

he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

**30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.**—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

<sup>1</sup>[*Explanation.*—“Offence,” as used in this section, includes the abetment of, or attempt to commit, the offence.]<sup>2</sup>

#### *Illustrations*

(a) A and B are jointly tried for the murder of C. It is proved that A said—“B and I murdered C”. The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said —“A and I murdered C”.

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

**31. Admissions not conclusive proof, but may estop.**—Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

#### STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

**32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.** — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —

(1) **When it relates to cause of death.**—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) **or is made in course of business.**—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) **or against interest of maker.**—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

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1. Ins. by Act 3 of 1891, s. 4.

2. Cf. the Indian Penal Code (Act 45 of 1860), *Explanation* 4 to s. 108.