ALLAHABAD HIGH COURT

Ajodhya Prasad Bhargava

Vs.

Bhawani Shanker Bhargava

First Appeal No. 373 of 1954

(Agarwala, V. Bhargava and Beg, JJ.)

08.05.1956

JUDGMENT

Agarwala, J.

1. The facts of the case which led to the reference to this Full Bench, briefly stated, are these.

2. Ajodhya Prasad Bhargava, defendant appellant, entered into an agreement with a joint Hindu family of which Ram Das was the karta and which owned a business concern known as H. Bevis and Co., for the advance of certain monies to the latter.
Under the agreement Ajodhya Prasad Bhargava was to receive interest on the sum advanced and was to have the control and management of the concern, H. Bevis and Co. Ajodhya Prasad Bhargava did not possess sufficient funds to enable him to discharge the obligations under the agreement and he. therefore, approached the plaintiff-respondent Bhawani Shanker Bhargava, a relation, for investing some money in the business of H. Bevis and Co. The respondent paid a certain sum either to the appellant, or at his suggestion, to Messrs. H. Bevis and Co. For the recovery of the money remaining due to the respondent he instituted the suit which has given rise to this appeal on the allegation that the money advanced by him was a loan to the appellant. The proprietors of the concern H. Bevis and Co. were also impleaded as pro forma defendants.

3. The appellant and Messrs. H. Bevis and Co., contested the suit. H. Bevis and Co.'s plea was that there was no privity of contract between them and the respondent and consequently there was no liability on them to make any payment to him. The appellant's plea was that he had never borrowed money from the respondent, that the latter was taken as a partner in the investment and that the liability to pay rested with H. Bevis and Co.

4. In support of this case that the advances made by the respondent were not loans to him but were loans to Messrs. H. Bevis and Co., the appellant produced certain letters written by the

respondent as containing admissions by the respondent in support of the appellant's case. These letters were produced in Court by the appellant before the hearing commenced and were shown to the counsel for the respondent for admission or denial. The counsel for the respondent admitted them and they were thus exhibited by the Court as evidence in the case. But when, later on, the respondent appeared in the witness-box these admissions were not put to him in cross-examination.

5. At the time of arguments when it was attempted to utilise these letters as containing admissions of the respondent contrary to what he had stated on oath in the witness-box, the learned Civil Judge relying upon the Privy Council decision in *Bal Gangadhar Tilak v. Shri Niwas Pandit*[1], and the Full Bench case *Malik Desraj Faqirchand v. Firm Piara Lal Aya Ram*[2], ruled these documents as inadmissible under Section 145, Evidence Act. The Civil Judge decreed the suit against the appellant and dismissed it as against Messrs. H. Bevis and Co.

6. The appellant appealed to this Court against the decree of the Civil Judge and urged that the aforesaid letters containing the admissions of the respondent were admissible in evidence and could be relied upon by him as substantive evidence in the case and as disproving the statements on oath of the respondent. The Bench hearing the appeal, considering that there was a conflict of judicial opinion on the point, referred the following two questions for decision by a Full Bench :

> (1) Where in a civil suit a party produces documents containing admissions by his opponent, which documents are admitted by the opponent's counsel, and the opponent enters the witness-box, is it obligatory on the party who produced those documents to draw in cross-examination the attention of the opponent to the said admissions before he can be permitted to use them for the purpose of contradicting the opponent?
> (2) Can the party producing these documents be permitted under Section 21, Evidence Act, to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to those admissions?

7. These questions have come up before us for answers.

8. An admission is defined in Section 17, Evidence Act as

> "a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

9. Under Section 21 of the said Act admissions are relevant and may be proved as against the person who makes them or his representative in interest.

10. The defendant-appellant produced the letters written by the respondent as containing his

admission which supported the defendant-appellant in the case set up by him. Prima facie, therefore, this was a case of admissions as to a fact in issue and as such the admissions were relevant and could be proved under Section 21.

11. Under Order 12, Rule 2, Civil Procedure Code either party may call upon the

[1] AIR 1915 PC 7

[2] AIR 1946 Lah 65

other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing whatever the result of the suit may be, unless the Court otherwise directs. The notice to admit or deny documents is to be in form No. 9 given in Appendix C with such variations as circumstances may require, but in practice in the Courts in this State no such written notice is given and instead, documents are produced before the counsel of the opposite party for admission or denial and the counsel concerned after looking into the documents admits or denies them. If he admits them the documents are exhibited on the record and an exhibit mark is put on them meaning that no further evidence is enquired to prove them. If he does not admit them the party producing them has to prove them in the ordinary manner.

12. In the present case, as already stated, the letters which according to the defendant contained the admissions of the respondent were produced and placed before the counsel for the respondent. He admitted them and they were exhibited as evidence in the case. The letters containing the admissions were therefore evidence in the case and could be relied upon as substantive evidence by the defendant-appellant provided there was nothing in any other provision of law excluding them from consideration.

13. The case for the respondent is that under Section 145, Evidence Act such admissions could not be relied upon or be proved to contradict his statement on oath because they were not put to him while he was in the witness-box. We have to see how far this contention is correct.

14. Section 145, Evidence Act runs thus :

> "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

15. The first part of this section permits cross-examination of a witness regarding a previous statement made by him in writing or reduced to writing as to any relevant matter and such questions may be put to him without the writing being shown to him or without its being proved. This part therefore deals merely with the factum of the previous statement upon a point having been made by the witness. The second part deals with the question how a witness is to be

contradicted by his previous statement and provides that in such a case his attention must be called to those parts of the document which are to be used for the purpose of contradiction before the writing can be proved. In the present case we are concerned with the second part of Section 145.

16. It will be noticed that the section deals with a previous statement in writing or reduced into writing, which has not been proved already. The words, "without such writing being shown to him or being proved" in the first part of the section and "before the writing could be proved" in the second part of the section, go to establish that the section does not contemplate a previous statement which has already been proved in the record under some other provision of law. It will also be noticed that the section prohibits the use of a previous statement of the witness for the purpose of contradicting his evidence on oath. It does not deal with the question of proving a party's case by the admission of the opposite party. That subject is dealt with in Section 21.

17. An admission of the opposite party to the proceeding may be produced for the purpose of proving a party's own case. It is the best evidence which can be produced in proof of the party's case, and although the proof of such admission is not conclusive against the opposite party, nevertheless it is such strong evidence of the facts admitted that the burden of proving the contrary is upon the party making the admission. He can do this only when he gives a satisfactory explanation that the admission was wrong or made under circumstances which render it unfit to be relied upon. A duty is cast upon him to offer an explanation of the circumstances under which a wrong admission was made. If he does not offer an explanation, the burden is not discharged.

18. As the Privy Council observed in *Chandra Kunwar v. Chaudhri Narpat Singh*[3]*,*

> "The proof of this admission shifts the burden, because, as against the party making it, as Baron Parke says in *Slatterie v. Pooley*[4]*,* a party himself admits to be true may reasonably be presumed to be so.' No doubt, in a case such as this, where the defendant is not a party to the deeds and there is therefore no estoppel, the party making the admission may give evidence to rebut this presumption, but unless and until that is satisfactorily done, the fact admitted must be taken to be established."

19. That case ILR 29 All 184 (PC) was practically on all fours with the present. In that case the admission of a party was proved upon the record and when, later on, the party himself was examined as a witness, the documents upon which reliance was placed as containing admissions of the party were not put to him in cross-examination, and yet the Privy Council held that the admissions were admissible in evidence under Section 21, Evidence Act and that, not having been satisfactorily explained, the fact admitted must be taken to be reasonably established.

20. The purpose of proving an admission of a party is not to contradict a statement given by the

party as a witness to the case. The purpose is to prove the case of the party who relies on the admission. It is true that a statement on oath (given as a witness) of the party making an admission will have to be considered along with the admission and unless an explanation as to the circumstances in which the admission was made is given or it is otherwise proved that the admission was erroneous, the statement contrary to the admission must be taken to be unreliable, and in this indirect way it may be said that the oral statement on oath is contradicted by a previous admission. But this not being the purpose of producing the admission, Section 145 cannot be construed as overriding, or to control, the provisions of Section 21.

[3] ILR 29 All 184

[4](1840) 6 M and W 664

21. The principle underlying Section 145 is that it is unfair to contradict a witness by his previous statement without bringing the statement to the notice of the witness and affording an opportunity to him to tender his explanation as to why he made the previous statement or to clear up the point of ambiguity or dispute. Where, therefore, a previous statement of a witness, be he a party or a stranger to the case, to not already proved on the record under some other provision of law but is intended to be proved in the case only for the purpose of contradicting the witness, the principle of fairness as embodied in Section 145 requires that before his admission can be proved the attention of the witness must be drawn to the passage in his statement by which it is intended to contradict him. But where the witness is a party to the ease and his previous admission has already been produced in the case to his knowledge or to the knowledge of his counsel who is his agent for the purpose of the case and it has been proved against him either by the writing having been admitted by him or his counsel or by some other proof, then no question of unfairness can arise. If an admission is sought to be used against him, then the admission having been already brought to his notice and it having been made clear to him that the admission was going to be used against his case and in support of the other party's case, the duty is cast upon him to tender his explanation as to the admission and no question of unfairness can arise in such a case if while he was in the witness-box he does not himself offer any explanation regarding the admission. His mere bald statement contrary to his previous admission does not discharge the burden that lies on him to explain the circumstances in which the admission was made.

22. Of course, if the admission is vague or ambiguous and it cannot be said that the party concerned had notice that a particular statement would be used against him as his own admission, the rule of fairness above adverted to would apply to the case and it would be unfair to use such an admission to contradict the oral statement on oath of the party concerned. If such an ambiguous or vague statement is relied upon to contradict the oral testimony of a party given in the case, it is but fair that his attention be drawn to the statement and opportunity be given to him to tender an explanation and clear up the ambiguity. But this rule flows as a corollary from the general principle of fairness and is not based upon Section 145 which is limited to admissions in writing and to admissions which have not already been otherwise proved on the record.

23. The decision of the Privy Council in AIR 1015 PC 7 and certain other decisions following it

have been strongly relied upon on behalf of the respondent for the proposition that a previous admission of a party who appears as a witness cannot be relied on to contradict his oral statement on oath or as substantial evidence, if such statement has not been put to him in cross-examination. In my opinion, no such result flows from the decision in Bal Gangadhar Tilak's case.

24. The question to be determined in that case had reference to the validity of the adoption by the widow of late Shri Vasudev Harihar Pandit, alias Shri Baba Maharaj, of a son to her late husband. The suit was for a declaration of the validity of the adoption of Jagannath, one of the plaintiffs. Three of the trustees appointed by the late Shri Vasudev Harihar Pandit were also impleaded as co-plaintiff's.
The fourth trustee was impleaded as a pro forma defendant. The widow of Shri Vasudev Harihar Pandit was the main contesting defendant in the case. The will of Shri Vasudev Harihar Pandit permitted the widow to adopt a boy, and the trustees were to carry on the management of the estate until the boy attained majority. A boy was selected and the widow wrote a letter to the boy's natural father agreeing to take the boy in adoption. These proceedings were commenced on the 27th of June, but were completed on the 28th. It was alleged on behalf of the plaintiffs that the boy was put on the lap of the widow in performance of the requisite essential for adoption, but the formal ceremonies and festivities were postponed to take place afterwards. The widow alleged that the boy was not put on her lap, and that therefore the actual giving and taking ceremony was not performed. Mr. Tilak, one of the trustees, wrote out a full account of the transaction, which was recorded in the minutes, and the trustees who had not taken part in the proceedings were communicated with, to the effect that the adoption had been completed. These minutes and the letters which were written on the occasion to the other trustees were put in evidence, probably by the plaintiffs to prove the completion of the adoption. On behalf of the plaintiffs, Messrs. Tilak and Khaparde, two of the trustees who were plaintiffs, appeared as witnesses along with several other persons. They all swore to the factum of the adoption. On behalf of the defendants certain witnesses were produced. The Subordinate Judge of Poona came to the conclusion that the plaintiffs' evidence established their case, and he decreed the suit. On appeal, however, the High Court of Bombay came to a different conclusion, namely, that the account given by the witnesses "appears to be a true account of many of the series of events and a false account of at least one, and that the most important". This referred to the taking of the child on the lap. The High Court then recorded their opinion :

> "We are driven to believe that a considerable number of men of good position have conspired together to give false evidence."

In arriving at this conclusion the High Court referred to the minutes of the proceedings of the trustees relating to the adoption and the letters which were exchanged between them later on. These were subjected to minute analysis with a view to contradict the evidence of the plaintiffs' witnesses. There was no clear statement in the documents to the effect that the adoption had not

been completed, but certain words, turns of expressions and omissions were relied upon by the High Court for the purpose. For instance, the words "selected" and "decided" were suggested to refer to something in the future. Minute arguments were raised on expressions used in the letters and as to why this was mentioned and that other was omitted. None of these words, expressions or omissions were put to the witnesses. Mr. Tilak, one of the plaintiffs was for five days under cross-examination before the Subordinate Judge, but not one of these things was put to him; and he was not asked in the witness-box to give one single explanation with regard to any of these expressions or omissions. These expressions and omissions were used merely to contradict the oral testimony of the witnesses and to show that the witnesses had perjured themselves.

25. On an appeal by the plaintiffs to the Privy Council, their Lordships observed that upon a proper reading of the documents no inference adverse to the evidence of the plaintiffs' witnesses could be drawn from them.
After stating this, they went on to observe that the High Court was guilty of a serious irregularity in procedure, in that they had relied upon certain statements and written documents and omissions without these statements and omissions being put to the witnesses. They observed that "on general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity, if documents are used against him, to tender his explanation and to clear up the particular point of ambiguity or dispute" and that :

> "This is a general, salutary and intelligible rule, and where a witness's reputation and character are at stake the duty of enforcing this rule would appear to be singularly clear." Then they further observed that the law of India as enacted in Section 145 also pronounced upon the same matter. They expressed regret and surprise that
> "the general principle and the specific statutory provisions have not been followed. The verdict of the High Court is an inferential verdict nonetheless sweeping on that account - but an inferential verdict actually of perjury. What are the premises upon which this inference proceeds? In no inconsiderable degree they consist of documents, statements, even turns of expressions, which are used to confound the spoken word. Had the safeguards set up by law with respect to the use of documents been observed ? Not at all.

Not only have the documents been used for the purpose of contradicting witnesses without obeying the injunctions prescribed by law, but the inference thus derived, and improperly derived, from these documents has resulted, as stated, in an inferential verdict of perjury."

26. In the arguments before the Privy Council it appears that reference was made to Sections 17, 21 and 31, Evidence Act. But it is not clear as to whether it was urged on behalf of the widow that the statements in the documents contained admissions of Mr. Tilak which were admissible as proving the case set up by her. It should be noted that the plaintiffs were four in number - the three trustees and the adopted son. The adopted son was no party to the proceedings of the trustees, or to the letters exchanged between the trustees. Further it should be noted that there was

no clear admission in the document about the adoption not having been actually completed; on the contrary the documents stated that the adoption had been completed and it should be further noted that reliance was placed on certain words and expressions which could bear two meanings and on certain omissions, to contradict the sworn testimony of Mr. Tilak and other witnesses.

27. In the judgment of the Privy Council there is no mention of Section 21, Evidence Act, and their earlier decision in ILR 29 All 184 (PC) was not at all adverted to. Their Lordships did not consider whether the documents were admissible in evidence as admissions even though the statements were not put to the witnesses. Clearly the omissions relied upon were not admissions and could not be considered in evidence without being brought to the notice of witnesses on the ground of fairness and the positive statements which were relied on were not clear admissions at all but were ambiguous statements which could have been explained and which even without being explained were considered by the Privy Council as not being contrary to the oral evidence of the witnesses.

28. It does not appear that at any stage of the case in the trial Court the statements in the documents were relied on as admissions of the plaintiffs in proof of the defendant's case. They were relied on merely as falsifying the witnesses. That case is, therefore, no authority for the proposition contended for on behalf of the respondents and cannot be said to have overruled the law laid down in ILR 29 All 184 (PC). It must be confined to its own particular facts.

29. This view finds support from the observations of the Patna High Court in *Bamkeshwar Das v. Baldeo Singh*[5], In that case, after referring to the decision in the Bal Gangadhar Tilak's case, the Court, referring to an admission of a party which had been proved in the case, held that :

> "It is an admission which goes to the root of the case, which is relevant under Section 21, Evidence Act; and its relevancy is not affected by the question of whether the defendant may or may not have given evidence consistent with the statement contained in it. If it had been a document which had no relevancy apart from the fact that it contradicted statements made by the defendant, when he was in the witness-box, it could have been necessary to observe strictly the provisions of Section 145....."

In *Lal Singh Didar Singh v. Guru Granth Sahib*[6], it was held that :

> "the legal position under the provisions of Section 145, Evidence Act, no doubt is that evidence in previous suit does not prove anything and it ought to be put to the witness, but it is not so in the case of admission where the party making the admission is required to explain and rebut the same and unless and until that is satisfactorily done the fact admitted must be taken to be established . . . .

Evidently it was for the maker of the admission to come into the witness box where the objection

is taken at the very early stages and explain as to what led him to make this admission. In the absence of any such explanation the value of this admission is rather enhanced."

30. In *Mt. Ulfat v. Zubaida Khatoon*[7] a Bench of this Court sitting at Lucknow, after referring to the Privy Council decision in Bal Gangadhar Tilak case and also to the decision of the Privy Council in *Chandra Kunwar v. Narpat Singh,* held that Section 145 did not apply when the witness was a party whose admission had been already proved under Section 21.

31. No Doubt in AIR 1946 Lahore 65 (PB), a contrary opinion was expressed. Mahajan J., (as he then was), who delivered the main judgment on the case, conceded
that :

[5] AIR 1936 Pat 588 [7] AIR 1955 All 361
[6] AIR 1951 Pepsu 101

> "If an admission is proved against a party and his attention has been drawn to it (it must be taken that his attention was drawn when in his face the other party has proved that admission) then it is the duty of the party as a party to that case to explain that admission."

The learned Judge was, however, of opinion that when a party enters the witness-box and makes a statement inconsistent with the previous statement, his duty of explaining the previous admission ceases and it becomes the duty of the party relying upon the previous admission to confront him with his previous statement and to ask for his explanation.

32. This statement of law is in the teeth of the decision of the Privy Council in ILR 29 All 184 (PC) to which the attention of the Full Bench of Lahore High Court was not invited, and this fact vitiates their opinion. If the law requires, as the Privy Council laid down in Narpat Singh's case, that it does, that if there is an admission of a party which has been proved in the case as against him, then the burden of proving the contrary is shifted on to him and that unless he satisfactorily discharges this burden his earlier admission will be taken as establishing the adversary's case, then it does not stand to reason that this rule is abrogated by the mere fact that a party has entered the witness-box and made a statement inconsistent with the previous statements without explaining as to how and under what circumstances he had made the earlier statement. As already stated, a mere contradictory statement on oath cannot be said to be an explanation of the circumstances under which the previous admission was made, and the duty cast upon the party to explain his previous admission cannot be said to have been satisfactorily discharged unless he offers an explanation, and as the duty is on him to offer an explanation, there is no reason why it should be the duty of the opposite party to ask for his explanation by putting the previous statement to him.

33. The learned Judges of the Lahore High Court construed the decision in Bal Gangadhar Tilak's

case, as laying down the proposition that without complying with the procedure laid down in Section 145, the admission contained in his previous statement cannot be used as legal evidence against a party. But as shown above, the Privy Council did not consider the question of an admission of a party to a case being used against him although it was not put to him while he was in the witness-box.

34. Reference was also made to some other cases.

35. In *Giridhari Biswal v. Golak Biswal*[8], the Lahore High Court decision AIR 1946 Lahore 65 (PB) was simply followed.

36. In *Baldev Sahai v. Nemi Chand*[9] Section 21. Evidence Act was not discussed and the question was whether the previous oral statements of the witness could be proved when they are not put to the witness and it was held that such oral statements would be of little evidentiary value unless they were put to the party.

[8] AIR 1949 Ori 27

[9] AIR 1950 East Pun 291

37. In the *Bombay Agarwal Co. v. Ram-chand Diwan-chand*[10] the implications of Section 21, Evidence Act were not referred to at all.

38. In ***Smt**. Charandasi Devi v. Kanai Lal Moitra*[11], neither Section 21 nor the two Privy Council cases already mentioned were referred to, but relying upon an earlier Lahore case *Shafiquddin v. Mahbub Elahi*[12] it was held that an admission of a party is not admissible unless it is put to that party. Clearly this decision is of little value.

39. In *Upendra Nath v. Bhupendra Nath*[13], without discussing Section 21 and without mentioning the earlier Privy Council case of Narpat Singh and relying upon Bal Gangadhar Tilak's case, the Court stated that certain statements of the parties could not be used in evidence unless they were put to the parties for their explanation in view of their discrepancy with the evidence tendered.

40. In *Latafat Husain v. Onkar Mal*[14], the Court simply followed the Lahore High Court's decision in AIR 1930 Lahore 714.

41. Reference was also made to certain decisions upon the interpretation of Section 288, Criminal Procedure Code That section makes previous statements of witnesses admissible subject to the provisions of the Evidence Act. It has been held that one of the provisions of the Evidence Act which applied in these matters is Section 145.

It is clear that the previous statement of a witness in a criminal case cannot be the statement of a party within the meaning of Section 21, Evidence Act, because no witness in a criminal case is a party to the case the parties being the State on the one hand and the accused on the other.

42. In "Wigmore on Evidence" (Vol. IV para 1051) it has been observed :

> "An admission is logically useful against the party in the same way as a prior self-contradiction against a witness, and its admissibility rests partly on that ground. It follows that certain deductions from this principle have a parallel application to the present sort of evidence, notably in respect to implied admissions, and to explanations of the admissions. But there are two respects in which the distinction between a witness' self-contradictions and a party's admissions becomes important.
> (1) The rule requiring that the witness must have been warned when on the stand, and asked whether he had made the statement about to be offered as a self-contradiction has always been understood not to be applicable to the use of a party's admission, i.e., they may be offered without warning to the party."

It is not necessary to state the other exception.

43. Then the reasons for the rule are stated : "firstly, because the opponent may not in fact take the stand, and thus no opportunity for asking him would arise, and, secondly,
because the only object of requiring the warning is to provide a fair opportunity of

[10] AIR 1953 Nag 154 [12] AIR 1930 Lah 714 [14] AIR 1935 Oudh 41
[11] AIR 1955 Cal 206 [13]21 Cal WN 280 : AIR 1916 Cal 110

explanation before the witnesses' departure, whereas a party is in theory present during the trial, and has in fact ample opportunity to protect himself by taking the stand for any explanation which he may deem necessary after hearing the testimony of his alleged admissions."

44. To sum up, the law may be stated thus : (1) A party to a case may prove an admission made by another party to the case in support of his own case in respect of a question in issue or a relevant fact. Such admission when proved is substantive evidence in the case in support of the party relying on the admission and shifts the burden of proving the contrary upon the party making the admission.

> (2) The effect of his previous admission can be removed by a party by offering an explanation as to the circumstances in which it was made or by proving facts which go to show that the admission was erroneous or bore some other meaning, put the duty to do so is upon the party who makes the admission and mere bald statement by him when he appears as a witness for himself contrary to his previous admission without any such explanation or proof of circumstances as referred to above does not discharge the burden that lies upon him. Consequently the party relying on the admission is entitled to say that the oral statement on oath contrary to the unexplained previous statement is not worthy of reliance.
> (3) Section 145, Evidence Act refers to a previous statement of a witness, be he a party or a stranger to the case, which has not already been proved on the record and which is sought to be proved for the purpose of contradicting the statement on oath of the witness.

The section lays down that a witness cannot be contradicted by his previous statement unless it has been specifically put to him while he is in the witness-box.

(4) Section 145 has no application to an admission of a party which has already been proved on the record and therefore it does not prohibit such admission being used to contradict the statement on oath of the party making the admission.

(5) There is, however, a general principle of fairness according to which a witness' statement on oath may not be contradicted by his previous statement unless such previous statement was specifically put to him and he was offered an opportunity of tendering such explanation as he might desire to offer. This rule of fairness can have no application when a clear and unambiguous statement of a party has been already proved on the record and the party appearing as a witness already knows that his previous statement is relied upon by his opponent in support of his own case.

(6) Where, however, a statement of a party is ambiguous or vague so that it cannot be said that he has notice that such statement is being relied upon by his opponent as his admission, the rule of fairness comes into play and such party's oral evidence will not be allowed to be contradicted by his vague and ambiguous previous statement unless it was specifically put to him while he was in the witness box so that he might tender an explanation regarding the statement and in these circumstances though such statement may have been admitted under Section 21, Evidence Act it will be deemed to have been disproved by a contrary statement on oath of the party making the admission.

45. I would, therefore, answer the questions referred to us as follows :

Question No. 1.

Where in a civil suit a party produces documents containing admissions by his opponent, which documents are admitted by the opponent's councel, and the opponent enters the witness-box, it is not obligatory on the party who produces those documents to draw in cross-examination the attention of the opponent to the said admissions before he can be permitted to use them for the purpose of contradicting the opponent provided that the admissions are clear and unambiguous; but where the statements relied on as admissions are ambiguous or vague, it is obligatory on the party who relies on them to draw in cross examination the attention of the opponent to the said statements before he can be permitted to use them for the purposes of contradicting the evidence on oath of the opponent.

Question No. 2.

The party producing these documents can be permitted under Section 21, Evidence Act to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to those admissions.

V. Bhargava, J.

46. I regret I am unable to agree with my brother Agarwala J., In his judgment, he has already given the facts and circumstances under which the following two questions have been referred to the Full Bench :

> "Q. 1. Where in a civil suit a party produces documents containing admission by his opponent, Which documents are admitted by the opponent's counsel, and the opponent enters the witness-box, is it obligatory on the party who produced those documents to draw in cross-examination the attention of the opponent to the said admission before he can be permitted to use them for the purpose of contradicting the opponent?
> Q. 2. Can the party producing these documents be permitted under Section 21, Evidence Act to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to those admissions?"

47. Section 17, Evidence Act defines an admission as "a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned." It appears to me that this definition of an admission itself indicates for what purposes an admission can be used. An admission can suggest an inference as to any fact in issue or as. to any relevant fact. In both cases, the admission can be used as evidence to prove the fact in issue or the relevant fact. In addition, whenever the admission suggests an inference as to a fact in issue, it can be used for the purpose of determining the burden of proof of that fact.
The burden of proof of a fact in issue is ordinarily determined by reference to the other provisions of the Indian Evidence Act but there can be cases where an admission of a party may have the effect that, even though ordinarily the burden of proof of the fact in issue would be on one party, it may shift to the other party which made the admission on proof of the admission. Section 21, Evidence Act declares admission to be relevant and further provides that they may be proved against the person who makes them, or his representative in interest. This section permits proof of admissions and, when proved, the admissions can be used for the various purposes indicated by Section 17, Evidence Act, as mentioned above. The question, that has to be considered, is how far the use of the admissions under Section 17, Evidence Act is affected by the provisions of Section 145, Evidence Act. In considering the effect of Section 145, it is clear that one of the purposes, for which an admission can be used under Section 17, will, in no way, be affected by the provisions of this section. If an admission is sought to be used for determining the burden of proof, Section 145 would not come into play at all. The admission will continue to be admissible for such a purpose even if the provisions of Section 145 are not complied with, so that when the party making the admissions comes into the witness-box and makes a statement contrary to it, he need not be contradicted by his previous admission in writing. Further, if the party, against whom the admission is sought to be proved, does not come into the witness box at

all and is not examined as a witness, Section 145 would not come into play. In such a case, the admission would be admissible not only for the purpose of determining the burden of proof if it relates to a fact in issue, but also for the purpose of proving the fact in issue or the relevant fact in respect of which the admission may suggest an inference. When, however, the party making the admission does come into the witness-box and makes a statement contrary to the admission, it would appear that Section 145 would come into operation and before the other party can use the admission for the purpose of contradiction, it would be incumbent on that party to draw the attention of the maker of the admission to those parts of the admission which are to be used for the purpose of contradicting him. When such a position arises, in my opinion, the admission will not be admissible and cannot be used for the purpose of contradicting the evidence given by the maker of the admission in Court. This view, I consider, fully gives effect to the principle underlying Section 145 which is that it is unfair to contradict a witness by his previous statement without bringing the statement to the notice of the witness and affording an opportunity to him to tender an explanation as to why he made the previous statement or to clear up the point of ambiguity or dispute. If the person, who made the admission, does not choose to appear as a witness, the only course open is to rely on the admission made by him and no question can crop up of any contradiction arising between the admission and the statement on oath made in Court. It is only when the maker of the admission enters the witness-box and makes a statement contradictory to the admission that it becomes necessary to decide which of the two statements made by the same person is true and reliable. The statement made in Court is on oath whereas the admission may or may not be on oath. Section 145 requires that the statement made on oath is not to be contradicted by a previous statement unless the attention of the witness is drawn to it and he is given an opportunity on oath either to admit it or deny it and give his explanation as to why he made the previous contradictory statement. I am unable to see any reason why the scope of Section 415 should be held to be limited so as to exclude cases where the previous statement happens to be a statement of a party amounting to an admission. No doubt, Section 21 makes a provision that admissions may be proved against a person or his representative in interest but under this section enabling proof of admissions cannot be read as being independent of all other provisions of the Indian Evidence Act and the limitation placed on the right of proving the previous, statement of a witness laid down in Section 145 must be held to govern the power of proving an admission under Section 21 also.

48. The point of view expressed by me above explains the apparent discrepancy between two views expressed by the Privy Council in 42 Ind App 135 (A) and in ILR 29 All 184 (PC). In the case of Bal Gangadhar Tilak, the previous statement of Bal Gangadhar Tilak were not sought to be used for determining the burden of proof on the question of adoption which was the fact in issue. The facts of that case have also been mentioned by my brother Agarwala J., and I need not repeat them. Their Lordships of the Privy Council, dealing with the judgment of the High Court, remarked :

> "A further mischance in point of procedure must now be mentioned. As already stated,

> the testimony of the plaintiffs' witnesses is not contradicted orally, and is internally a consistent body of evidence. But various minutes and documents are the subject of minute analysis, observation and comment by the learned Judges of the High Court with a view to rebutting it."

Their Lordships of the Privy Council then proceeded to consider the propriety of the use of the minutes and documents by the High Court in this manner and went on to add :

> "But they must also record their dissent from the view that the use made of these documents in this case was justified by law. On general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity, if documents are to be used against him, to tender his explanation and to clear up the particular point of ambiguity or dispute. This is a general, salutary, and intelligible rule, and where a witness's reputation and character are at stake the duty of enforcing this rule would appear to be singularly clear. Fortunately the law of India pronounces no uncertain sound upon the same matter. By Section 145, Evidence Act, 1872, it is provided that
> 'A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to the matters in question without such writing being shown to him or being proved; but if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

Their Lordships have observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed. The verdict of the High Court is an inferential verdict - none the less sweeping on that account - but an inferential verdict actually of perjury. What are the premises upon which this inference proceeds ? In no inconsiderable degree they consist of documents, statements, even turns of expression, which are used to confound the spoken word. Had the safeguards set up by the law with respect to the use of documents been observed ? Not at all. Not only have documents been used for the purpose of contradicting witnesses without obeying the injunctions prescribed by law, but the inference thus derived, and improperly derived, from the documents has resulted as stated, in an inferential verdict of perjury." It will be noticed that the use of the documents by the High Court was for two different purposes. One was the purpose of contradicting witnesses and the other for drawing an inference that the witnesses had committed perjury. Their Lordships of the Privy Council objected to the use of the previous statements for either of these two purposes without complying with the provisions of Section 145, Evidence Act and with the general principle enunciated by them which was held to have been given statutory form in India by Section 145 Evidence Act. One of the principal witnesses was Mr. Bal Gangadhar Tilak who was also a party to the suit. His statements contained in the documents, therefore, clearly amounted to admissions of a party. If their Lordships of the Privy Council had been of the view that an admission of a party could be

proved under Section 21 and there was no need of complying with the requirements of Section 145 when using such an admission, they would not have criticized the High Court for using those documents for the purpose of contradicting the evidence of Mr. Tilak and disbelieving him and even for the purpose of holding that he had committed perjury. No doubt, those admissions were not admissions of all the parties but, at least, against Mr. Tilak those admissions could have been used under Section 21 in order to contradict his depositions on oath if Section 145 had not been applicable. Their Lordships condemned the use of previous statements for such a purpose which indicates that they laid down the principle that even admissions of a party proved under Section 21 could not be used for contradicting the evidence of that party if he appears as a witness and makes a contrary statement on oath the pending litigation.

49. Most of the High Courts in India, which have held that an admission proved under Section 21 can be used for contradicting the statement on oath given by the party making the admission even when he appears as a witness, have relied on the other decision of the Privy Council in ILR 29 All 184. In that case, the admissions in questions were contained in two documents : One of the documents was deed of gift dated 25-6-1892, duly executed by Partap Singh and Makund Singh, in which Makund Singh was stated to be the adopted son of Raja Kishan Singh, rais of Patan, in the Sewai Jaipur State. The second was a copy of a power of attorney dated 10-6-1891, duly executed by Partap Singh and Makund Singh, in which the latter was similarly described, and in the body of the deed he was specifically stated to be the ruler of Patan. In the list, with which these documents were filed, the object for which the first document was to be given in evidence was stated to be "To prove that Makund Singh is not the son of Partap Singh, and that he did not mention himself in this document to be the son of Partap Singh;" and the object, for which the second deed was proposed to be "To show that Raja Makund Singh is the adopted son of Raja Kishan Singh, and that in this mukhtarnama (power of attorney) Raja Makund Singh has described himself as the adopted son of Kishan Singh.

> "Their Lordships held that, as a result of the mention of the object for which the documents were being filed, there could be no ground for the suggestion that the plaintiffs were not fully informed that this question of adoption would be raised, and that one, if not both, of these documents would be relied upon to prove the admissions of Makund Singh upon this question of adoption contained in them.

It was further held that, "indeed, that was the only purpose for which they could have been given in evidence in those suits." Subsequently, Makund Singh was himself examined by interrogatories in the suit. When Makund Singh was thus examined, his admissions contained in the two documents mentioned above were not brought to his notice nor was he called upon to give any explanation for those admissions. Their Lordships of the Privy Council then proceeded to consider the effect of those admissions and remarked :

> "The learned Chief Justice in his judgment points out that the burden of proving that the

> adoption relied upon took place rests on the defendant. That is undoubtedly so, but it is difficult to conceive how she could, as against Makund Singh prima facie at all even discharge that burden more effectually than by proving his solemn statement under hand and seal that it did take place.

The proof of this admission shifts the burden, because, as against the party making it, as Baron Parke says in (1840) 6 M and W 664 at p. 669 (D). What a party himself admits to be true may reasonably be presumed to be so.' No doubt, in a case such as this, where the defendant is not party to the deeds and there is therefore no estoppel, the party making the admission may give evidence to rebut this presumption, but unless and until this is satisfactorily done, the fact admitted must be taken to be established."

After further discussion on this point, their Lordships then went on to hold :

> "And the question for the decision of their Lordships in effect resolves itself into this : Has Makund Singh proved satisfactorily that the admissions contained in the deeds to which he was a party are untrue in fact? In the opinion of their Lordships that question must be answered in the negative. Their Lordships must therefore hold that on the materials before them the title of the plaintiffs to recover has been disproved." The manner, in which their Lordships dealt with the admissions of Makund Singh in that case, illustrates the distinction drawn by me above between an admission of a fact in issue and an admission relating to a mere relevant fact.

In that case, Makund Singh denied a fact in issue and their Lordship held that the defendant, by proving the admissions of Makund Singh, had shifted the burden of proof on him, so that it was for Makund Singh to prove that there had been no adoption and, consequently, it was his duty to explain those admissions satisfactorily, or to show that they were untrue in fact. Nowhere did their Lordships of the Privy Council hold that those admissions were admissible for the purpose of contradicting the oral testimony given by Makund Singh as a witness in the case. In fact, it was because the admissions were not being used for contradicting the oral testimony of Makund Singh as a witness that their Lordships had no occasion to refer to the provisions of Section 145, Evidence Act and to consider its effect on the admissibility or proof of the admissions. In my opinion, therefore, this decision of their Lordships of the Privy Council does not support the proposition that, in the case of an admission, it is not necessary for a party making use of it to draw the attention of the party, who made the admission, under Section 145, Evidence Act, before using it for the purpose of contradicting his oral testimony in Court. Since their Lordships were not using the admissions for contradicting the oral testimony given in Court, it was also not at all necessary for them to refer to their views expressed in the earlier case of Bal Gangadhar Tilak, cited above.

50. It, however, appears to me that there may also be causes where the admissions contained in

an earlier document may not contradict the evidence of the witness given on path in Court and may yet provide useful evidence in respect of a fact in issue or a relevant fact. In such a case also, the use of the admissions as substantive evidence in the case may be permissible without drawing in cross-examination the attention of the maker of the admissions to those admissions. Section 145, Evidence Act only comes into play when a question arises of contradicting the oral testimony given on oath by a person as a witness. If a witness keeps silent on facts which are to be inferred from an admission, an inference can be drawn from the admission without raising any question of contradiction between the inference and the statement on oath made in Court. Section 145 only governs those cases where the previous statement is sought to be used for contradicting the oral testimony. Its scope does not appear to be so wide as to cover even those previous statements which may be admissible under other provisions of the Indian Evidence Act and which do not contradict the oral testimony given by the witness in the pending litigation in which he appears in that capacity.

The applicability of Section 145 must be confined to those cases where the admission relates fact and those cases where the admission relates to fact in issue or a relevant fact and the party relying on it intends to use it not merely for the purpose of determining the burden of proof or for the purpose of using it as substantive evidence in support of his case but also for the purpose of contradicting the oral testimony given in Court as a witness. If the admission cannot be used as substantive evidence without contradicting the oral testimony, Section 145 does not permit the use of that admission without drawing the attention of the witness to the contradiction and affording him an opportunity to give an explanation.

51. My brother Agarwala J., has also cited a number of decisions of the various High Courts in India. It appears to me to be unnecessary to deal with those decisions because, in almost all of them, the decision is based on an interpretation of the decision of their Lordships of the Privy Council in ILR 29 All 184. I have already indicated my view of the interpretation of the decision of their Lordships of the Privy Council in that case. I must say with respect that I am unable to agree with the view expressed by the Patna High Court in AIR 1936 Patna 588 that the relevancy of the admission is not affected by the question of whether the defendant may or may not have given evidence consistent with the statement contained in it, and with the view expressed by the Pepsu High Court in AIR 1951 Pepsu 101 that

> "evidently it was for the maker of the admission to come into the witness-box where the objection was taken at the very early stages and explain as to what led him to make this admission. In the absence of any such explanation the value of this admission is rather enhanced."

I have already indicated above my reasons for not agreeing with this view. On the other hand, I respectfully agree with Mahajan J., in AIR 1946 Lahore 65 (PB) where he expressed the view that

> "it is only where the party goes into the witness box and makes a statement inconsistent

with the previous statement that a duty is cast by the provisions of Section 145, Evidence Act, on his opponent to confront him with his statement inconsistent with the statement made in Court, and if he does not do it at that stage then those previous statements can no longer be used as legal evidence to contradict his evidence."

In my opinion, this decision of Mahajan J., is, in no way, in conflict with the decision of the Privy Council in Chandra Kunwar's case cited above.

52. I may also refer to a decision of their Lordships of the Supreme Court in *Tara Singh v. The State* [15]That case is not directly in point as it did not deal with the effect of Section 145, Evidence Act on the admissibility of an admission provable under Section 21 of that Act. The case is, however, analogous to the point arising in this reference to the Pull Bench as, in that case, the Supreme Court considered the effect of Section 145, Evidence Act on the admissibility of a statement provable under Section 288, Criminal Procedure Code Section 21, Evidence Act makes an admission of a party admissible as against that party. Section. 288, Criminal Procedure Code makes the evidence of a witness recorded under the specified circumstances, admissible during the trial of the case before the Court of Session. Section 288, Criminal Procedure Code appears to go a step farther than Section 21, Evidence Act as it specifically provides that the evidence of the witness previously recorded may be treated as evidence in the case whereas Section 21, Evidence Act is merely an enabling section giving power to the party relying on the admission to prove it. Their Lordships of the Supreme Court, in the case cited above, held that the provisions of Section 288, Criminal Procedure Code are governed by Section 145, Evidence Act, so that the previous statement of a witness sought to be treated as evidence under Section 288, Criminal Procedure Code can only be used as such if the attention of the witness was drawn to the contradiction. In my opinion, the same principle is applicable when the effect of Section 145, Evidence Act is considered on the provision of Section 21, Evidence Act. Though Section 21 permits an admission to be proved against a party, if that party appears as a witness and the admission is used to contradict his evidence given in Court, this can only be done after complying with the provisions of Section 145, Evidence Act.

53. I would, therefore, answer the two questions referred to the Full Bench as follows :

[15] AIR 1951 SC 441

(1) Where in a civil suit a party produces documents containing admissions by his opponent, which documents are admitted by the opponent's counsel, and the opponent enters the witness-box, it is obligatory on the party who produces those documents to draw in cross-examination the attention of the opponent to the said admissions before he can be permitted to use them for the purpose of contradicting the statement of the opponent.

(2) The party, producing these documents, can be permitted under Section 21, Evidence Act to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent, when appearing as a witness, makes no statement at all

contradictory to the admissions contained in the documents but if the opponent, in his statement in Court, gives evidence contradicting that contained in the admissions, the admissions cannot be used as substantive evidence unless his attention is drawn in cross-examination to those admissions.

Beg, J.

54. The two questions to a large Bench and the facts and circumstances put of which the said questions have arisen are given in the judgment of my learned brother Agarwala J., It is not, therefore, necessary for me to recapitulate them. The answer to the two questions will depend on the reply to the short question as to whether the provisions of Section 21, Evidence Act are in any way controlled by the provisions of Section 145 of the said Act. Having given my earnest consideration to this matter, I find it difficult to persuade myself to agree with the view that Section 21, Evidence Act is, in any way, controlled, restricted or modified by Section 145, Evidence Act.

55. It appears to me that the argument that the latter section controls the former is based on a mis-apprehension of the purpose, nature and effect of the evidence which is sought to be imported by the two sections. In order to appreciate the difference that exists between the nature of evidence sought to be embraced by the two sections, three prominent features of admission as a piece of evidence should be steadily kept in mind. These features may be enumerated at the very outset as follows :

(1) An admission constitutes a substantive piece of evidence in the case; and, for that reason, can be relied upon for proving the truth of the facts incorporated therein.
(2) An admission has the effect of shifting the onus of proving to the contrary on the party against whom it is produced with the result that it casts an imperative duty on such party to explain it. In the absence of a satisfactory explanation, it is presumed to be true.
(3) An admission, in order to be competent and to have the value and effect referred to above should be clear, certain and definite, and not ambiguous, vague or confused.

56. All the three above-mentioned propositions are now too well-established to admit of any doubt and, to my mind, the answer to the two questions which confront this Bench is an inescapable and necessary corollary to the aforesaid propositions. In every case in which a contrary view of this matter is taken, it appears to me that someone or other of the above three features of admission is ignored.

57. An admission is concession or voluntary acknowledgement made by a party or someone identified with him in legal interest of the existence of certain facts which are in issue or relevant to an issue in the case. The predominant characteristic of this type of evidence consists in its binding character. Admissions are broadly classified into two categories : (a) judicial admissions

and (b) extra-judicial admissions. Judicial admissions are formal admissions made by a party during the proceedings of the case. Extra-judicial admissions are informal admissions not appearing on the record of the case. Judicial admissions being made in the case are fully binding on the party that makes them. They constitute a waiver of proof (vide Section 58, Evidence Act). They can be made the foundation of the rights of the parties. We are, however, concerned with what are called extra-judicial or informal admissions. They are also binding on the party against whom they are set up. Unlike judicial admissions, however, they are binding only partially and not fully, except in cases where they operate as or have the effect of estoppel in which case again they are fully binding and may constitute the foundation of the rights of the parties (vide Section 31, Evidence Act).

58. In the Evidence Act extra-judicial admissions are dealt with in Chapter II which deals with the "relevancy of facts". Section 17, Evidence Act defines an admission

> "as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact and which is made by any of the persons and under the circumstances hereinafter mentioned."

Sections 18 to 20 specify the circumstances and the conditions under which statements made by a party or other persons, for example, an agent of a party or a person having proprietary or pecuniary interest in the subject-matter of proceedings, or a predecessor-in-interest of a party or by a person whose position must be proved as against any party to the suit, or by a person expressly referred to by a party to the suit for information may be treated as an admission. Section 21 deals with the relevancy and proof of admissions. It provides that admissions are relevant and may be proved as against the person who makes them or his representative-in-interest, but they cannot be proved by or on behalf of the person who makes them or by his representatives-in-interest except in the three cases specified therein.

59. It would, therefore, appear that admissions are pieces of original evidence and may be filed as such by a party against his opponent to demolish his opponent's case or to establish his own. They provide inherent evidence of the truth of the facts contained therein. As items of evidence in the case their value will depend upon the particular circumstances of each case. But if the statements embodying them are in writing and their meaning certain and clear, they constitute evidence of highest value when produced and relied on against the party who made them. They are powerful weapons of offence in the hands of a party and, once wielded, their single stroke, if unrepelled and unresisted, might under certain conditions turn out to be the final and finishing flourish of the battle proving completely fatal to the entire case of the adversary.
Where such admissions are shown to be voluntary and deliberate, and made without any mistake, fraud, or misapprehension, they may form an insuperable hurdle in the way of the party against whom they are produced in the heavy responsibility of having to explain the circumstances under which such admissions emanated from him. In the absence of such explanation or rebuttal on his

part, they are presumed to be true; and may by themselves, be quite enough to form the substantive basis of a finding of a fact in issue or a relevant fact. Their destructive or constructive tendency is a wide one, and their repercussions cover the entire case.

60. It is further significant that none of the sections mentioned above contain any limitation or restriction of the purpose for which admissions can be relied on against a party against whom they are produced. The above sections specifically deal with admissions, and exhaustively define in meticulous detail the exact conditions, limitations, restrictions and circumstances under which they are admissible as well as the extent of their relevancy and mode of their proof, yet none of them refer to any such conditions precedent or subsequent as are contemplated by Section 145, Evidence Act. Further, no such restrictions are in any way to be traced within the four corners of Chapter II which deals exhaustively with the "relevancy of facts" provable in a case. Any such limitations therefore, if sought to be fastened on Section 21 by the provisions of a far-flung section like Section 145 which finds its place in Chapter X and deals with the "examination of witnesses" must, therefore, be shown to be justified by express words of limitation contained in the section itself or by necessary implication arising there from. An examination of Section 145, however, shows that there are no such express words of limitation contained therein. It is significant that although Section 145, Evidence Act is itself a self-contained section defining exhaustively and in detail its own amplitude, the conditions under which it can be invoked and the mode and procedure of proof of the evidence that it seeks to import, yet it contains no express reference to Section 21 at all. On the other hand, an examination of its provisions indicates that the entire trend of this section is to leave the provisions of Section 21 untouched. A deeper examination of Section 145 further discloses that by necessary implication it leaves the provisions of Section 21, Evidence Act unimpaired and unaffected.

61. At this stage a perusal and analysis of the various aspects of Section 145 is necessary to bring out the contrast between the evidence contemplated by Section 145 and Section 21, Evidence Act. Section 145 provides as follows :-

> "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

62. I now propose to discuss the above matter from various aspects under seven headings enumerated and underlined below :-

1. Stages at which Section 145 and Section 21 evidence adducible differ.
Section 145 is to be found in Chapter X which relates to the "examination of witnesses". Its opening words viz., "when a witness is cross-examined" themselves show that the stage when

evidence under Section 145 is adduced is reached only after a witness is produced and examined. On the other hand, Section 21 is to be found in Chapter II which relates to the "relevancy of facts", and admission evidence which it makes relevant can be adduced quite independently of the question whether a witness is produced or not.

2. Intention of producing evidence under Section 145 differs from that of evidence under Section 21.

The second portion of Section 145 which is relevant for our purposes clearly lays down that the evidence contemplated by it "is intended to contradict" the witness. It is, therefore, evident that Section 145 refers only to such evidence as is adduced solely with the intention of contradicting a particular witness who is in the witness-box. On the other hand, admission evidence is not intended to contradict any particular witness. It is filed with the intention of contradicting the case of a party i.e. the opponent's case. The case of a party consists of the entire pleadings and evidence of the party. A self-contradiction of a mere witness, therefore, stands on a footing quite different from the self-contradiction of a party; for, as stated by Wigmore in his book on Evidence, Vol. IV, (Edn. 3) para. 1048 at p. 3.

> "The witness speaks in Court through his testimony only, and hence his testimony forms the sole basis upon which the inconsistency of his other statement is predicated. But the party-opponent, whether he himself takes the stand or not, speaks always through his pleadings and through the testimony of his witness put forward to support his pleadings; hence the basis upon which may be predicated a discrediting inconsistency on his part includes the whole range of facts asserted in his pleadings and in the testimony relied upon by him."

No doubt an admission may be and can be used to contradict a party when he appears as a witness, and confusion, therefore, is likely to arise by virtue of this fact. The fact, however, that an admission can be used to contradict a party as a witness does not mean that it was intended to be filed for that purpose. The words "intended to contradict" are to be differentiated from the words "used to contradict."

The fact that an admission may be used to contradict a witness does not mean that it was filed for that purpose. Admissions may be said to have a double purpose. Their main and primary purpose in all cases is to contradict the case of a party. The fact that can also be used in a certain contingency - viz., when a party appears as a witness to contradict that party is merely an incidental purpose. If an admission can be used for two purposes - one being the main or the primary purpose and the other being merely an ancillary or a subsidiary purpose - I find it difficult to understand how the fact that it was not used for the ancillary or subsidiary purpose would make it inadmissible altogether. The contention against the admissibility seems to overlook the fact that even though admission is not used for the ancillary or the incidental purpose, the main or the primary purpose which is its predominant purpose - and a deeper stronger and a wider one - still continues to exist and to sustain the foundation of its

admissibility.
3. The effect of the evidence produced under Section 145 and Section 21, Evidence Act contrasted. It is significant to note that the effect of adducing evidence under Section 145 is only "to contradict a witness." This section merely provides a method for impeaching the credit of a witness by confronting him with a previous contradiction. It is in a way supplementary to Section 155 (3) according to which the credit of a witness may be impeached by proof of former statements inconsistent with any part of his evidence. The effect of adducing this evidence is merely to cast a suspicion on the reliability of the witness. Such evidence has no effect on the truth or otherwise of the facts stated. The utmost that it may show is that the witness is capable of erring in his testimony through bias, dishonesty, slip of memory or in other words, suffer from what is termed as "a defect either in the memory or in the honesty." The effect thus produced is an indefinite one. The end thus attained has been aptly described as "some undefined capacity to err." The following passage from Wigmore, Vol. III (Edn. 3) para. 1018, p. 687 is relevant in this connection :-

> "Since, in the words of Chief Baron Gilbert (ante S 1017), it is 'the repugnancy of his evidence' that discredits him, obviously the Prior Self-Contradiction is not used assertively; i.e. we are not asked to believe his prior statement as testimony, and we do not have to choose between the two (as we do choose in the case of ordinary Contradictions by other witnesses). We simply set the two against each other, perceive that both cannot be correct, and immediately conclude that he has erred in one or the other, - but without determining which one. It is the repugnancy and inconsistency that demonstrate his error, and not the superior credibility of the prior statement."

On the other hand, the effect of producing admission evidence is far more definite and defined. Admission evidence touches the truth and the falsehood of the facts adduced by a party in his pleadings or in his evidence. Whereas Section 145 is intended merely to apply to evidence which would enable a party to argue that a witness is unreliable because there is an obvious contradiction between the two statements, admission evidence would enable a party to argue that a witness is untrue, because the facts which he has deposed to are contradictory to the facts stated by him previously.
In other words, an argument based upon admission evidence invites the Court to throw out the statement made by the witness in Court on the ground that it is false or untrue. On the other hand, an argument based on Section 145 cannot entitle a party to go so far as that. The utmost that it can entitle a party to argue is to say that the witness's statement is unreliable as his statement might or might not be true. Thus the argument which is based on admission under Section 21 being a stronger one than the argument which is based on Section 145, the former dispenses with the necessity of a resort to the latter.

4. Condition precedent for adducing evidence under Section 145 contrasted with Section 21. Under Section 145, Evidence Act before evidence impeaching the credit of a witness by his self-

contradiction is adduced, the attention of the witness must first be called to his previous statement. No such conditions are to be found in the method of proof provided for adducing admission evidence. Section 145 shows that where the Legislature wanted a condition precedent to be attached to the importation of a particular evidence, it did specifically mentioned it in that very section. There is no reason why if this was a condition precedent to the admissibility of admission evidence, it should not have been specifically mentioned in Section 21. In this connection it is strenuously argued that to exempt admissions from the rule of confrontation would result in grave injustice. It would be tantamount to condemning a party without giving him an opportunity of explanation. The statutory or, at any rate, the equitable rule of confrontation should, therefore, apply equally to a party as well as to a witness. The argument, though seemingly specious, is a clearly fallacious one in so far as it ignores the difference between the position of a party and a witness in a case. It is important to note in this regard that a party is present throughout the case, or, at any rate, is deemed to be so. As stated by Wigmore in his book on Evidence, Vol. IV (Edn. 3), para. 1051, "the only object of requiring the warning is to provide a fair opportunity of explanation before the witness' departure, whereas a party is in theory present during the trial, and has in fact ample opportunity to protect himself by taking the stand for any explanation which he may deem necessary after hearing the testimony to his alleged admission." Admission evidence is and can be filed as original evidence in the case. In the present case, the admission evidence was filed by the defendant along with the documents. It was, therefore, fully within the plaintiff's knowledge from the very inception. It was in fact admitted on his behalf. The plaintiff, therefore, had full opportunity of explaining it if he so chose. On the other hand, the words "before the writing can be proved" in Section 145 show that the contradictory statement is for the first time produced at this stage and is not even proved up to that time. The party being present or deemed to be present throughout the proceedings is cognizant or, at any rate, is presumed to be cognizant of everything that goes on in the case. The result is that as soon as admission evidence is adduced, its knowledge is in law automatically brought home to him. Admission evidence is, as it were, flung in the face of a party, and its mere production constitutes from that very moment a standing challenge to the opponent to come forward and meet it by offering an explanation in respect of it, if he has the courage to do it, and if he is fortified by truth in his favor. Moreover, a party is not only cognizant of the proceedings in the case, but is also able to control the proceedings. He has, therefore, full opportunity of not only explaining the damaging piece of evidence, but also of rebutting it by other evidence. He has also the opportunity and the right to fully cross-examine the witnesses of the other party on the lines of explanation given on his behalf. On the other hand, the position of a witness is quite different. He is not present, nor is he deemed to be present throughout the proceedings. He might be quite unaware of what has gone on in the case. In fact, under Section 145 the damaging evidence is first produced when he takes his stand in the witness-box, and after his cross-examination has started. Till that stage, this evidence is not even proved. He might well be taken by surprise, if he is not confronted with it. Moreover, the witness unlike the party cannot control the proceedings. He cannot give any rebutting evidence nor can he divert the course of cross-examination on the lines of his defense. The only occasion for his explanation is when he is

present in the witness-box. Confrontation in the witness-box is, therefore, the only opportunity and method of providing him an occasion to offer his defense. Such a step is, therefore, absolutely necessary in the interests of justice and fair-play in the case of a witness. None of these considerations apply to the case of a party. Thus, all the reasons that exist in favor of laying the foundation of forewarning in the case of a witness are conspicuous by their absence in the case of a party. There are, therefore, neither statutory nor equitable grounds for extending the rule of confrontation to the case of a party appearing as a witness. The well-known principle of natural justice that a person should not be condemned unheard may, therefore, apply to the case of a witness who is not a party, but is clearly inapplicable to the case of a witness who is also a party to a case.

5. Extent of evidence adducible under Section 145 and Section 21, Evidence Act differs. Under Section 145 only that portion of the previous statement can be adduced in evidence which is contrary to the statement of the witness. The evidence in that section is confined to "those parts of it which are to be used for the purpose of contradicting him." The entire document cannot be filed. The scope of evidence is, therefore, limited. On the other hand, admission has to be taken as a whole, and once a piece of evidence is admissible as an admission, the entire evidence is to be put in. If Section 145, Evidence Act controls Section 21, then the conflict of principles governing the importation of two kinds of evidence might lead to inconsistency. Take, for example, a case where a party appears as a witness and makes a statement contradicting only a part of his previous statement which is admission. If Section 145 applies, then only that specific portion of his previous statement should be admissible which is contradictory and with which he is confronted even though, according to the principles governing admission evidence, the whole evidence should be considered.

6. Form of evidence under Sections 145 and 21, Evidence Act, may differ.
An application of Section 145 to Section 21 might result in another inconsistency. Section 145 is applicable only if the previous statement "is in writing or reduced into writing." On the other hand, as Section 17 itself states, an admission might be either "oral or documentary." Section 145 would not. therefore, in terms apply to oral admissions. Further, admissions might also be by conduct or even by silence, and admissible under Section 8, Evidence Act. Strictly, Section 145 will not apply to this kind of admissions either. The result, therefore, would be that Section 145 would strictly apply only to one type of admissions viz., written admissions and not to others. This would be an inconsistent position. It might be argued that the general principle of confrontation of a witness which is a principle of equity and fair play should also be applied to statements which are not in writing. This argument might have force so far as the evidence of an ordinary witness is concerned. As already shown above, there are strong considerations militating against the extension of the equitable principle of confrontation to the case of a party-witness.

7. Other inconsistencies and Difficulties.

The acceptance of the contrary view might give rise to other difficulties and inconsistencies also. Thus a statement which is admissible under Section 21 as admission might also be admissible under Section 6 as res gestae or under Section 8, Evidence Act or some other section relating to the relevancy of facts in Chapter II. Would Section 145 then be considered to be so potent as to override the entire solid body of these sections that deal with the importation of substantive and original pieces of evidence and makes them fully relevant and admissible in the case. The principles lying behind the admissibility of evidence under these sections appear to be of too strong and of too compelling a nature to permit of their being swept away so easily by considerations applicable to evidence of such a frail nature as is embraced by Section 145, Evidence Act.

Further, as already pointed out, admissions may be made not only by a party but also by other persons who are identified in legal interest with him or who are his privies (vide Sections 18 to 20, Evidence Act). If Section 145 is applied to admissions, it can strictly speaking be applied only to a certain type of admissions, namely, admissions that are made by the party-witness himself. It would not be applicable to admissions made by other persons which are equally binding on him as admissions. The result would be that Section 145 would be applicable to one class of admissions and inapplicable to another class of admissions. It is argued that admission might be admissible if the party making it did not appear in evidence; or, if he did appear but did not make a statement inconsistent with his previous admission; but it should be inadmissible only in a case where a party did appear in evidence and having appeared and having made a statement inconsistent with his previous admission was yet not confronted with the previous admission. This argument obviously involves a series of inconsistencies. The same evidence would be admissible in the first two cases, but not in the third case. Moreover, the result of accepting this argument would be that the same evidence which was perfectly admissible upto a certain stage in the same case would become quite inadmissible after a certain stage. Thus, if a party did not appear in a case in the trial Court and the case went up in appeal and it was remanded from appeal; and, at that stage, the party appeared in the case, and made a statement inconsistent with the admission set up against him, and was not confronted with his previous admission, the position would be that the same statement which was fully admissible in the prior stage of the case and even in appeal, would suddenly become inadmissible from the stage at which the said party appeared in the witness-box after remand and made an inconsistent statement. It does not appear to be logical that admission fully proved and admissible against a party at the earlier stages of the case should, as a result of his own act, suddenly become quite inadmissible at the later stages of the same case. Admissibility or inadmissibility would thus be left at the mercy of the party against whom it is tendered. It is possible to imagine the rules laying down conditions precedent to the admission of evidence, but it is difficult to imagine admissible evidence becoming inadmissible by conditions subsequent. The contrary view, therefore, appears to be illogical and unreasonable. Moreover, the inconsistency might not be express. It might arise only by implication. Would the inconsistency that would invalidate a perfectly valid piece of evidence include Implied inconsistency also; and if so, the determination of the preliminary question might itself involve the Court in difficulty. Moreover, it is too much to say that the heavy burden of

explanation which lies on a party against whom a clear admission is set up is discharged by a dubious statement of conveying a bare denial inferable merely by implication. Apart from the inherent considerations that emerge from a discussion of Section 145, Evidence Act, the rule of confrontation, if applied to admission evidence, would come into sharp conflict with the well-recognized rule that admission shifts the burden of proof and casts upon the party making it a duty to explain it. The latter rule is now too strongly established to be shaken or subverted. The former rule is still in too shaky a condition to be accepted without close examination. The non-application of the rule of confrontation to admissions is really a necessary corollary to the unquestioned rule relating to the shifting of the burden of proof. If it is the duty of the party making the admission to explain it, then to apply the rule of confrontation to the case of admission would result in the circumvention of the said rule. The duty is laid by law on the party against whom admission is set up, as he is the person who made the admission. The explanation must, therefore, be peculiarly within his own personal knowledge. It is not the duty of the party relying on admission to call upon the opponent to explain his admission. To expect the party relying on an admission to call for an explanation is tantamount to postulating that the duty of the party on whom the burden lies is to be performed by the party on whom the burden does not lie. It is for the party who is under the bounden duty to discharge the burden to offer an explanation of his own accord. It is not for the party on whom no such burden lies to extort or to extract an explanation from the party whose admission it has produced. Once it is held that it is the duty of the party relying on the admission to compel the other party to offer an explanation, then the natural and logical corollary of this position is to go a step further and to hold that where the opponent does not appear the said party should also be under an obligation to summon him in evidence and then to confront him with his own admission a step which he can only take after getting him declared as a hostile witness. It would have to be conceded that this cannot be the law. Thus the acceptance of the contrary view would not only result in the complete inversion of the rule relating to the burden of proof which governs all admissions, but would also lead to situations which are logically untenable.

63. It is next argued that the rule of confrontation might not apply in a case where the party does not appear as a witness or where the party does appear in the witness-box and remains silent, but it must apply in a case where a party has appeared and made an inconsistent statement on oath as the position in the last case is greatly different between the first two positions and the third. The primary question in all cases is one and the same viz., where the party making an admission has discharged the burden that lay on him. A mere inconsistent statement is not an explanation. On the other hand, it emphasizes the want of explanation. The burden still remains undischarged. The fact that an inconsistent statement is made on oath also does not improve the position. If at all, the position of a party who makes an inconsistent statement on oath becomes worse, for whereas in the first two cases the inconsistency is latent in so far as it lies embedded in the pleadings and other evidence in the case, the effect of an inconsistent statement by the party himself on oath is to make this latent inconsistency a patent one. Far from discharging the burden, therefore, it has made the inconsistency more accute, and the contradiction more glaring.

There may be some justification for the absence of explanation if a party does not appear or is unable to appear. Even if he appears and remains silent, it can be said that the matter might have escaped the attention of the party. The fact, however, that the party did make an inconsistent statement shows that in spite of the fact that the party was fully cognizant of the fact that a contradictory statement of his was staring him in the face, the said party fought shy of the explanation and deliberately evaded disclosure of facts of which he alone had personal knowledge. If, under the circumstances and in spite of the fact that he had appeared in the witness-box, a party does not choose to give an explanation on oath, but merely gives an inconsistent statement, the position of the party relying on the admission, in my opinion, becomes stronger. It will then be open to the party relying on the admission to argue that in spite of the fact that the party did appear in the witness-box and was cognizant of the admission, he had failed or rather deliberately avoided to give an explanation and the presumption, therefore, against the party must operate more strongly.
Even if there was a choice of truth between the two statements, one made in Court and the other made previously out of Court, there can be no question of competition between the two. They cannot stand on equal footing. If a choice has to be made, there is every reason to prefer the self-harming statement made out of Court to the self-serving one made in Court. The one made in Court is an interested statement after the controversy has arisen. It is made post litem motam. It is hardly of any value. It is obviously a self-regarding statement of a highly interested person made to subserve the immediate purposes of his own case. The previous statement of the party which was made at an anterior date is certainly entitled to a greater weight, as it was made before the controversy had arisen. It was made antelitem motam. The minds of the parties at that time were not blinded by the bias generated by the case, nor were their hearts polluted by the self-interest created by it. Under the circumstances, I do not think that the position is in any way improved by the party coming in evidence and making a self-serving inconsistent statement. If at all, the position is aggravated.

64. One thing, however, is important to note in this connection. In order that admissions may have the far-reaching effect of saddling the party against whom they are produced with the grave responsibility of having to explain them, they should be clear and certain and not vague and ambiguous. Clarity and certainty are, in other words, the necessary ingredients of a proper admission. Although admissions shift onus on the party against whom they are produced, it is to be remembered that the initial onus of producing the admissions and proving that the piece of evidence produced is admission in fact and in law lies on the party setting it up. Therefore, before a party can be allowed to take advantage of an admission, it should prove before the Court that the alleged statement or document does contain a clear and unambiguous acknowledgement of facts unfavorable to the conclusion for which the maker of admission contends in the case. If the admission on the face of it is ambiguous, vague and uncertain, the initial onus of proving that the statement relied on is a proper admission in law is itself not discharged. In other words, it can be said that an ambiguous admission is no admission at all. Or, it may be said that it does not amount to an admission and it will not, therefore, have the effect of shifting the onus.

Further, in the case of an ambiguous statement, the statement itself being dubious speaks with two minds. The minds of the parties in such a situation might be running at cross-purposes. In such a case, there is a danger that the opposite party against whom it is produced might be taken by surprise because the meaning which is sought to be put on such an admission by the party relying on it might be quite different from the meaning which was actually put on it by the party by whom it is alleged to be made. This would, therefore, be a case where an alleged admission is itself incompetent as an admission. Such a statement, although set up as an admission, will not have any substantial merit as such. In the above view of the matter, in such cases there are good reasons why both the statutory as well as the equitable rule of confrontation should be attracted. Section 145 will come into play because the alleged statement having fallen short of admission becomes incompetent as such, and the initial burden of proving an admission has not been discharged. The rule of equity will come into operation, because there is a danger that the party might be taken by surprise and condemned unheard.

65. Reference may now be made to the relevant law on the above subject. The most important pronouncement in support of the view propounded above is contained in a judgment of their Lordships of the Privy Council reported in ILR 29 All 184. In that case the plaintiff Mukund Singh came to Court with the allegation that he was the son of Partab Singh, and as such entitled to the estate through him. Partap Singh was natural father. The defendant sought to defeat the claim of the plaintiff by producing two deeds - one a deed of gift and the other a power of attorney - both executed by him. Both these deeds contained clear admissions by the plaintiff Mukund Singh showing that he was the adopted son of Kishan Singh elder brother of Partap Singh.
Mukund Singh came in evidence and set up a case inconsistent with the clear admissions contained in the said deed. He was not, however, cross-examined on the contents of the said deeds by the party relying on those admissions, nor was he confronted with them when in the witness box. In spite of it, the defendant in her arguments utilised these admissions to destroy the case of the plaintiff and to establish her own case and both these admissions were considered to be fully admissible by their Lordships of the Privy Council. After observing that the burden of proving the adoption lay undoubtedly on the defendant, they went en to make the following significant pronouncement :

> "But it is difficult to conceive how she could, as against Mukund Singh prima facie at all events discharge that burden more effectually than by proving his solemn statement under hand and seal that it did take place. The proof of this admission shifts the burden, because, as against the party making it, as Baron Parke says in (1840) 6 M and W 664, at p. 669 (D) : 'What a party himself admits to be true may reasonably be presumed to be so.' No doubt, in a case such as this, where the defendant is not party to the deeds and there is therefore no estoppel, the party making the admission may give evidence to rebut this presumption, but unless and until that is satisfactorily done, the fact admitted must be taken to be established. The law upon the point is clear."

Later on their Lordships cited with approval the observations of Bayley J., which are to the following effect :

> "There is no doubt but that the express admissions of a party to the suit, or admissions implied from his conduct, are evidence, and strong evidence against him."

The above case seems to be on all fours with the present case.

66. On behalf of the opposite party strong reliance has, however, been placed on another case of their Lordships of the Privy Council reported in AIR 1915 PC 7. It may be noted that this was a case in which the plaintiff Jagannath sought to establish that he was the validly adopted son of one Shri Baba Maharaj. Along with him was arrayed Mr. B. G. Tilak, one of the trustees of the estate, as a plaintiff. The defendant contested the factum of adoption. In this case certain minutes and letters written by Mr. B. G. Tilak were produced. It appears that Mr. B. G. Tilak had recorded a detailed account of the proceedings of adoption in these minutes and letters. Their Lordships of the Privy Council relied on the oral evidence of Mr. B. G. Tilak as well as these documents and letters, and upheld the plaintiff's claim. In this case certain observations were made which are relied on for the proposition that when a party comes in evidence and makes a statement inconsistent with his previous admission, Section 145, Evidence Act would apply to that case. This argument assumes that in the said case their Lordships of the Privy Council considered the oral evidence of Mr. B. G. Tilak inconsistent with his previous statement. A perusal of the ruling, however, shows that this assumption is based on a misapprehension of the exact findings of their Lordships of the Privy Council. Their Lordships in that case did not hold that the oral statements of Mr. B. G. Tilak made in Court were in any way inconsistent with his previous statements. The findings of their Lordships on this aspect of the case are as follows :

> "As already stated, the testimony of plaintiff's witnesses is not contradicted orally, and is internally a consistent body of evidence. But various minutes and documents are the subject of minute analysis, observation and comment by the learned Judges of the High Court with a view to rebutting it.

Their Lordships think it right to observe that in view of the serious nature of the verdict of the High Court, they have considered it within their province themselves to peruse the documents. Having done so, they are of the opinion that, taken together, they completely confirm the case made in the witness-box, and that there is no ground, in fact, for the conclusions that they either contradict the testimony or cast any reasonable doubt upon it." (at p. 11)

Again, in an other part of the judgment while referring to the minutes prepared by Shri Tilak, their Lordships observed as follows :

> "It may be added that when the party returned to Poona, Mr. Tilak wrote out a full account of the transaction, which was recorded in the minutes, and the trustees who had not taken part in the mission to Aurangabad were communicated with, to the effect that the

> adoption was complete. The sworn evidence is entirely in accordance with What has now been stated." (at p. 9)

It is, therefore, clear that this was not a case where their Lordships considered the statement of the party in the witness box as inconsistent with his previous statement. In fact the judgment throughout proceeded on the assumption that the previous statement of the party fully corroborated his statement in Court and was uniformly consistent with it. The defendants, however, tried to twist the obvious meaning of the aforesaid letters and minutes with a view to give it a meaning against the obvious tenor of the said documents. While examining this position taken on behalf of the defendants, their Lordships considered that if this position was accepted, then the documents would appear to be ambiguous and doubtful, and as such, they would attract the application of Section 145, Evidence Act When dealing with this aspect of the matter, their Lordships observed as follows :

> "Here and there, there are expressions in the letters out of which it may with ingenuity be possible to suggest a 'doubtful' meaning; for example, that the word" selected and decided" refer to something in the future. And it is also undoubtedly true that both the minutes of the trustees, and the letters, date the adoption as the 27th whereas in point of fact, as has been seen, it began upon the 27th and was concluded on the 28th."

Again, their Lordships observed as follows :

> "On general principles it would appear to be sound that if a witness is under cross-examination on oath he should be given the opportunity if documents are to be used against him, to tender his explanation and to clear up the particular 'point of ambiguity or dispute." (at p. 11)

The words 'doubtful' and 'point of ambiguity' have been underlined (here into ' ' by me as they form the crux of the above observations and should not be ignored in this connection. It is, therefore, obvious that the observations of their Lordships of the Privy Council were obiter; and, even if accepted, were made on the assumption as to what would be the position if the documents were to be treated as ambiguous or doubtful. This case cannot, therefore, be treated as an authority for the proposition that when a party witness makes an inconsistent statement in his evidence, a duty is cast upon the party producing the admission to confront him with it. Read as a whole, the observations of their Lordships should be confined to the case where the previous statement is considered to be ambiguous or doubtful. Nowhere in the body of the judgment of their Lordships of the Privy Council is there any reference to Section 21, Evidence Act. A reference to Section 21 is only to be found in the course of the arguments of the counsel and proceedings of the case as noted by the reporter of the case. In any case, for the above reasons this case cannot be taken to be an authority for the contrary proposition contended for. This case is clearly explicable on the principle that an uncertain and ambiguous or doubtful admission is

either no admission at all, or it has no value as an admission.

67. The position taken by their Lordships in this case is further cleared up by another important case of their Lordships of the Privy Council reported in *Dolatsinghji Jaswantsinghji v. Khachar Mansur Rukhad*[16] In this case the statement sought to be relied upon as an admission consisted of an agreement and the meaning sought to be put on the agreement by the party relying on it as admission was against the obvious and natural tenor of the document. The agreement relied on as admission was, therefore, ambiguous and not clear. In this connection their Lordships observed that it is enough to say that the admission sought to be taken must be clear and the admission not being clear, their Lordships thought it afforded no evidence as such.

68. Another case of the Privy Council reported in *Mt. Maqbulan v. Ahmad Hussain* [17]would show that evidence cannot be relied on as admission, unless the construction sought to be put upon it is a natural one, and in accordance with the intention of the maker of the statement. In that case their Lordships did not treat the alleged admission to be an admission as the construction sought to be put upon it was characterised by them both as "harsh and uncalled for" and against the obvious intention of the maker. In *U Min Sin v. Ko Kye*[18], a qualified

[16] AIR 1936 PC 150 [18] AIR 1941 Rangoon 117

[17] ILR 26 All 108

admission was treated as no admission at all. Similarly in *Wali Muhammad v. Emperor*[19] a vague admission was considered to be no admission at all.

69. Admission in a civil case is analogous to a confession in a criminal case, and in both the cases the law is that the party should not be saddled with the heavy liabilities which such pieces of evidence entail unless the alleged admission or confession is clear.

> "Since a confession is merely one sort of an admission, all admissions are usable against the accused in a criminal case precisely as against a party in a civil case (ante Section 821); i. e. so long as they have satisfied the confessional rule, or fall without its scope, they are to be tested, like other admissions by the ensuing principles common to all admissions." (Wigmore, Edn. 3, Vol. 4, para 1050 p. 7).

Admissions and confessions are pieces of evidence of a seriously self-damaging type. They cannot be extracted from the words of a party couched in cloudy or ambiguous form or from language of doubtful import.

70. Reference in this connection might also be made to Corpus Juris Secundum. Vol. 31, para 277, at page 1029, where under the heading "Certainty" the law relating to admissions in this regard is enunciated as follows :

> "An admission should possess the same degree of certainty as would be required in the evidence which it represents, and hence mere conjectures or suggestions as to what might have happened if certain circumstances had not occurred are not competent; neither

should an alleged admission be considered where the 'subject matter to which it refers is left uncertain.'

It is not necessary that the statement should be a direct admission; it may be an indirect admission, as where it bears on the issue incidentally or circumstantially. A statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it."

71. The case most, strongly relied on for the proposition that when an inconsistent statement is made by a party-witness Section 145, Evidence Act is attracted, is reported in AIR 1946 Lahore 65 (FB). In this case it was laid down that Section 145 is not attracted where a party does not come in evidence, or where a party does come in evidence and remains silent on the facts relating to admission. Where, however, a party does come in the witness-box and makes an inconsistent statement, according to the view taken in this case, Section 145 would be attracted With profound respect to the learned Judges who decided that case I find it difficult to agree with the proposition of law laid down therein. Although a large number of cases are considered in it curiously enough the attention of the learned Judges in that case was
not invited to ILR 29 All 184 (PC), the most important decision of their Lordships of the Privy Council referred to above on this point. In this case the law laid down was
[19] AIR 1924 All 193
as follows :

"It is only in cases where the party goes into the witness box and makes a statement inconsistent with the previous statement that a duty is cast by the provisions of Section 145, Evidence Act, on his opponent to confront him with his statement inconsistent with the statement made in Court, and if he does not do it at that stage then those previous statements can no longer be used as legal evidence to contradict his evidence." (at p. 72)

As already observed, this statement of law is in conflict with the rule that admission shifts onus of proof to the contrary on a party against whom it is proved. If this view is followed, then a mere statement of a party on oath in Court will be sufficient to discharge the burden that lies upon it. This is not quite correct. I have already shown that the position in all the three situations remains exactly the same so far as the question of onus of proof is concerned. In fact, a closer scrutiny discloses that the situation in the third case, far from being better might, on the other hand, be worse,

72. Further, in this case while referring to the facts of the case reported in AIR 1915 PC 7, it was presumed that their Lordships held that the statement of Mr. Tilak was inconsistent with the previous documentary evidence of letters and minutes. In this regard the case contains the following observations :

> "It may be mentioned that the document relied upon to contradict the evidence of Mr. Tilak and Mr. Khaparde were certain letters in which expressions had been used which led to an admission on their part that there had been no real giving and taking of the boy in adoption and the adoption was incomplete." (at p. 69)

Further, referring to the case of their Lordships of the Privy Council, it was observed that :

> "Lord Shaw took the view that those provisions could not make the previous statements and admissions of a party legal evidence in the case unless the general, salutary and intelligible rule of law incorporated in Section 145, Evidence Act, had been followed and the attention of the party who had appeared as a witness in the case was drawn to specific portions of the previous statements made by him which amounted to admissions and went contrary to his spoken word in the witness-box."

In fact, as I have shown above, the clear finding of their Lordships of the Privy Council was that Mr. Tilak's oral evidence did not go contrary to his previous statement; on the other hand, it was fully corroborated by his previous statement.

73. The other basis of decision in this case is that in fairness a party should be confronted with his previous statement because a person should not be condemned unheard. This principle, as I have already shown, has no application to admissions either as a rule of law or as a rule of equity. 74. Further, in this case the important observations of their Lordships of the Privy Council in AIR 1915 PC 7 to the effect that the documents in question in that case were ambiguous and doubtful is not adverted to. The alleged admission, being not clear, could not be treated as admission.

Thus the very foundation of the observations of their Lordships and the context in which they were made is ignored. Moreover, the argument that an admission under Section 21 is a substantive piece of evidence admissible independently of the question whether a party is produced in Court or not is also not adverted to. Further, it is stated in this case that in 'AIR 1915 PC 7', "their Lordships held that admission relevant under Section 21 could not be used as legal evidence unless the procedure laid down in Section 145, Evidence Act, was complied with." (pp. 72 and 73). In fact, there is no reference to Section 21, Evidence Act in the body of the judgment of their Lordships of the Privy Council at all. For the above reasons, I find it difficult to accept the view taken in ' AIR 1946 Lahore 65 (FB).

75. The view taken by me is fully in accord with the view of a Bench of this Court reported in ' AIR 1955 Allahabad 361' and a Bench of the Patna High Court reported in ' AIR 1936 Patna 588'.

76. I do not think it necessary to refer to other cases as most of the case law on the point revolves

round the interpretation of the two rulings of their Lordships of the Privy Council already discussed in detail - the one in 'ILR 29 All 184' and the other in 'AIR 1915 PC 7'. In my opinion, there is no conflict between the two, and, even if there is any apparent conflict, it is resolved by the third ruling of their Lordships of the Privy Council reported in 'AIR 1936 PC 150' mentioned above.

77. The position in analogous systems of jurisprudence appears to be the same. In this connection reference may be made to Corpus Juris Secundum, Vol. 31, para 273, page 1027 where under the heading of purpose for which admissions are admitted, the law on the point is summarized thus :

> "Admissions are ordinarily admissible as original or substantive evidence of the truth of the statements made or of the existence of fact which they tend to establish while they may be used to impeach or contradict the testimony of the party who made them, their admissibility does not depend on, nor should their effect be confined to, their tendency to do so."

In the subsequent portion the same law is explained as follows :

> "Admissions are ordinarily admissible as original or substantive evidence of the truth of the statements made or of the existence of any facts which they have a tendency to establish, and their admissibility is not dependent on any tendency to discredit the person by whom they were made. Of course, where the party who has made the admissions testifies, and the admissions are contradictory to or inconsistent with his testimony, the admissions are competent for the purpose of discrediting and impeaching him, although they should not be limited to the purpose of discrediting." (pp. 1027 and 1028).

The statement of law on the point contained in the 'Wigmore on evidence' is to the same effect. In the said book, in reference to the rule of confrontation requiring preliminary warning; which is applicable to a witness, it is stated as follows :

> "The rule applies only to the discrediting of a witness, and not to the use of a 'party's admissions', whether or not he is also a witness." (Wigmore, Vol. 3, para 1039, p. 725) 3rd Edn.

78. In Cockle's Cases and Statutes on Evidence (Edn. 6) with reference to the case of '*Slatterie v. Pooley*', it is stated at p. 196 that.

> "Admissions are considered primary evidence against a party, and they are admissible to prove even the contents of written documents, without notice to produce, or accounting for the absence of, the originals."

79. On page 197 of the same book citing Parke, B. it is stated that in such cases "The rule as to

the production of the best evidence is not at all infringed" because "what is said by a party to the suit is not open to that objection" and "what a party himself admits to be true, may reasonably be presumed to be so."

80. Certain other arguments sought to be advanced may now be noted. It is argued that there is a distinction between an admission of a fact in issue and an admission relating to some relevant fact. I, however, find it difficult to accept this distinction.
Reliance in this connection is placed on 'ILR 29 All 184 (PC)', a ruling of their Lordships of the Privy Council mentioned above. This ruling, however, does not indicate any such distinction. On the other hand, it would show that the rule that admission shifts onus is a uniform one and is applicable to all admissions. In fact, in view of the observations of their Lordships in 'ILR 29 All 184 (PC)', the rule might apply even to an admission implied by conduct.

81. It is next argued that in 'ILR 29 All 184 (PC)', their Lordships did not use the admissions for the purpose of contradicting the oral testimony of Mukund Singh, and so Section 145 was not invoked. This argument seems to ignore the point that their Lordships in that case did much more than that. They used the admissions of Mukund Singh for discarding the entire oral evidence adduced by him including the evidence of Mukund Singh himself. In fact, admissions in that case were used by their Lordships to discard the entire case of Mukund Singh. In other words, the destructive range of admissions in that case extended not only to the entire oral and documentary evidence, but also to the pleadings of Mukund Singh. The argument, therefore seems to overlook the real substance and effect of the findings given by their Lordships of the Privy Council in that case.

82. Lastly, strong reliance is placed on a ruling of their Lordships of the Supreme Court reported in ' AIR 1951 Supreme Court 441'. This case is obviously distinguishable. The question in this case arose in a criminal matter in which certain witnesses had appeared in the Sessions Court. These very witnesses had made some statements in the Court of the committing Magistrate which were contradictory to the statements made by them in the Sessions Court.
The question before their Lordships was whether it was necessary to confront these witnesses with their previous statements under Section 145, Evidence Act before their evidence could be used as substantive evidence under Section 288, Criminal Procedure Code The answer given by them was in the affirmative. It is obvious that these witnesses were not parties to the case and their statements could not be treated as an admission. Further, it is to be remembered that Section 288. Criminal Procedure Code is a special provision designed to transmute what would ordinarily be non-substantive evidence under the Evidence Act into substantive evidence. Section 288, Criminal Procedure Code itself therefore, seeks to do something which is obviously banned by the Evidence Act, and is directly against its express provisions. It would be a mistake, therefore, to look to Section 288, Criminal Procedure Code for guidance on merits in a matter confined to a consideration of the Evidence Act only. So far, however, as the line of reasoning of their Lordships of the Supreme Court is concerned, it is to be noted that the reason given by them for

holding Section 145 to be applicable to Section 288 is that Section 288 itself contains express words of limitation to the effect that "the previous statements are to be 'subject to the provisions of the Indian Evidence Act'." (p. 446, Col. 2). Their further observations show that in doing it they were merely "giving effect to the plain meaning of the words 'subject to the provisions of the Indian Evidence Act'" (p. 446, Col. 2). It is significant to note that unlike Section 288, Criminal Procedure Code Section 21, Evidence Act does not contain any such express words of limitation making its provisions subject to any other provision of the Indian Evidence Act. Any such words of limitation are, as already observed, in fact conspicuous by their absence from Section 21, Evidence Act. On a parity of reasoning, therefore, evidence under Section 21 would be free from any such limitations or conditions as are imposed by Section 145. The line of reasoning adopted in this case by their Lordships would, therefore, indirectly support the view propounded in this judgment.

83. To sum up, my conclusions are as follows :

1. Neither Section 21, Evidence Act, nor entire Chapter 2 of the said Act contains any express words of limitation showing that the said section is, in any way, controlled or limited by the provisions of Section 145. Further, no such limitation appears to be imposed by implication.
2. An examination of Section 145 also shows that neither by express words nor by necessary implication does it control or limit Section 21, Evidence Act. On the other hand, it shows just the contrary.
3. Admissions being substantive pieces of evidence their admissibility is not dependent on the appearance or non-appearance of the party as a witness. Section 145 would, therefore, have no application to this class of evidence.
4. To hold otherwise would be to contravene the well-recognised rule that admissions shift the onus of proving the contrary on the party against whom they are set up.
5. The position of a party-witness is quite different from that of an ordinary witness. The reasons that exist for laying the foundation of forewarning before contradicting an ordinary witness do not apply to the case of a party-witness at all. There is no justification, therefore, for extending the application either of the statutory or even the equitable rule of confrontation which applies to an ordinary witness to the case of a party-witness.
6. The acceptance of the contrary view leads to inconsistencies and difficulties, and results in situations which on the face appear to be unreasonable and illogical.
7. The view taken herein is strongly supported by the decision of their Lordships of the Privy Council reported in 'ILR 29 All 184, and is a necessary corollary to the principle laid down therein to the effect that admissions shift onus. It is also supported by the principles accepted in con-tries like England and America where analogous rules of evidence prevail.
8. The above observations, however, would not apply to a case where the alleged

admission is uncertain or doubtful. In such a case, there is every reason why both the statutory as well as the equitable rule of confrontation should fully apply. The statutory rule should apply because admissions themselves being incompetent cannot really be considered to be proper admissions in law, and the initial onus of proving an admission which rests on the party who sets it up cannot itself be said to be discharged. The equitable rule also should apply because such admissions, even though alleged to be so, have in fact no merit as such. Further, there is a danger that the party against whom they are set up might be taken by surprise and condemned unheard.

84. For the above reasons, I would answer the questions referred as proposed by my learned brother Agarwala J.

BY THE COURT.

85. Our answers to the questions referred to us are as follows :

Question No. 1 : Where in a civil suit a party produces documents containing admissions by his opponent, which documents are admitted by the opponent's counsel, and the opponent enters the witness box, it is not obligatory on the party who produces those documents to draw in cross-examination the attention of the opponent to the said admissions before he can be permitted to use them for the purpose of contradicting the opponent provided that the admissions are clear and unambiguous but where the statements relied on as admissions are ambiguous or vague it is obligatory on the party who relies on them to draw in cross-examination the attention of the opponent to the said statements before he can be permitted to use them for the purposes of contradicting the evidence on oath of the opponent.

Question No. 2. - The party producing these documents can be permitted under Section 21, Evidence Act to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to those admissions.

Answers accordingly.