That the questions in issue were substantially the same in the first as in the second proceeding, (Further portion not forthcoming—ed.)

35 § Entries in any book, register or record

1. Conditions of admissibility.

(i) Two classes of entries are contemplated by the section, (a) By public servants and (b) by persons other than public servants. If it is by a public servant then it must be in the discharge of his official duty. If it is by persons who are not public servants then the duty to make the entry must have been specially enjoined by the law. The former is as a matter of course. The latter is as a matter of special direction.

(ii) The book, register or record must be either **public** or an **official** one.

Official does not mean maintained for the use of the office. It means maintained by the State as distinguished from anything maintained by a private individual.

Public means for the use of the public. Public does not mean open to every one. It means open to every one having a concern to it. *18 Cal. 584.*

(iii) The Book, Register or Record may be in the book, register or record kept in any country not necessarily in India, provided it satisfied the conditions. An entry in a book, register or record of any foreign country can be proved.

Points to be noted.

(1) The entry is evidence ; though the person who made it is alive and is not called as a witness—For the proof of public and official documents see Sections 76-78.

(2) The Sections does not make the book, register or record evidence to show that a particular entry has not been made—

10 Cal. 1024 ; 25 All. 90.

(3) The Section is not confined to the class of cases where the public officer has to enter in a register or other book some actual fact which is known to him—

20 Cal. 940.

(4) Although the entry must have been made by a public servant in the discharge of his official duty or in the performance of a duty specially enjoined by law, but it must not be such an entry which a public servant is not expected or permitted to make, or which from ignorance of his duties or caprice or otherwise, he may choose to make at the dictation of a person who had a personal knowledge of the truth of the facts stated in the entry.

25 All. 90.F. B. 101.

2. It is not necessary that the entries must have been made up from day or (as in banks) from hour to hour as the transactions take place. Time when the entries are made is not essential. All that is necessary is that they must have been made regularly in the course of business. Delay in entry may affect its value but cannot affect its admissibility—27 Cal. 118 (P C.); 13 C. I J. 139.

3. Although the actual entries in books of account regularly kept in the course of business are relevant, the book itself is not

relevant to disprove an alleged transaction by the absense of any entry concerning it.

10 Cal. 1024.

NOTE : It may be admissible under Sec. 9 and 11—19 C. N. 1024.

For inference to be drawn from absence of entry.

30 Cal. 231 (247) P. C.

4. The entry must be in some book, register or record. Entry does not include correspondence 7 *M.L.I.* 117.

Illus.—

1. Entries in Birth and Death Registers.
2. Entries in Birth and Revenue Registers.
3. Entries in Birth and Marriage Registers.

36 § Statements of fact in issue or relevant facts made in Maps, Plans and Charts.

I. Conditions of admissibility.

The section refers to two classes of **Maps** and **Plans**.

- (a) Those generally offered for **public sale** and
- (b) Maps or Plans made under the authority of Government.

Reasons for the admissibility of (a)

The publication being accessible to the whole community and open to the criticism of all the probabilities are in favour of any inaccuracies being challenged or exposed.

Reasons for the admissibility of (b)

Being made and published under the authority of Government, they must be taken to have been made by and to be the result of the study or inquiries of competent persons.

37 § Statement made in a recital in any Act or in a notification of the Government appearing in the Gazette.

Reasons.

1. The Gazettes and Acts are admissible because they are made by the authorised agents of the public in the course of an official duty and published under the authority of the State and facts stated in them are of a public nature and notoriety.

2. As the facts stated in them are of a public nature, it would often be difficult to prove them by means of sworn witnesses.

1. Relevant only if the Court has to form an opinion as the existence of any fact of a public nature.

2. Public nature. (not explained—ed.)

3. The section draws no distinction between a public and private Act of Parliament. It merely requires that the fact recited in either case should be a public nature.

4. The recitals are not conclusive so far as the Evidence Act is concerned. However they may be expressly declared to be conclusive.

5. A recital is to be proved for showing the existence of a fact. It is no evidence that the particular person knows its existence. Knowledge of a fact although it be of a public nature is not to be conclusively inferred from a notification in the Gazette; it is a question of fact for the determination of the Court. It must be shown that the party affected by notice has probably read it.

38 S.

1. Statement of the law of any country in

(a) book purporting to be printed or published under the authority of the Government of such country and to contain any such law.

2. Report of a ruling of the Court of such country contained in a book supporting to be a report of such rulings.

This applies where the Court has to form an opinion as to a law of any country.

Particular instances of facts which are inconsistent with facts in issue or relevant facts or which make them highly improbable.

They are (1) Admissions (2) Confessions and (3) Judgements.

§ Admissions

Sec. 21.

1. Admission may be proved against the person who makes them or against his representative in interest.

2. Question is what is an admission? Before that certain points regarding the relevancy of admissions must be noted.

(1) Admission can be proved against a person. Admission in favour of a person cannot be proved by him. A plaintiff can prove an admission made by the Defendant if it is necessary for this case. A defendant can prove an admission made by the plaintiff if it is necessary for his case. But a plaintiff cannot prove an admission made by him however helpful it may be for his own case. Similarly a Defendant cannot give evidence of an admission made by him however hopeful it may be for his own case.

The reason is that a party cannot be allowed to create evidence in his own favour.

There are three exceptions to this rule under which a party is permitted to give evidence of an admission in his own favour.

(a) If the Admission is relevant under Sec. 32.

(b) IF the Admission relates to a state of mind or body made about the time and is accompanied by conduct.

(c) If the admission is relevant otherwise than as an admission.

Illus: (d) and (e)

Sec. 23.

(2) Barring these three cases, an admission, if it is to be proved can be proved only against a party. But there is a case in which proof of an admission cannot be given. This is a case where admission was made on the express condition that proof of the admission shall not be given.

Sec. 31.

(3) Admissions are not conclusive proof of the matter admitted. An admission may become an estoppel if the elements necessary for estoppel exist in which case a party against whom it is sought to be proved cannot give evidence to disprove it or explain it away. But if it is not an estoppel, evidence can be given by the party against whom it is proved to disprove it or to explain it.

3. Admissions can only be proved against the party who made them but they can also be proved against his representative-in-interest.

Who is a representative-in-interest ?

- (i) There is no definition of the term given in the Act.
- (ii) It is held to be wider than the term Legal representative which according to the penal code means a person who represents in law the estate of a deceased person.
- (iii) It not only includes a 'legal representative' but also includes the **privies of a person**.
- (iv) The privies of a person are :—
 - (i) *Privies in blood*, such as ancestors and heirs.
 - (ii) *Privies in law*, such as executor of a testator or administrator to an intestate.
 - (iii) *Privies in estate* or interest, such as Vendor and Purchaser, grantor and grantee, donor and donee, lessor or lessee.

So that an admission :

- (1) made by the father can be proved against the son ;
- (2) made by the deceased against the executor or administrator ;
- (3) made by the Vendor against the Purchaser.

17-20 § What is an Admission.

1. Admissions are (1) Formal or (2) Informal.

(1) Formal admissions are :

- (i) Admissions contained in the pleadings.
- (ii) Admissions in answers to interrogatories.

- (iii) Admissions on notice to admit facts.
- (iv) Admissions on notice to admit documents.
- (v) Admissions by Solicitors.
- (vi) Admissions by Counsels.
- (2) Informal Admissions are :
 - (i) By Statements.
 - (ii) By Conduct—
 - (1) Act or Omission.
 - (2) Silence.
 - (3) Acquiescence.

4. Admissions the proof which is allowed by section 21 do not Formal Admissions. Section 21 deals with informal admissions only. But it does not deal with all the classes of informal admissions. It does not deal with informal admissions by conduct. It only deals with informal admissions contained in statements. It deals with **assertions** and not **acts**.

5. The definition of an admission as used in Section 21 is spread over sections 17-20.

An admission is a **statement, oral or documentary, which** suggests an **Inference** as to any fact in issue or relevant fact made by a person specified in Sections 18, 19, 20.

Two things are necessary.

The statement may not be directly touching the fact in issue or a relevant fact. It is enough if it suggests an inference of acknowledging the fact in issue or relevant fact.

Illus :—

A sues X for damage done by K's cattle to A's crop and for the purpose of showing an admission on the part of X that his cattle had caused the damage. X offers the testimony of B to the effect that X told that X had offered a certain sum to cover the damage.

This is a statement which can sustain the inference that X's admission that his cattle did do the damage.

Illus.—

A sued X for the loss of his sheep alleging that X's dog had killed them. As proof he adduced evidence that X had killed his dog at the time remarking that it will not kill any more sheep.

Is this an Admission ?

II. It must have been made by persons specified in Sections 18-20.

1. Deference to sections 18-20 shows that the reasons specified fall into categories.

(1) Persons who are parties to the proceedings and

(2) Persons who are not parties to the proceedings—strangers.

Persons who are parties to the proceedings include :

(1) Parties.

(2) Agents of the parties.

(3) Persons jointly interested in the subject-matter of proceedings. e.g. partners, joint contractors.

(4) Persons from whom parties have derived their interest.

I. Strangers.

Where can a statement of a person who is a stranger and is not in any way related to a party to the proceedings mentioned in Section 18, be treated as an admission by a party.

Two cases.

(1) Statement is that of a referee—Section 20.

II. When the liability or position of that stranger is subject-matter of the proceedings.

and

(2) When the statement of the **stranger** be such as to amount to admission by him of his liability i.e. it must come within Section 17-18.

Illus. To the section—of liability.

Illus. 5 *Mad.* 239—of position.

A and B are jointly liable for a sum of money to C who brings an action against A alone.

A objects that he cannot singly or severally be made liable and that *B* should be joined as a co-defendant being jointly liable.

An admission by *B* to *D* as to his joint liability is relevant between *A* and *C* and may be proved.

D may prove it although *B* is not called.

§ Confession

1. Evidence may be given of a confession provided it be not expressly excluded whether made to a private person or to a Magistrate.

2. That a confession was made is a fact which must be proved like any other fact.

9 Mad. 224 (240).

5 Lah. 140.

4 All. 46 (94).

8 W.R. Cr.28.

3. Two Questions arise :

I. What is a Confession.

II. What are the cases in which the Evidence of a Confession is excluded.

I. What is a Confession :

1. The Act contains no definition of the term Confession.

2. The definition of the term is therefore a matter of judicial interpretation.

3. A confession is a statement. An Admission is also a statement although the one is a statement by an accused while admission may be statement by a party. Two questions arise :

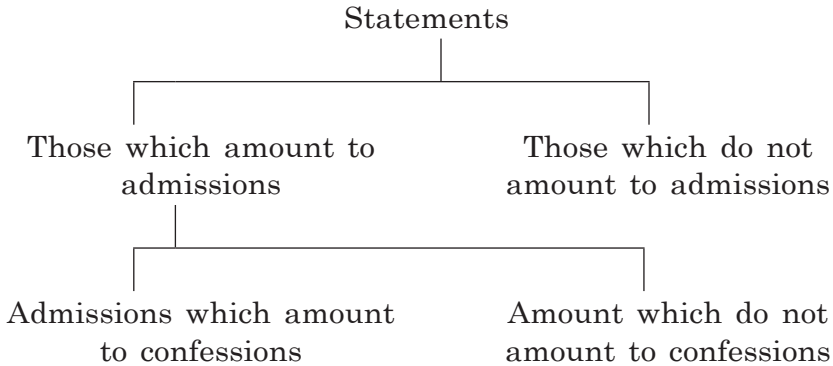
(1) What is the precise difference between Confession and Admission.

(2) When is a statement by the accused a Confession and when it is an admission.

1. Statements made by an Accused person belongs to a class which the Evidence Act calls “admissions” (sections 17,18) and.....they are evidence against the maker but not in his favour.

2. Confessions are a sub-species of “statements” and a species of admissions.

3. The following table illustrates the relationship.



4. The common feature of confessions and admissions is that they are both of them are **statements** made by the party to the proceedings.

5. Two questions arise.

I. A statement is an admission even though it is not made by the party himself. If it is made by a person defined in Sections 18-20 it will be an admission. Can a statement rank as a confession if it is made not by the Accused himself but by persons specified in Sections 18-20.

1. To be a Confession, it must be by the Accused himself. If it is not by the accused it is not a Confession :

1. An exculpatory statement by the Accused is not a Confession.

2. An inculpatory statement by the Accused which involves him but does not incriminate him is not Confession.

3. An inculpatory statement which not only involves but also incriminates is a Confession.

Points to be noted.

1. The incrimination may be direct or may be by inference. A statement which can by itself be the foundation of conviction is a confession.

2. The statement may be intended by the accused to be self-exculpatory but it may nevertheless be an admission of an incriminating circumstance in which case it will amount to a Confession.

6 Bom. 34.

§ Two sorts of Confessions.

1. Confessions are either Judicial or Extra Judicial.

(i) Judicial Confessions are those which are made before a Magistrate or in Court in the due course of legal Proceedings.

(ii) Extra Judicial Confessions are those which are made by the party elsewhere than before a Magistrate or in Court.

§ What are the cases in which Evidence of Confession excluded

1. The Evidence Act has considered three possible cases :

(i) Confession is made to a Police Officer.

(ii) Confession is made while in the custody of the Police.

(iii) Confession which is made to a person who is not a Police Officer and which is not made while in the custody of the Police.

With regard to (i)

It is excluded by Section 25.

With regard to (ii)

It is excluded by Section 25, 26. Exception.

Effect of Sec. 27.

6 All. 509 (F. B.)

Question. Is Section 27 an exception only to Section 26 and not to section 25 ?

or

Is it an exception to both ?

57 Cal. 1062.

With regard to (iii)

The matter is governed by Section 24.

Explanation. 1. Person in authority.
 2. Appears.

Points to note :

1. Sec. 28 Confession after.....is removed.
2. Sec. 29

Queries.

I. Does Sec. 24 apply to statements made by the Accused under Sec. 287 Cr. P. C. before the Committing Magistrate.

Q. Not settled. *17 Bom. L. R. 1059.*

II. Does Sec. 24 apply to statement of an Approver under pardon under Sec. 339 (2) Cr. P. C. (*22 Bom. L. R. 1247*).

§ Use of Confessions.

1. Statement made by an Accused person binds him only so because of two reasons.

(i) The general rule of law is that an Admission made by one person could prejudicially affect another person.

(ii) The statement made by an accused person is not on oath.

(iii) The statement is not subject to cross-Examination.

2. But if the statement is a Confession which affects both himself and another person, then Section 30 says the Court **may** take into **consideration** the confession made by the Accused against other persons mentioned in the Confession.

3. Section 30 is therefore an exception to the general rule. The reason for this exception is the fact of self-implication which is said to take the place as it were of the sanction of an oath or is rather supposed to serve as same guarantee for the truth of the accusation against the other.

4. With regard to the use of the confession of one Accused against another accused, the important words are “**Court may take into consideration**”. This means,

(1) That the use is not obligatory. It is permissive and discretionary. Court is permitted to use it. Court is not bound to use it.

(2) Court may **Consider** it. The word consider is significant.

(1) A statement made by a **witness** is “evidence”, according to the definition of that term. A confession by an accused person affecting himself and his co-accused is not “evidence” in that special sense. It is in the sense that it is a matter before the Court which it may consider. The question is while allowing it to be so considered, does it do away with the necessity of other evidence? There is no direct answer given in the Evidence Act. But all the Courts have held that it does not do away with the necessity of other evidence. The reasons are :

(1) Confession is never a complete guarantee of its truth against the other persons whom it involves. A confession may be true so far as it implicates the maker but may be false and concocted through malice and revenge so far as it affects others.

(2) Confession cannot be placed above the testimony of an accomplice because the latter is subject to Cross Examination while the former is not and if testimony of an accomplice requires corroboration a confession must.

Conclusion. If there is

- (a) absolutely no other evidence in the case, or
- (b) the other evidence is inadmissible

such a Confession alone will not sustain a Conviction. There must be corroboration.

When persons are accused of an offence of the same definition, arising out of a single transaction, the Confession of one may be used against the other, though it inculcates himself through acts separable from those ascribed, to his accomplice, and capable, therefore of constituting a separate offence from that of the accomplice.

8 Bom. 223 : 7 Mad. 579

Abatement—Same offence

1. Importance of the words **made** and **proved**. Does the section include statement made by one accused at the trial which incriminates himself and implicates a co-accused?

The answer is that it does not.

The Section is not to be read as though the words “**at the trial**” were inserted after “made” and the word “recorded” substituted for “proved”.

(1890) 14 *Mo. Jur. N.S.* 516.

The Section does not refer to the statements made at the trial. It refers to statements **made before** and proved at the trial. The use of the term proving a Confession is inapplicable to the procedure where the Judge asks questions and the accused gives explanation.

45 *All.* 323.

2. Importance of “**Jointly tried**”.

In this connection two important questions arise—When one Accused confesses and in his confession implicates a co-accused and pleads guilty.

(i) In such a case can he be treated as being jointly tried with the rest, as to let in his confession under this section against co-accused ?

(2) In such a case can an Accused who pleads guilty be called as a witness against those who do not plead guilty ?

Q. I. His Evidence cannot be taken into consideration because he ceases to be jointly tried. 5 *Bom.* 63; 7 *Mad.* 102; 19 *Bom.* 195.

Although it is open to the court to continue the trial without convicting the Accused who pleaded guilty, yet it is unfair to defer convicting them merely in order that their confessions may be considered against the other accused.

23 *All.* 53.

Q. II. This depends upon the definition of the word accused : When does an accused person cease to be an accused person ?

Until an Accused person who has pleaded guilty is convicted or acquitted, he is still an accused person and is therefore not a competent witness against the co-accused. 13 *C. W. N.* 552. Until an Accused person who has pleaded guilty is convicted and **sentenced**, he is still an Accused person and is therefore not a competent witness against the co-accused. 3 *Bom. L.R.*

Summary.

1. When a person pleads guilty—he ceases to be jointly tried but he does not cease to be accused person. So that on plea of guilty his confession cannot be taken into consideration against other accused because they are not co-accused jointly tried : nor can he be called as a witness because he continues to be an accused until sentenced.

2. When a person pleads guilty and he is jointly tried and ceases to be an accused person, his Confession cannot be used but he becomes a competent witness.

Relevancy of Judgments.

Sec. 40

Where the question is whether a Court ought to take cognizance of a suit or to hold such trial.

The existence of a judgment order or decree which **prevents** any Court from taking cognizance of a suit or holding a trial is relevant fact.

Comment.

1. The law by which a prior judgment order or decree prevents a civil court from taking cognizance of a suit is contained in the Civil Procedure Code and the law by which a prior judgment prevents a criminal Court from holding a trial, is contained in the Cr. P. C.

2. The relevant Sections of the C. P. C. are 11-14. Provisions summarized in Field p. 260.

3. The relevant Section of Cr. P. C. is section 434.

4. Under Section 40 a Judgment is relevant if its effect is to conclude the court.

5. Such a judgment must be just between the **same** parties and on the same issues.

6. A Judgment *inter partes* does not bind a stranger. The principle underlying the rule is that no man ought to be bound by proceedings to which he was a stranger and over which he had no control.