

THE REFORM OF LEGAL PROCEDURE*

I

In a significant and stimulating lecture delivered before the University of London on the 14th March 1928, Lord Justice Sankey (as he then was) reviewed "The Principles and Practice of the Law Today".

"It is time," he urged, "that an enquiry should be made into legal procedure on the civil side; an enquiry conducted not merely by lawyers, but by lawyers and business men, for it is helpful sometimes to see ourselves as others see us."¹

The Royal Commission on *The Despatch of Business at Common Law* appointed on 5th December 1934 presented upon 20th January 1936 a reasoned and succinct Report. The Commission was a small representative body of seven; seventy witnesses were heard; evidence was given by Lords of Appeal, Lords Justices and puisne Judges, by Masters of the Supreme Court and by County Court Judges; the Bar was heard, the "stuffs" as well as His Majesty's Counsel; the Law Society and Provincial Law Societies put their points of view and the Commission also examined representatives of leading commercial organisations.

During the last sixty years several enquiries into civil procedure had been conducted. The Judicature Acts 1873-1875 were based upon a Report of a Royal Commission; the Gorrell Committee on County Courts sat in 1908 and the joint Select Committee on the High Court in 1909. In 1913 the St. Aldwyn Commission enquired into the complaints of delay in the King's Bench Division, while in 1922 Mr. Justice Swift's Committee considered the question of rearranging the circuits so as to promote economy and the "greater despatch of business". Lastly, came The Business of Courts Committee of 1932 under the Chairmanship of the late Lord Hanworth to consider the state of business in the Supreme Court, its constitutions, sittings and facilities for appeal. That Committee made some useful recommendations, some of which have become the law of the land. County Court Appeals now go direct to the Court of Appeal, the character of which, however, has been considerably weakened when it becomes necessary for that Court to sit in

* While the present article is concerned with English procedure, so much is relevant to Canadian practice that no apology is required for its presentation to the Canadian profession.—ED.

¹ Reprinted from *The Solicitor's Journal*, at pp. 14, 15.

three Divisions instead of two. Since there are but six members—the Master of the Rolls and five Lords Justices of Appeal—a practice has grown up in the last few years of making up the necessary complement of three Judges required for a third Court by calling upon puisne Judges from the King's Bench or Chancery Divisions. The qualities and the technique requisite on the Bench of the Court of Appeal differ considerably from what is required in the hearing of a case; and it is much to be hoped that this appellate tribunal will be permanently enlarged.

All the previous Committees have been concerned for the most part, with certain aspects of procedure; and a glance at the Recommendations of the 1932 Committee² will show that important proposals have not been adopted. These include in particular, the radical and minority views of Lord Wright upon the reform of the Circuit system.³

But the Peel Commission of 1934 was the broad, comprehensive enquiry, after Lord Sankey's own heart, that he had adumbrated in 1928. Its purpose was to enquire (among other things) into "the state of business in the King's Bench Division" to report whether, "with a view to greater dispatch, any reforms should be adopted". True, the Chancery Division was not included but of that Division a contented tranquillity was ever the mark. Divorce, again, and Admiralty, have their own problems, and the normal matters dealt with by King's Bench Judges have, and should have, little affinity with matrimonial causes or the specialised learning of marine collision.

Ten pages of the Majority Report, consisting of one hundred pages,⁴ deal with "Reforms in Procedure and Jurisdiction". The Commissioners thought that one of the most hopeful methods of reducing delays lay in cutting down the length of trials. They recommended a restriction of issues, some relaxation in the rigid rules of evidence and the cutting down of the mountainous mass of irrelevant documents often prepared and produced at a trial.

Unfortunately, by a curious irony, the publication of the Report coincided with a new slump in litigation; judges began to finish their list before the adjournment; cases were called on before parties were ready; and the idea of a Business Manager to group the growing lists—unpopular in certain quarters—died of inanition. Some very sensible suggestions for the classification and re-grouping of the London lists for securing the

² Second Interim Report, 1933, Cmd. 4471.

³ Pp. 52-58.

⁴ 1936 Cmd. 5065, pp. 77-88.

benefit of fixed dates of trial, appear also to have been relegated to the arcana of blue-book historians; and this Report like many others, has already passed from the land of the living. Yet the evidence (when one reads through it) of men like Lord Atkin, Lord Wright and Lord Maugham, of Lord Justice Greer and Mr. Justice Swift—to name but a few—is remarkable not simply for the systematic survey of legal experience (which, by the way, one can find in no other contemporary document), but even more for a unanimity upon the need for the reform of legal procedure. That is the important fact to be grasped at the outset. Suggested remedies may differ; but that the rules of evidence be relaxed and the method of legal procedure be simplified, wise and experienced judges are in no doubt. This fact may surprise both the public and the legal profession: the profession by reason of the frequency of judicial pedantry in matters of practice and procedure; the public who until they come into contact with the law—and frequently even afterwards—would never for one moment dream that the mind of a judge can be receptive to progress, much less sensitize the spirit of the age.

II

Other writers have laid stress upon the need for systematising the law itself by codification and upon the need for a new technique in the interpretation of statutes. Reform may be approached by several paths; and ultimately, no doubt, all paths lead to the same objective. But time has not dimmed the truth of Maitland that remedy is the mother of right. A student of jurisprudence may well wish to see a more logical and aesthetic rebuilding of the Common Law. The realistic mind of the legal historian recoils from what he considers to be a pedantic and dialectical construction of the mind of Parliament, disregarding the very expressions which Parliament itself utters of its own intentions. What strikes the present writer as even more grievous, and as being in need of immediate reform, and more likely, because of the unanimity of important judicial opinion, to be reformed, is the cumbrousness of legal procedure. *That* is what the business man is concerned with: the cost, the delay of an action at law and its unintelligible procedure. That is what troubles the ordinary citizen, who desires to vindicate his rights.

Why does it cost so much to go to law? Why does it take so long? Why does the judge exclude what the parties think is a crucial piece of evidence or a decisive document? Why is it

necessary to go to the expense of "proving" a document by calling a professional witness, who must be within reach for several days and then whose evidence may turn out to be quite formal? Why must sheaves of documents be copied out in full for the trial? Of proceedings between writ and the trial of the action the layman hears but little, until later when the bill of costs arrives. But were he in a position to speak he would doubtless ask: what was the need of those applications for frivolous particulars? How did the putting of such elaborate interrogatories help my case? And what, pray, was the use of the application to strike out a paragraph in a pleading? That appeal from the Master to the Judge, and then from the Judge to the Court of Appeal—what good came of it all? Once the layman puts himself into the hands of the lawyers, he feels somewhat like the patient wheeled into the operating theatre: his not to object, but to endure with dignity for—how long?—and then, cure or kill, to pay.

The reluctance to go to law, among all classes of citizens, and especially since the war, is widespread. They shun it like the plague. It is not that disputes are fewer; on the contrary, they must be on the increase. But litigants "split the difference" or go to arbitration. To split the difference is unsatisfactory, because neither party is satisfied and each never ceases to believe that *he* was really right. Moreover, unless the matter is one of mercantile custom or practice and the arbitrator is an expert in the particular type of case, an arbitration is less satisfactory than an action. There is little or no saving in costs and indeed, the arbitrator's fee must be paid in addition. An arbitration may last longer than an action; and unless the arbitrator is an experienced lawyer, or has a legal clerk of ability, the result here too is often unsatisfactory and leads to further proceedings upon a "case stated". That arbitrators relax the rules of evidence is all to the good; but when they relax the rules of law nothing but confusion can result.

The remedy for this state of affairs is not to change the law but to reform the procedure. It is not healthy for the body politic to be dissatisfied with the administration of its legal system, for, in the last resort, in that alone resides the dispensation of impartial justice. A judge whose business it is day by day to decide impartially in all manner of causes and between all manner of persons is more likely to do justice than an *ad hoc* arbitrator who, albeit quite unconsciously, may be less divested of professional prejudice.

III

With procedure in the criminal courts this article has no concern. When the liberty of a citizen is at stake rigid rules of evidence are a vital safeguard to govern those who would seek to take the liberty away. Moreover, the whole theory and practice of criminal punishment has within the last thirty years been radically transformed—some may think perhaps too far in favour of the delinquent and against the interests of society generally.

The need for the reform of procedure in the civil courts is manifest both to the public generally and to growing numbers of the profession. The new County Court Rules of 1936, based upon the recent statute of 1934, (which consolidated enactments relating to County Courts), have introduced important improvements in County Court procedure. The code in accordance with which an action is conducted in the King's Bench Division of the High Court (the theme of the present article) is entitled "The Rules of the Supreme Court, 1883", as amended from time to time. A recent edition of this code was published in 1936 under the direction of Lord Sankey, then Lord Chancellor, and it can be bought at H. M.'s Stationery Office. Consisting of 72 chapters, each chapter is entitled "Order" and each order contains a varying number of "Rules". On the whole the Code makes intelligent reading and a person of reasonable understanding may well imagine that with this guide in hand he will be able to follow the progress of an action.

But upon no Act of Parliament does there exist so much case law as upon these Rules. He who would seek to base his knowledge upon the words of the Rules alone, would soon discover the error of his ways. There are two annual recensions of the Rules, which lawyers call—from the colour of their cover—"The White Book" and "The Red Book", respectively. "The Annual Practice" for 1937 (*The White Book*)—including Miscellaneous Forms and Tables—contains no less than 2,744 pages, 1,542 of which are devoted to a commentary upon the Rules themselves. It is fair to state that the latter part is devoted to certain statutes which have a bearing upon procedure, and to their interpretation. Nevertheless the "Table of Cases" occupies no less than 371 pages at the outset—each page containing, upon the average, from ten to twenty cases or more! All these are decisions of Judges in Chambers, the Divisional Court and the Court of Appeal—decided in the course of fifty years—upon the Rules. The "General Index" with which the volume closes

occupies 438 pages. Either the "White" Book or the "Red" is indeed, indispensable to all practising lawyers—an annual and a monumental tribute to their editors. But is it really necessary to be governed at the present time by such a complicated Code, so trammelled by binding decisions? Even when the words appear to be plain, the Court of Appeal, bound by earlier decisions, may have put a restrictive interpretation upon the words, which appears to be inconsistent with their obvious meaning. For the Rules have the force of statute, being made under the Judicature Acts, and as statutes—with all the traditional technique of statutory interpretation—are they construed.

One example will suffice to make this point perfectly clear.

A, having sold goods to B to the value of £100, sues B, after several months for their price. The reason why B has not paid is a very simple one: he has been unable to pay and he intends to avoid paying as long as he can. In a rational code of procedure one would have thought that it should be possible for A to sign judgment against B without being compelled to wait for a few months and go to the unpredictable expense of a trial. There does in fact exist a Rule which, on the face of it, would appear to give him such a right. As soon as he has served his writ and B has "entered an appearance" (as it is called), A can take out a summons before a Master, asking for leave to sign "summary judgment" against B, for £100 and taxed costs.

Now

Unless the defendant shall satisfy him (i.e., "the Court or a Judge") that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally,

the Master's *duty* is to make an order empowering the plaintiff "to enter such judgment as may be just". The words and the intention are plain; they are to grant a speedy relief to plaintiffs against whom no plausible case can reasonably be raised.

Accordingly, if B does not put forward any ostensible defence, A will obtain liberty to enter judgment. But if B sets up *any* kind of case—"a triable issue" as it is called—however devoid of merits that be, he will of a certainty obtain liberty to defend the action. His object is secured—the gaining of time, three months or six, as the case may be, or even longer—and at the end the plaintiff may achieve a barren judgment. This happens every day in the experience of practitioners. The Master may not think very much or indeed anything at all of

the defence raised; he may even cast doubt upon its veracity; but send it for trial he must. Let B say "you gave me six months credit; your action is premature"; even though there is not a word of this in the correspondence, even though B wrote "I will endeavour to pay you in a fortnight", this, (says the Master), does not prove an admitted liability; for B may well say, "I will pay you" without being under any legal liability so to do. Fifty years ago the Court of Appeal held that if the defendant sets up a case in his affidavit, whatever be its merits, he must have his leave to defend; and the Court of Appeal today—even though they are aware of the result of their decision and realise that the Rule has thus been robbed of much of its remedial effect will not treat the order as *tabula rasa* upon which they may now begin to re-write.⁵

Only recently Mr. Justice Goddard made some scathing comments upon these "lying affidavits". A lady claimed £685 which she had advanced to someone who persuaded her that he had invented a device to prevent motor cars from skidding. The defendant duly put in his affidavit against summary judgment and as duly obtained leave to defend. At the trial he did not appear nor was he represented. "These lying affidavits," the learned judge is reported in *The Times*⁶ as saying, "will not be stopped until the Director of Public Prosecutions decides to prosecute a few dozen of these defendants for perjury."

Is there not, however, a much simpler way of putting an end to the falsehoods of this kind of affidavit? If defendants knew that they were bound to set up a reasonable case before they were entitled to obtain leave to defend, "lying affidavits" would cease to be fashionable: leave to defend would be refused. "I swore an affidavit and it died."

Long before the fight begins in Court, there is a preliminary battle over "pleadings". The clerk of a certain court of arbitration who was once asked by the solicitors of the respondent for a statement of the applicant's case replied in amazement: "Why do you want that? Your client knows exactly what is alleged against him." This is a withering comment upon a certain laxity sometimes prevailing in an informal arbitration, but it illustrates nevertheless a certain truth. The clients themselves *do* know what the fight is about; but once the lawyers come into the fray, the issues—in the preliminary documents

⁵ The Case of *The Polish Bank*, [1932] 2 K.B.D. p. 353 at p. 359. See the judgment of Lord Justice Greer.

⁶ *Baker v. Swift*, June 18th.

called "the pleadings"—are metamorphosed beyond recognition. True: that is to protect the client against "surprise", but the result may be to prolong by months the period of waiting and to increase the costs to a figure undreamt and unprovided.

"The object of the pleader," says the Peel Commission, "is to put his case with sufficient vagueness and with such suitable alternatives that however the facts turn out his client will not be hampered. Consequently most pleadings contain many allegations of fact which are untrue or impossible to prove. At the trial a great part of these allegations is thrown overboard, but the opponent cannot risk being unprepared to meet them."⁷

Even when the pleadings are closed, the parties—or rather, their legal advisers—are not yet ready for trial. Indeed the pleadings may be completed within a month—unless there have been applications for "particulars" or "to strike out" a pleading or its part—but several months may still elapse before the case can be heard. This period is often taken up by applications made before a Master to deliver questions in writing, called "Interrogatories" which must be answered on oath by one's opponent. The theory is that the answers may contain valuable admissions or even render it unnecessary for the other side to call certain evidence. The fact is quite otherwise. For in the first place, there is strenuous objection as a matter of course to answering the interrogatories, or indeed any of them: they are "scandalous" (it will be said), "oppressive", "prolix", "irrelevant". (Some of them probably are.) But it is always safer to ask for more than you will get. Some will be allowed. The polysyllabic dexterity of the questions is only excelled by the elusive monosyllables of the answers. A splendid game, forsooth, leading—in most cases—nowhere! But the rules of the game must be observed. Parties hesitate to make admissions; time is further spent in asking for "discovery" and "further and better discovery" of all documents that might even remotely be relevant—all making their appearance in due course in the carefully numbered bundles of epistolary history.

When the day of the trial has arrived, it is almost certain—if, *e.g.*, the case is the last on the list,—that it will not be reached. It may be reached the next day, or even the day after that. The judge may have to go on Assizes; he cannot say when upon his return he can take the case. A few judges may be absent by reason of illness. On Mondays the Court of Criminal Appeal sits. A judge may be taking a special enquiry. The Commis-

⁷ Para. 227, p. 78 of Cmd. 5065 (1936).

sion thought that the subject ought to be assured that his dispute would be heard within two months of being ready and would, moreover, be reached either on a fixed date or on a day fixed within a specified and comparatively short period.⁸ Fixing the date of trial is now usual in a case certified and proceeding under the "New Procedure" Rules: the extension of this benefit to all cases is fundamental. It would be one of the functions of the "Manager of the Lists" suggested by the Commission,

to secure the economical and efficient use of judge-power in the interests of litigants, witnesses, jurors and practitioners.⁹

To enable dates to be fixed an increase of judicial strength is a condition precedent. There were eighteen judges in 1873 and today,—despite the increased length of cases and the increase of litigation the King's Bench Division consists of one Chief Justice and but nineteen puisnes—now reduced to seventeen!

IV

The rules of evidence are of long historical growth: they are matters of the common law and not part of the Rules of the Supreme Court or of any statutory code. Their origin derives from the days when every case was tried before a judge and jury; at the present time, the non-jury list exceeds in size and perhaps in importance the lists heard by special or by common juries. Moreover, a judge should be entitled to admit all kinds of evidence; the weight to be attached to a dubious piece of evidence might well be left to his discretion. A doctor's certificate at present is not "evidence"; the doctor must be "called". An affidavit, except by special order, is not admissible; yet in commercial matters, much time and money could be saved were a judge, in appropriate cases, able to admit an affidavit, a certificate, or even an unsworn declaration.¹⁰ As to documents generally, the Commission reported :

We consider that the judge should have a discretion to admit all documents and records relating to the matters in question which came into existence before the dispute arose. This would put the judge in the same position as the ordinary commercial arbitrator, who is usually given power to receive and act upon all such evidence as he chooses to admit.¹¹

⁸ Para. 141; p. 51 *ibid.*

⁹ Para. 149; p. 53.

¹⁰ Para. 228, p. 78.

¹¹ Para. 230, p. 78.

The rules of evidence can not be reformed save by Act of Parliament, implemented by some "well-considered Rules of Court". Lord Maugham laid before the Commission a draft Bill which had been prepared by a Committee of Judges appointed by the Lord Chancellor. In his evidence before the Commission, (which well repays the reading) the Bill was discussed and analysed.¹² The late Mr. Justice Avory was a member of that Committee, as were Lord Roche and Lord Justice Greer. Apparently the Bill was supported by the Chamber of Commerce, the Bar Council and other representative bodies of standing. All the law Lords at the time save one were in favour of the Bill, and the Bill was dropped. But, as Lord Maugham caustically observed—lawyers can never agree to any report and Lord Eldon and Lord Ellenborough opposed every possible reform.

For himself Lord Maugham thought that letters and reports, relevant to the issues, should be admitted in evidence without the need for calling the writers "to prove" the document. This would apply to such documents as reports by doctors concerning the condition of a patient, by engineers as to the result of an inspection, by a stockbroker on the price of stocks, by a merchant as to the price of goods. But these are simply illustrations of a suggested principle.¹³

The Commission gave the draft of the Bill a general approval, and recommended its introduction in Parliament "as soon as opportunity offers," in Lord Maugham's words as "a first step towards a little more generous acceptance of documents as evidence."¹⁴

V

So far then, as the rules of evidence are concerned the reform is there, waiting to be introduced. Nor is any zeal wanting for the amelioration of the law; of this fact ample proof can be found in the six Interim Reports of the Law Revision Committee appointed by Lord Sankey in January 1934.¹⁵ But it is doubtless easier to pioneer a new measure of social legislation (such as Local Government Superannuation) or a consolidating Act dealing with Housing or Public Health than it is to lay hands upon the immemorial ark of the common law. On the other hand the weight of opinion—professional, judicial, and commercial—in favour of the Bill is so vigorous that the opposition

¹² 1935, 21st Day, Tues. 14 May 1935: pp. 309-314, paras. 4254-4272.

¹³ *Minutes of Evidence* p. 309.

¹⁴ Para. 233, p. 79.

¹⁵ See *e.g.*, Cnd. 5449, (1937).

of a minority is worth the risk. If, however, it be sought to make doubly sure that the measure would command the greatest measure of representative assent in the world of lawyers, the Lord Chancellor might well refer the question to the Law Revision Committee presided over by Lord Wright and containing representatives of the Court of Appeal, the puisne judges, the Bar and of no less importance, jurists of eminence. And if *now* is not the time, pray when?

The amendment of the rules of evidence is a matter for the Rule Committee appointed under the Supreme Court of Judicature Act. New rules, it is true, appear from time to time, usually upon minor matters of detail. On occasion, however, the Committee has exhibited a fecund ability to provide changes of outstanding importance; *The Poor Persons Rules* of 1926, for instance, and *The New Procedure Rules* of 1932. In their way, these Rules, in certain branches of procedure effected a quiet revolution. But in substance, the Rules of the Supreme Court, after fifty years of legal interpretation require a comprehensive and a drastic revision. The time has come for the preparation of a new code of procedure, shorter, simpler, more rational. The "White" Book and the "Red" are far too large; much of the case law upon the present Rules—and many and divers of the Rules themselves—might well be consigned to legal history. If a plaintiff with a clear-cut case could obtain a swift remedy; if the proceedings between writ and trial were shortened, made more intelligent and less expensive; if the parties were reasonably certain of the day upon which their dispute would be heard; the layman would feel not only a greater confidence in the machinery of justice but also an enhanced respect for justice itself. The permanent value both for the individual litigant and for society generally would be greater than could accrue from any reform in the substantive Law.

GEORGE WEBBER.

London, England.

ADDENDUM

Since the foregoing was received for publication, *The Evidence Act, 1938* (1 and 2 Geo. VI, C. 28) has been enacted in England to come into effect on September 1st, 1938.

The Act is designed to facilitate proof and does so by adopting many of the changes discussed in Mr. Webber's article. In some respects the changes are, in effect, revolutionary.

1.—New exceptions to the hearsay rule are created by secs. 1 and 2 in permitting (a) statements in documents made by persons having personal knowledge of the matter stated, and (b) statements in documents forming part of a continuous record made on reliable information by a person having a duty to record such information.

2.—Attesting witnesses need not be called to prove documents (other than testamentary documents) even though such witnesses are alive and could be called. (Sec. 3).

3.—The period for endowing documents with the presumptions attaching to ancient documents is reduced from 30 to 20 years. (Sec. 4).

4.—Provision is made for alteration of the Rules of Court so that the court may order specified facts to be proved by affidavit with or without cross-examination. (Sec. 5).

It is clear that these provisions mark a turning point in the law of evidence and in view of their general importance, the Entire Act is produced below. Admirable discussions of the Act in the light of the existing law are to be found in a series of articles by Dr. Julius Stone in 85 *Law Journal* at ppr. 408, 424, 441.—Ed.

EVIDENCE ACT, 1938, 1 AND 2 GEO. VI, c. 28

Sec. 1.—In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

(i) if the maker of the statement either—

(a) had personal knowledge of the matters dealt with by the statement; or

(b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the proceedings

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the Court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

Sec. 2.—(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

Sec. 3.—Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requi-

site may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

Sec. 4.—In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Sec. 5.—It is hereby declared that section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, and section ninety-nine of the County Courts Act, 1934 (which relate to the making of rules of Court), authorise the making of rules of Court providing for orders being made at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

Sec. 6.—(1) In this Act—

“Document” includes books, maps, plans, drawings and photographs;

“Statement” includes any representation of fact, whether made in words or otherwise;

“Proceedings” includes arbitrations and references, and “Court” shall be construed accordingly.

(2) Nothing in this Act shall—

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not passed.

Sec. 7.—(1) This Act may be cited as the Evidence Act, 1938.

(2) This Act shall not extend to Scotland or Northern Ireland.

(3) This Act shall come into operation on the first day of September, nineteen hundred and thirty-eight.