

Exception to the Rule

(I) *Sec. 41.* enacts an exception to the rule, under it. A final Judgment of a competent court in the exercise of

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| <ul style="list-style-type: none"> (i) Probate (ii) Matrimonial (iii) Admiralty (iv) Insolvency. | <div style="border-left: 1px solid black; height: 100px; margin-left: 5px;"></div> | <p>Jurisdiction</p> |
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which confers or takes away a legal character or which declares any person to be entitled to any specific thing is admissible.

Comment:

1. This means that a judgment *inter partes* is admissible in a proceedings between persons who were not parties to that proceedings.

2. This section deals with what are called judgments *in rem* without using that expression. All judgments are *inter partes*. But some *inter partes* judgments are judgments *in personam* and some are judgments *in rem*. Both are *inter partes*. Instead of defining judgments *in rem*—the section enumerates them.

3. The result is that every judgment which gives or takes away a character is not admissible. It is only judgments given in the exercise of particular kind of jurisdiction which is admissible.

Illus.

Adoption is not admissible as between strangers.

It is a Judgment which confers a statics. But it is not admissible because it is not under any of the jurisdiction mentioned.

(II) **Exception.** *Sec. 42.*

Judgment *in personam* is relevant as between strangers if the judgment relates to a subjects of a public nature.

Subjects of a public nature.

- (1) Customs.
- (2) Prescriptions.

(3) Tolls.

(4) Boundaries.

(5) Rights of Ferry.

(6) Sea Walls etc.

(III) **Exception Sec. 43.** Under this section Judgments *in personam* are admissible as between strangers under two circumstances

(i) Where the existence of such judgment is a fact in issue.

(ii) Where the Judgment is relevant under some other provision of the Evidence Act.

Comment:

1. The first circumstance is easy to conceive.

Illus.

(1) *A* sued *B* for slander in saying that he had been convicted of forgery. *B* justified it upon the ground that it was true.

The conviction of *A* for forgery would be a fact in issue and a judgment supporting his conviction would be admissible also. *B* was not a party to that judgment.

(2) A Judgment against a surety obtained by the creditor will be admissible in a suit by the surety against the principal debtor although the principal debtor was not a party to it.

(3) Upon a trial for intentionally giving false Evidence in a Judicial proceedings the record will be evidence that there was a Judicial proceedings.

2. It is the second circumstance which has created difficulty. What are the sections under which a judgment is likely to be relevant ?

Under sec. 7—Show cause, occasion.

Under sec. 8—Motive conduct.

Under sec. 9—Facts necessary to explain relevant facts.

Under sec. 11—Facts inconsistent.

Under sec. 13—Transaction.

3. Two Questions.

I. Is a Judgment a fact.

II. Is a Judgment a transaction.

6. *Cal. 171 F.B.*

4. Comment on 6 Cal. 171. that it is a fact. p. 181.

Fact: (1) Anything state of things, or relation of things capable of being perceived by the senses.

(2) Any mental condition of which any person is conscious.

II Documentary Evidence.

1. The subject to be dealt with is the proof of the statements made in a document i.e. proof of the contents of a document. Oral Evidence deals with the proof of the statements made verbally by a party.

2. What are the requirements of the Rule of Best Evidence with regard to the proof of the contents of a Document? There are two requirements—

(i) In certain cases the Evidence must be documentary and not oral.

(ii) In those cases where the Evidence must be documentary that evidence must be primary.

§ Cases where Evidence must be documentary

1. Many matters are reduced to writing. But because they are reduced to writing, the Law does not require that every such case they shall be *proved* only by the production of the document. Some may be proved by oral Evidence and others must be proved by documentary Evidence.

2. For this purpose it is necessary to note that the Indian Evidence Act makes two distinctions—

(1) between documents which are **dispositive** in character and documents which are non-dispositive in character and

(2) between transactions which are required by law to be in writing and those which are not.

3. Dispositive and non-dispositive. Dispositive means transactions in which parties dispose of their rights, such as a Contract, grant etc., Non-dispositive means transactions in which no disposition of rights is involved.

4. The rule embodied in the Evidence Act is twofold :

(i) When a document is a dispositive document and when the matter is such that the law requires it to be reduced to writing no evidence shall be given in proof of the matter except the document. In other words oral Evidence in such cases cannot be substituted for documentary Evidence. But if the document is of a non-dispositive character or if it is one which is not required by law to be reduced to writing then although the transaction may have been reduced to writing yet oral evidence may be given in proof of the transaction.

(ii) If the transaction is a dispositive transaction or is one which is required by law to be in writing then not only oral Evidence cannot be substituted for the documentary Evidence but oral evidence cannot be admitted to contradict, modify or vary the terms of the document

5. This rule is contained in Sections 91-92.

§ Exceptions to the Rule contained in Sees. 91-92.

1. There are exceptions to this rule. They fall into classes. They must be kept separate. One class deals with cases where the question is whether oral evidence may be substituted for documentary Evidence. The second deals with cases where the question is whether oral evidence may be admitted not to substitute but to modify documentary evidence where the rule requires that the Evidence shall be documentary.

§ Exceptions which permit substitution of oral Evidence for documentary Evidence.

1. They are contained in Section 91 and cover the following cases :

- (i) Appointment of a Public Officer.
- (ii) Will may be proved by the probate.

§ Exceptions which permit oral Evidence to be given to modify the terms of the document.

1. They are contained in Sec. 92 and cover the following cases.
2. The first thing to note is that such evidence can always be given by persons who were not parties to the document or who are not representatives in interest of the parties to the document.
3. The cases in which parties to the document or their representatives in interest can give oral Evidence are as follows:—
 - (i) Fact which would invalidate a document e.g. fraud, want of capacity.
 - (ii) Fact on which document is silent and which is not inconsistent with its terms.
 - (iii) Condition precedent.
 - (iv) Subsequent oral agreement.
 - (v) Usage or custom by which incidents are attached to contracts. (Bakers dozen). Provided it is not inconsistent.
 - (vi) Fact showing how the language is related to existing facts.

§ Cases where oral Evidence may be admitted to Explain documentary Evidence.

There are two propositions of law which arise out of the first rule of Best Evidence relating to Documentary Evidence.

1. Where the transaction embodied in a document is of a non-dispositive character or is one not required by law to be in writing the fact of the transaction may be proved by oral Evidence.
2. Where it is dispositive or required by Law to be in writing then oral evidence not only given to prove the transaction but it cannot be given to contradict, modify or amend the terms of the transaction as embodied in the document.
3. One question however remains. Can oral Evidence be given to explain documentary Evidence? This is a distinct question and must be, separated from the question whether evidence can be given to modify contract etc. the terms of the documentary evidence.

4. This question is dealt with in Sections 93-100.

5. In dealing with documentary Evidence disputes may arise on three counts:

(i) Disputes regarding applicability or non-applicability of the language of the document to existing facts

(ii) Disputes regarding the meaning of the documents where the language used is ambiguous or defective.

(iii) Disputes regarding the meaning of the words used in the document.

1. Under 1 there are three possible cases of disputes.

(1) Where language applies accurately to facts and the contention is that it was not meant to apply—Evidence may not be given in support of the contention to show that it was not meant to apply to the existing facts to which they do apply—Sec. 94

(2) Where language applies to one of the existing facts but not to all of them—and the contention is that it applies to one specified fact—Evidence may be given in support of the contention to show to which particular fact it was intended to apply.—Sec. 95.

(3) Where language applies partly to one set of facts and partly to another set of facts and whole does not apply correctly to either and the contention is that it applies to one set and not to the other—Evidence may be given in support of the contention to show to which of the two it was meant to apply—Sec. 97.

1. Under the second Head of Disputes there are two possible cases :

(i) Where language is ambiguous or defective and the contention is that the parties meant a particular thing—Evidence may not be given in support of the contention to show its meaning or to supply its defects—Sec. 93.

(ii) Where the language is plain in itself but is unmeaning in reference to existing facts and the contention is that it was meant to indicate a particular thing—Evidence may be given in support of the contention to show what was meant—Sec 95.

3 Under the third head of disputes there arises the following case—

(i)...

(Space left blank in M.S.—ed.)

Difference between latent ambiguity and patent
Ambiguity.

II How to prove the contents of a Document ?

1. What are the requirements of the Rule of Best Evidence with regard to the proof of the Contents of a Document ?

2. There are two requirements in this respect as laid down in the Evidence Act.

(i) The contents of a document must be proved by Primary Evidence.

(ii) The document must be proved to be genuine.

§ What is meant by Primary Evidence ?

Sec. 62.

(1) Primary Evidence means the document itself produced for the inspection of the Court.

Explanation

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§ How to prove that the document is genuine ?

1. For the purpose of proving their genuineness the Evidence divides documents into two classes (1) Public Documents and (2) Private Documents.

2. Public Document is defined in Sec. 74.

3. Section 75 declares that any document which is not a public document is a private document.

4. The rules for proving the genuineness of a document differs according as the document is a public document or a private document.

5. The mode of proving the genuineness of a public document is stated in Sections 76-78.

6. The mode of proving the genuineness of a private document is stated in Sections 67-75.

7. Private documents must generally be proved by the production of the original coupled with the evidence of the **handwriting, signature or execution** as the case may be. **Exception**—will may be proved by probate.

8. The genuineness of public documents may be proved either by the production of certified copies under Section 77 or if they be documents of the kind mentioned in Section 78 the various modes prescribed in that section.

9. With regard to the burden of the genuineness of a document whether it is public or private, the Evidence Act enacts certain presumptions which are contained in Sections 79-90 although they are not conclusive presumptions.

10. These presumptions fall into classes:

(1) Those in which the Court shall presume.79-85 and 89.

(2) Those in which the Court may presume.86-88 and 90.

§ When is Primary Evidence dispensed with ?

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§ How are the Contents of a document proved where Primary Evidence is dispensed with ?

1. By Secondary Evidence.

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§ What is Secondary Evidence ?

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BURDEN OF PROOF

1. The law requires the person on whom the burden of evidence is placed to discharge the burden.
2. In discharging this Burden of Proof the following considerations must be borne in mind :—
 - (i) There are matters of which Proof is not required.
 - (ii) There are matters of which Proof is not allowed.
3. Under (i) his burden is lightened while under (ii) his burden is increased.

BURDEN OF PROOF

(i) Matters of which Proof is not required by Law

1. Matters of which Proof is *not* required by Law fall under three heads :

- (a) Matters which are judicially noticed.
- (b) Matters which are admitted by parties.
- (c) Matters the existence of which is presumed by Law.

§ Matters which are judicially noticed

1. Sections 56 and 57 deal with facts which are judicially noticed. Section 57 enumerates 13 matters of which judicial notice must be taken.

Section 56 says that no fact of which the Court will take judicial notice need be proved by evidence. Parties are relieved from the burden of adducing evidence to prove a fact which falls under any one of the matters falling under Section 57 of which judicial notice must be taken.

2. *The principle underlying the Sections.*— Certain matters are so notorious and are so clearly established that it would be useless to insist that they should be proved by evidence

Illus. .

1 The commencement and continuance of hostilities.

2. The Geographical Divisions of the Country

These facts are so notorious that proof of them by evidence is superfluous.

3. *Matters enumerated in Section 57.*

(i) RULES HAVING THE FORCE OF LAW.

Many Acts contain a Section empowering the Local Government to make rules for carrying into effect the provisions of the Act and declaring that such rules shall have the force of Law e. g. Rules made under the Government of India Act. Such rules fall within the purview of this section.

2. Distinction must be drawn between rule having the force of law and custom which is the source of Law. A large part of Hindu Law is based on custom. But the Court will not take judicial notice of a custom. The party who relies on a custom must prove the existence of the custom. When the party has proved the existence of the custom the Court will give effect to it only if it comes to the conclusion that it is a valid custom.

3. It is true that there are some customs for the proof of which the Court does not require Evidence. But that is not because the Court is bound to take judicial notice. The Court does not require formal proof because by the rule of precedent, the Court is bound to uphold a custom, the existence and validity of which has been recognised in an earlier decision by a Court to which it is Subordinate.

(ii) STATUTES.

The statutes passed by Parliament are either general or special.

A General Statute is universal in its application and extends to all persons and to all territories.

A Special Statute is either local or personal and operates upon particular persons and private concerns.

2. All Acts of Parliament are to be presumed to be public unless the contrary be declared therein - Section 13 of 14 Vict. c. 21.

3. Judicial notice *must* be taken of all public Acts. Court is not bound to take judicial notice of a Private Act unless the particular Private Act contains a direction to the Court to take judicial notice. If it does not contain such a direction, the party must prove that a Private Act relied upon is an Act of Parliament.

(iii) INDIAN ARTICLES OF WAR.

These are rules of discipline for Native Officers, soldiers and other persons in His Majesty's Indian Army. They are contained in the Indian Army Act of 1911.

(iv) COURSE OF PROCEEDINGS OF PARLIAMENT AND COUNCIL.

1. Course of Proceedings must be distinguished from proceedings themselves.

2. The Court will take judicial notice of the course of proceedings and not of the proceedings.

Foreign State

Court will take judicial notice whether a foreign State is recognised or not by His Majesty or by the Governor-General in Council.

State of War

The existence of a State of War between foreign States will not be taken judicial notice of.

Rules of the Road on Land or Sea

Effect of the last para.

1. Court can refuse to take judicial notice under certain circumstances of matters of which they are bound to take judicial notice.

2. Party is bound to produce the necessary material to enable the Court to take judicial notice.

Illus.

Gazette must be produced if the party wishes the Court to take judicial notice of a Proclamation.

Mode of Proof

1. The general rule regarding mode of proof may be stated thus:

The law requires evidence to be given by a person—

- (i) Who is present in the Court.
- (ii) Who is legally competent as a witness.
- (iii) Upon oath or affirmation.
- (iv) In regular course of Examination.
- (v) Subject to contradiction as to facts.
- (vi) Subject to discredit as to veracity.

I. PRESENCE IN COURT.

1. It is a duty of the citizens to appear and testify to such facts within their knowledge as may be necessary to the due administration of justice. It is a duty which has been recognised and enforced by the Common Law from an early period.

2. The right to compel the attendance of witnesses was incidental to the jurisdiction of the Common Law Court, and the statutes have conferred this power upon other officers such as Arbitrators. Every Court having power definitely to hear and determine any suit, has by the Common Law, inherent power to call for all adequate proof of the facts in controversy and to that end, to summon and compel the attendance of witnesses before it.

3. The wilful neglect to attend and to testify after proper and reasonable service of the *subpoena* and in civil cases, after payment or tender of the witnesses fee of waiver of payment is a contempt of Court.

4. The process to compel attendance of witnesses to give testimony or to produce documents is not provided for in the Evidence Act. It is provided for in the Civil and Criminal Procedure Codes.

5. The following matters are in the Country provided for by the Civil and Criminal Procedure Codes.

(i) Summoning of witnesses :

Civil Pro. C.	O. XII	
Cr. Proc. C.	68-74	(Summons)
	90-93	(Other rules regarding Process)
	328	(Summons on Juror or Assessor)
	244	(Issue of Process in Summons Cases)
	254	(" " Warrant cases)
	256	(")
	257	(")
	540	(Power to summons material witness on Examine person present.)

(ii) Production of documents and other things :

Civil P.C.	O. XI, XVI.	
Cr. P. C.	94, 95	(Summons to produce documents or other thing)
	96-99	(Search warrants)
	485	(Consequences of refusal to produce)

(iii) Expenses of the witnesses:

Civil P. C. O. XVI. R. 2-4

Cr. P.C. 244, 257.

(iv) The freedom of complainants and witnesses in criminal cases from police restraints.

Cr. P. C. 171.

(v) Recognizance for the attendance of complainants and witnesses in Criminal proceedings.

Cr. P.C. 217, 170.

NOTE.—Not provided for in Civil cases.

(vi) Exemption of witnesses from arrest under Civil process.

Civil Pro. Code S. 135

NOTE.—There is no protection given against Criminal process.

6. Not only is there provision for summoning a witness, there are provisions for compelling his attendance.

(1) Non-attendance in obedience to a Summons is made an offence by Section 174, 175, I. P. C.

(2) Non-attendance in obedience to a summons may be followed by *Warrant of arrests* under Sections 75-86 and by Proclamation and Attachment under Sections 87-89 of the Cr. P. C.

(3) Non-attendance may further render a witness liable to a Civil action for damages under Section 26 of Act XIX of 1853 (in force in Bengal) and under Section 10 of Act X of 1855 (in force in Bombay and Madras).

24 W. R. 72.

7. Although the law requires persons summoned as witnesses to *attend in person*, the law also excuses non-attendance in certain cases.

(i) By reason of non-residence within certain limits.

Civil P. C. O. XVI R. 19.

(ii) By reason of the witness being a *purdanashin* lady.

Civil P. C. Section 132.

(iii) By reason of the witness being a person of Rank.

Civil P. C. Section 133.

§ The witness must be competent to give evidence

1. The question of competency of a person may be considered from two points of view

(1) From the point of view of his intellectual capacity

(2) From the standpoint of his veracity.

I. COMPETENCY FROM THE STANDPOINT OF

INTELLECTUAL CAPACITY.

1. Section 118 deals with the question of competency from the standpoint of intellectual capacity.

2. The rule enacted in Section 118 is a rule which recognises the power of understanding as the *only* test of competency.

3. As every normal person has the intellectual capacity to understand things and to grasp their importance, Section 118 declares that *all persons* are competent to testify unless they suffer from want of understanding.

4. The law of competency is therefore practically the law of incompetency. A person is a competent witness who is not incompetent.

5. Incompetency therefore means want of understanding. This want of understanding may arise from

- (i) Tender years.
- (ii) Extreme old age.
- (iii) Disease whether of body or mind.
- (iv) Any other cause of the same kind.

6. *Comment.*

(i) *Tender year* or (ii) *Extreme old age*— is not defined.

A boy of 7 may not be incompetent but 12 may be, if the former has an understanding which the latter has not. A man of 60 may be incompetent and a man of 80 may not be.

The test is not the age. The test is the Existence or non-Existence of understanding.

(iii) *Disease of the body*

A witness may be in such extreme pain as to be unable to understand or if able to understand to answer questions. He may be unconscious, as if in a fainting fit, catalepsy or the like. Here again it is a question of fact whether in any particular case the disease of the body is such as to deprive a person of his power of understanding.

(iii) *Disease of the mind*

1. This contemplates the case of an idiot and a lunatic, both suffer from the disease of the mind.

2. An idiot is one who is born irrational, without the reasoning faculty. A lunatic is one who is born rational, has subsequently become irrational and lost his reasoning faculty.

3. A lunatic is either a *monomaniac* or is a maniac for the time being. That being so, a lunatic is not incompetent merely because he is a lunatic. Lunacy does not mean complete annihilation of understanding. If it is general lunacy, he may be lucid at intervals. If he is a monomaniac, his understanding about other matters may be clear.

Illus. of partial lunacy.

(1) Murder discussion in Lunatic Asylum.

(2) Interview by a person with his lunatic friend in the asylum and his remark about time.

Illus. of Monomaniac

(1) R. V. Hill—Hill was tried for murder. Donelly witness—lunatic—suffered from the delusion that he had 20000 spirits about him which were continually talking to him.

That being so a lunatic can be a competent witness.

This is recognized in the Explanation.

(iv) *Any other cause.*

This means any other cause depriving a person of his power of understanding. e.g. *drunkenness*.

Some of these disabilities are coextensive with the cause, therefore, when the cause is removed the witness becomes competent.

e.g. When pain ceases
drunkenness ceases
Lunacy ceases

Whether there is understanding or not in the witness, is a matter which is determined by the Court by questioning the witness.

§ Accused as a witness

1. While all persons who have understanding are competent as witnesses, there is one exception to the rule. That is, an accused person cannot be examined as a witness in a criminal case in which he is being tried.

There is a case of the disease of the body which does not affect the mind of the understanding. Dumbness is such a disease.

Section 119 deals with the case of such a witness. The Section does not declare him to be incompetent. On the other hand, it treats him as a competent, and permits him to give evidence in any manner by *writing* or by *signs* made in open Court.

§ Competency from the standpoint of the veracity of the witness

1. The motives, which prevent a person from telling the truth, are more numerous in judicial proceedings than in ordinary affairs of life because of the fact that, result of a judicial proceeding cannot be flouted and are binding in a more absolute manner than other informal proceedings of a Panch are. Consequently the law at one time rendered many people intellectually competent incompetent to give evidence in a cause.

2. Formerly, therefore, not only mental incapacity was a good ground for incompetency but *interest* was also a ground for incompetency. Reason was that, an interested person would not tell the truth. Consequently, at one time, the following persons were deemed incompetent.

1. Parties to the suit.
2. Husband and wife against each other.
3. Accused against himself.
4. An Accomplice.

3. This view of the law is now changed and the principle has undergone a change. Question of competency or incompetency has been converted into a question of credibility or incredibility. So that every son is rendered competent to give evidence but it is left to the Court to believe him or disbelieve him.

4. This new principle is embodied in Sections 120 and 133.

§ Section 120

I. CIVIL PROCEEDINGS

- (i) The parties to the suit are competent witnesses.
- (ii) The husband and wife of any party to the suit are competent witnesses.

II. CRIMINAL PROCEEDINGS

1. The husband or wife of the accused is a competent witness either for or against.

§ Section 133

1. This section deals with the competency of an accomplice. The evidence of an Accomplice is held untrustworthy for three reasons:

- (i) because an accomplice is likely to swear falsely in order to shift the guilt from himself.
 - (ii) because an accomplice as participator in crime, and an immoral person, is likely to disregard the sanction of the oath.
 - (iii) because he gives his evidence under a promise or hope of not being prosecuted, if he discloses all he knows against his participators in the crime.
2. But his evidence has to be admitted from necessity, it being often impossible without having recourse to such evidence to bring the principal offenders to justice.

§ Difference between the value of Evidence of Accomplices and other persons

1. Persons other than accomplices are not only competent but are also credible. An Accomplice on the other hand is only competent but is not credible.
2. Witnesses may be incredible in the eye of the Judge. But they are not incredible in the eye of the law. An Accomplice has a statutory incredibility attached to him by the law.
3. This statutory incredibility arises from illustration (b) to Section 114 of the Evidence Act. The presumption is sanctioned by the Act and although it is rebuttable, it would be an error of law not to disregard.

4. For attaching this statutory incredibility, it would be necessary to determine whether the witness is an Accomplice. The term is not defined.

(i) An Accomplice is a person who is concerned with another or others in the commission of a crime. He is a participant. But it is not every participation in a crime which makes an accomplice. Much depends on the nature of the offence and the extent of the complicity of the witness in it.

5 W.R.Cr.59.

(ii) An Accomplice is a person who is a guilty associate in crime or who sustains such a relation to the criminal act, that he can be justly indicted with the Accused who is being tried.

27 Mad. 271.

§ Effect of Sections 120 and 133

1. The sections enumerate certain persons as being competent to give evidence. Question is, Are other persons not competent? The sections are not to be understood to mean that these are the only persons who are competent and others are not. The effect of the sections is that all persons are competent including those mentioned in Sections 120 and 133.

2. The reason why it was necessary to specifically deal with these classes is, because under the earlier law they were incompetent. The ban against them had to be lifted and therefore the specific provisions relating to them. Other classes of persons were already deemed to be competent and it was unnecessary therefore to say anything about them.

3. The Effect of Sections 120 and 133 is this, that not only

- (1) Parties to suits.
- (2) Husbands and wives.
- (3) Accomplices.

are competent witnesses, but

- (1) Jurors and Assessors—Section 294 Cr. P. C.
- (2) The Executor of a Will
- (3) An Advocate for a party

may be competent witnesses in the case to which they are a party, although it is a cause in which they are interested.

Evidence must be given on Oath

1. Oath is not a requirement of the Indian Evidence Act. Left to the Indian Evidence Act, evidence by a witness would be legal evidence although the witness had given evidence without taking oath.

2. Oath is a requirement of the Indian Oaths Act X of 1873. Section 5 of the Oaths Act lays down.

1. That oaths or affirmation *shall* be made by the following persons.

(a) all witnesses.

(b) interpreters.

(c) Jurors.

3. Section 6—permits a person who objects to the oath to affirm.

4. Section 14.—Every person giving evidence before any Court or person authorised to administer oaths or affirmation shall be bound to state the truth on such subject.

5. There are three questions that arise for consideration.

(1) Can a Court decline to administer oath or affirmation to a witness ?

(2) Can a party decline to take oath or make affirmation?

(3) Effect of the refusal of a witness to take oath or affirm and of the failure of the Court to administer oath.

Answer to Question 1. It is a statutory duty of the Court to administer oath.

There is one qualification, namely, Court is bound to administer it to a person who is competent and not bound to administer it to one who is incompetent, *e. g.* a child.

6 Pat. L. J. 147.

Answer to Question 2. The answer is given in Section 12. Party shall not be compelled to make it. But the Court is to make a record of his refusal and the reasons, if any, given by him.

Answer to Question 3.

Part I—Effect of the refusal of the party to take oath or make an affirmation.

1.
2. Such refusal only affects the value of the evidence.

Part II—Effect of the failure of the Judge to give oath.

1. The evidence remains admissible.
2. Obligation to tell the truth remains.

6. The Provisions of the Oaths Act in India are not so strict as they are in England.

(1) Oath is not a necessary condition precedent for the obligation of telling the truth. It is necessary merely to remind a witness of its sanction.

(2) The Indian Act condones the failure to remind or failure to take oath. The English law makes the evidence inadmissible.

IV. COURSE OF EXAMINATION

1. There are two possible ways in which a witness can depose

- (i) By narrating the facts.
- (ii) By answering questions put to him.

2. The Evidence Act provides that the testimony of a witness shall be taken in the form of Examination, not in the form of a narration. The reasons why the law prefers examination as the mode of giving evidence are to be traced to the rules of relevancy. A person is permitted to give evidence of matters which are relevant. He is not permitted to give evidence of all matters relating to the issue. Matters which are related to the issue are not necessarily relevant to the issue and under the Evidence Act it is the duty of the Judge to decide whether any particular fact is relevant or irrelevant and to rule out their relevant then and there.

If a witness is permitted to give his testimony in the form of a narration two things will happen :—

- (i) The witness will in all probability tell *all* facts relevant as well as related and this introduce irrelevant matter and
- (ii) The action that a Judge may be able to take to rule out irrelevant matters will be *ex-post facto*.