

It in the english court,  
unless the  
circumstances



**ASSIGN  
BUSTER**

It follows that if it is desired in an English Court to prove a foreign document, then, although such a document may be provable in its country of origin by production of a copy, it cannot be so proved in the English Court, unless the circumstances are such as to render the copy admissible by English law.

[Brown v. Thornton, (6 Ad.

& El. 185)] To what proceedings does the Act: Apply (S. 1) Not apply (S. 1) The Act applies to all judicial proceedings in or before any Court, including Courts- Martial (except those specified in the second column).

The Act does not apply to—(i) Affidavits presented to any Court or officer, or (ii) Proceedings before an arbitrator, or (iii) Proceedings before a Court- Martial convened under the Army Act, the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934, or the Air Force Act. Judicial Proceedings: As stated above, the Act applies to all judicial proceedings. An enquiry is judicial, and not administrative, if its object is to determine the legal relation between one person and another or a group of persons or between him and the community generally. Therefore, if a judge acts without such an object in view, it cannot be said that he is acting judicially. Under the Criminal Procedure Code, the term “ judicial proceeding” includes any proceeding in the course of which evidence is, or may be, legally taken on oath. An administrative inquiry is, however, not a judicial proceeding. Similarly, a proceeding which is subsequently found to be without jurisdiction cannot be a judicial proceeding.

It is to be remembered that Courts have to discharge both administrative as well as judicial duties, and in order that there may be a judicial proceedings,

the judge must act in a judicial capacity, i. e., as a Court. Whether the Act Applies to Civil Proceedings: As seen above, the Act applies to all judicial proceedings, civil or criminal. Generally speaking, the rules of evidence are the same, whether the proceeding is civil or criminal. However, there are certain provisions of the Act (e. g. the doctrine of estoppel) which apply only to civil proceedings.

Likewise, some parts of the Act. (e. g.

, provisions relating to confessions) would apply only to criminal proceedings. Moreover, although the rules of evidence are the same in civil and criminal proceedings, there is a marked difference in the legal effect of evidence in civil matters when contrasted with criminal matters. (This topic is discussed at greater length later in this Chapter, under the heading “Difference between probative force of evidence in civil and criminal proceedings.”) Affidavits: An affidavit is a statement or declaration of a person (in writing) made on oath or affirmation before a person having authority to administer an oath or affirmation (as for instance, a Magistrate or a Notary). It is expressly provided that the Act does not apply to affidavits. Nor are affidavits included in the definition of evidence under S. 3 of the Act. This is so because in an affidavit, the deponent (that is, the person who make the affidavit) asserts certain things based on his personal knowledge.

Normally, contempt proceedings are decided on the basis of affidavits. So also, affidavit evidence is accepted in interlocutory matters. Arbitration: The principal aim of arbitration is to have a controversial matter decided without wasting time and money on a regular suit in a Court of Law. Legal

technicalities do not, therefore, attach to proceedings before an arbitrator, and it has therefore been expressly provided that the Act does not apply to such proceedings. Thus, the strict rules of evidence or the technical rules of procedure do not apply to arbitration proceedings. Similarly, an arbitration award cannot be set aside on the ground that a particular document was improperly received by the arbitrator. However, the arbitrator must always conform to the rules of natural justice. Arbitrators are specially excluded from the ambit of the Act, because such persons are chosen for their respectability and the confidence reposed in them by the parties to the dispute.

Arbitrators are, therefore, not expected to apply the rules of evidence in proceedings before them, but are expected to act according to fundamental principles of fairness and justice, e. g., not recording evidence in the absence of one of the parties, and so on. Proceedings before Tribunals: The Evidence Act has no application to enquiries conducted by tribunals.

But the law requires that such tribunals should conform to the rules of natural justice. The rules of natural justice require that the party should have the opportunity to adduce all the relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given an opportunity of cross-examining the witnesses examined by the other party, and further that no material should be relied upon against him without his being given an opportunity of explaining it. (*New Prakash & Co. v. New Suvama & Co.*

, A. I. R. 1957 S.

C. 232) The Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the inquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which prevails in a Court of Law.