

A a local investigation under the civil procedure



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A fact is said not to be proved when it is neither proved nor disproved. “Proved”: The English author, Cunn, gives the analogy of a merchant who receives information that the rate of exchange will vary, or a General who gets information about the movement of the enemy. The success of either will depend on his judging soundly when he ought to act on the assumption that what he hears is true, or when prudence bids him to assume it to be false.

If he waits for absolute certainty, he would never be able to act at all. Similarly, all that a judge needs to look for is such a high degree of probability that a prudent man, in any other similar transaction, would act on the assumption that such a thing was true. “Matters before It”: The expression “matters before it” includes matters which do not fall within the definition of the term “evidence” (in S.

3 of the Act), as for instance, a fact orally admitted in Court or the result of a local investigation under the Civil Procedure Code. Therefore, in determining what is “evidence” other than evidence within the phraseology of the Act, the definition of ‘evidence’ must be read with that of ‘proved’. It would appear, therefore, that the Legislature intentionally refrained from using the word ‘evidence’ in this definition, but used instead the expression ‘matters before it’. For instance, a fact may be orally admitted in Court. Such an admission would not come within the definition of the term ‘evidence’ as given in this Act.

Yet, it is a matter which the Court before whom the admission was made, would have to take into consideration, in order to determine whether the

particular fact was proved or not. Similarly, the result of a local investigation under the Civil Procedure Code must be taken into consideration by the Court, though it is not 'evidence' within the definition given by the Act. 'Legal Proof' and 'Moral Conviction': 'Legal proof is to be distinguished from 'moral conviction'. Legal proof is neither more nor less than what is indicated by the definition of the word 'proved' in S. 3.

Whatever may be the moral certainty in a case, unless it is legally proved to such an extent as would amount to legal proof, a judicial decision cannot be arrived at. So also, however morally convinced a judge may feel as to the truth of a particular fact, unless there is a legal proof of its existence, he cannot take it as proved.