VI Expediting the Hearing of the Evidence

(i) The Formal Admission of Undisputed Facts in Criminal Trials[1]

Although an accused may admit his guilt in toto thereby waiving his right to have the case against him proved beyond a reasonable doubt, in many common law jurisdictions he is not allowed to admit certain of the facts alleged by the prosecution, which would obviate the need to introduce evidence to prove those particular facts. In consequence, court time is often wasted on proving facts which the defence or the prosecution do not dispute. As far as the accused is concerned, the rule is based on the principle that once a plea of not guilty is entered, it is incumbent on the prosecution to prove every fact and circumstance constituting the offence(s) charged, there being no mid-point between a plea of guilty which admits the truth of everything charged and a plea of not guilty which puts everything in issue.[2] Perhaps this is related to the sensitivity with which confessions are treated by the criminal law. Be that as it may, provided sufficient safeguards for accused persons are laid down, there would seem to be no cogent reason for not allowing formal admissions in criminal proceedings. If a party is willing that something should be treated as proved, it seems unnecessary that the other party should have the burden of proving it. Moreover, since a person can admit the whole case against him by pleading guilty, it seems illogical that he should not be allowed to admit part of it.[3] It must be stressed that allowing the formal admissions of undisputed facts (and sometimes documents) generally only permits admissions to be made of facts of which oral evidence may be given. It does not enlarge the scope of legally admissible evidence, but merely provides an alternative and convenient machinery for placing legally admissible evidence before the court.

In a number of Commonwealth jurisdictions the rule requiring proof of all facts has been modified over the years by statute, under which facts not in dispute may be admitted by the accused, and in some instances, also by the prosecution. Canada, New Zealand and Queensland have provisions which are very widely framed, placing few restrictions on how undisputed facts are to be admitted in court. Section 582 of the Canadian Criminal Code[4] provides:

> Where an accused is on trial for an indictable offence he or his counsel may admit any fact alleged against him for the purpose of dispensing with proof thereof.

Section 369 of the New Zealand Crimes Act, 1961,[5] provides:

> Any accused person on his trial, or his counsel or solicitor, may admit any fact alleged against the accused so as to dispense with proof thereof.

Section 644 of the Queensland Criminal Code, 1899, as amended reads as follows:

> An accused person may (by himself or counsel) admit on the trial any fact alleged against him, and such admission is sufficient proof of the fact without other evidence. In this section the term "trial" also includes, and is hereby declared to have always included, proceedings before justices dealing summarily with an indictable offence.

Thus, although the kind of proceeding may affect whether a formal admission will be accepted, the method by which such evidence should be tendered, orally or in writing, is not specified and it would appear that if he is legally represented, the accused need not be present when the admission is made, but he need not be legally represented.

By contrast, other jurisdictions have made the presence of the defendant in court, whether or not he is legally represented, a necessary prerequisite for the acceptance of formal admissions. In Tasmania and Western Australia the wording of the relevant provisions is identical:

> An accused person, either personally or by his counsel or solicitor, in his presence, may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence.

Section 34 of the South Australian Evidence Act, 1929, as amended, provides:

> A person may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor.

The relevant provisions of Botswana, Lesotho and Swaziland are identical. Section 269 of the Botswana Criminal Procedure and Evidence Act (reproducing an amendment made in 1939) provides:

> (1) In any criminal proceedings, the accused or his representative in his presence may admit any fact relevant to the issue, and any such admission shall be sufficient evidence of that fact.
> (2) An admission made by an accused or his representative in his presence at a preparatory examination, which the magistrate thereat noted on the record, may be proved at the subsequent trial of the accused by the production, by any

> person, of the documents purporting to constitute that record.[7]

The provisions in this class are very liberal as to type of proceedings where formal admissions of fact may be made but place a restriction on how it is to be received, i.e. the accused must be present in court.

There is a slightly different safeguard built into the legislation of the Australian state of Victoria. Section 149A of the Evidence Act, 1958, as amended, reads as follows:

> Subject to the express provisions of any Act but notwithstanding any rule of law or procedure or any practice to the contrary the accused person in any criminal proceedings may make admission of any fact or matter that is relevant in the proceedings and any person acting judicially may accept the admission as sufficient evidence of that fact or matter without further proof <u>unless he is of the opinion that it would be contrary to the interests of justice so to do having regard to all the circumstances of the case.</u> (Emphasis added)

In the remaining jurisdictions where undisputed facts may be admitted, protection for the accused is provided in terms of a requirement that he must be legally represented. In New South Wales, section 404 of the Crimes Act, 1900, as amended provides:

> Every accused person on his trial may, if so advised by counsel, make any admissions as to matters of fact, whatever the crime charged, or give any consent which might lawfully be given in a civil case.

"Matters of fact" has been interpreted to include matters of fact which are not within the personal knowledge of the accused and conclusions as to matters of fact. Also, admissions made under this section make it unnecessary for the Crown to call evidence to prove the matters admitted, and accordingly, the Crown ought not to call such evidence if it would be likely to prejudice the accused unless such evidence goes not only to prove the matters admitted but also to prove other matters in issue.[8]

Scottish procedure in relation to formal admissions requires that they be set down in writing in the form of "minutes of agreement and admission".[9] This procedure covers both undisputed facts and documents although it may only be used where the accused has legal assistance in his defence. This is essentially a pre-trial procedure rather than one used in court; thus, a recent review of Scottish procedure concluded that more use of these minutes might be made if the pre-trial preparation period were extended somewhat, to allow drawing up and adjustment of the documents.[10]

In Uganda, the clearing away of undisputed matters also forms part of the pre-trial preparation: admissions are made during that period rather than in court during the trial. After committal, and an arraignment the first thing the High Court Judge is required to do is to ascertain what facts are agreed and draw up a memorandum of the admitted facts. The memorandum must be read over and explained to the accused and signed by him and his counsel. This procedure can only occur if the accused is legally represented. Any fact or document agreed or admitted in a memorandum filed under this section shall be deemed to have been duly proved for the purpose of subsequent proceedings, although the court may require proof of such matters if it is of the opinion that the interests of justice demands it.[11]

Since 1970 Bermuda, Hong Kong, Malawi, Singapore and the Seychelles have enacted legislation which is identical for all practical purposes to section 10 of the English Criminal Justice Act, 1967.[12] The English provisions are in the following terms:

> (1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.
>
> (2) An admission under this section -
> (a) may be made before or at the proceedings;
> (b) if made otherwise than in court, shall be in writing;
> (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;
> (d) if made on behalf of a defendant who is an individual, must be approved by his counsel or solicitor (whether at the time it was made or subsequently) before or at the proceedings in question.
>
> (3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or re-trial).
>
> (4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent proceedings relating to the same matter.

(ii) Modification of other rules of evidence

In common law jurisdictions the general rule is that all facts which have to be proved at a criminal trial must be proved by oral evidence given at the actual trial. Hearing evidence viva voce is thought to be the best method of assessing the credibility of witnesses. As we have already seen, the extreme orality of criminal trials has a decelerating effect. It would be advantageous, therefore, if evidence which was unlikely to be disputed could be given by means of a written statement of the witness who would otherwise give evidence orally. As the English Criminal Law Revision Committee pointed out in 1966, provided an accused does not wish to question the person who can give the evidence, there is no real reason why that person's evidence should notbe given by means of a written statement. In relation to crucial evidence it is probably easier for judge and jury to follow and assess its value when they see and hear the witness. This is less likely to be the case where the evidence is purely technical. The Committee felt that juries in particular would be less likely to be wearied and distracted from the major issues if formal or uncontroversial evidence was read out rather than given by a succession of witnesses.[13] Documentary evidence can be as cogent as oral evidence and it is often easier for the court to follow and can be absorbed much more quickly and thus speed the trial.[14]

In light of this, several Commonwealth countries have acted to change the character of the criminal trial from one of extreme orality to a combination of oral and documentary evidence by allowing the undisputed evidence of witnesses to be admitted in the form of a written statement or permitting documentary evidence to be received without formal proof.

One of the earliest provisions to this effect was the Criminal Law Amendment Act, 1892 of Queensland,[15] section 4 of which reads:

> When a person charged with an indictable offence other than treason, wilful murder or murder, or any of the crimes defined in the second paragraph of section 81 and in section 82 of "The Criminal Code" is committed for trial, the Justice or Justices by whom he is committed shall, when the depositions of the witnesses are read over to him, ask him after the reading of the deposition of each witness whose evidence is in the opinion of the Justice or Justices of a formal character, whether he wishes that witness to be produced at his trial or whether he will be content that the deposition as taken and read to him shall be produced and admitted as evidence at the trial together with the exhibits (if any) annexed.

This marked a break away from English practice, which, although allowing the deposition to be used to neutralise a witness' testimony where leave has been given to treat the witness as hostile, did not allow it to be used as evidence in the subsequent trial. In India the deposition of a medical witness, taken and attested by a magistrate in the presence of the accused, may be given in evidence at the trial.[16] This is also permitted in Singapore with the rider that the court must be satisfied "that grave inconvenience would otherwise be caused".[17]

The English Criminal Justice Act, 1967, provides that written statements are to be admissible in committal proceedings subject to certain conditions. This relaxation of the viva voce evidence rule was also extended to "criminal proceedings", again subject to certain qualifications, and the legislatures of Singapore, Western Australia, Seychelles and Malawi subsequently enacted broadly similar procedures.[18] Section 9 of the Criminal Justice Act enables the written evidence of a witness to be admitted to the same extent as oral evidence in all criminal trials, subject to the right of the party against whom it is tendered and of the court to require that the witness should give evidence orally. A similar amendment to the Criminal Procedure Code of Bangladesh permits evidence of a formal character to be given by affidavit, subject to the power of the court on its own motion or on application made by the prosecution or defence to summon and examine witnesses.[19]

A slightly different provision exists in Tasmania. There, section 113A of the Evidence Act, 1910, as amended, provides:[20]

> In any criminal proceeding the judge may -
> (a) if he sees fit; and
> (b) if the parties to the proceeding consent thereto, receive as evidence without formal proof thereof -
> (c) exhibits; and
> (d) affidavits and statutory declarations.

The Indian Criminal Procedure Code likewise allows the evidence of any person whose evidence is of a formal character to be given by affidavit, "subject to all just exceptions".[21] In relation to documents it is provided in section 294 of the Code that:

> (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

> (2) The list of documents shall be in such form as may be prescribed by the State Government.
>
> (3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved.

In South Australia the admission of the undisputed evidence of witnesses occurs on an informal, ad hoc basis. It is felt, however, that it is not done as frequently as it might be if there were a statutory provision similar to that contained in section 9 of the English Criminal Justice Act. A committee studying evidence and procedure in South Australia recently recommended that such a measure be enacted to encourage the use of written statements, thereby saving the time of the courts and of prospective witnesses and also saving expense.[22]

Technical and scientific evidence is often the most difficult to convey with clarity orally and in many cases, such evidence is not challenged by either party. If it is to be challenged, then the attendance of that witness is imperative, but otherwise, a written report would likely be more satisfactory both for those assessing the evidence and the witness - the expert witness - who is, as a result, not tied up in court and is free to continue with his work. Provisions relating specifically to the expert witness and the reception of his evidence have been enacted in several Commonwealth jurisdictions.

In Jamaica, section 33 of the Food and Drug Act provides that:

> (1) Subject to subsection (2), the certificate of an inspector or analyst stating that he has examined or analysed an article or sample for the purpose of this Act and stating the result of his examination or analysis shall be admissible in evidence in a prosecution for a contravention of this Act and shall be prima facie proof of the statements contained in the certificate but the party against whom it is produced may require the attendance of the inspector or analyst for the purpose of cross examining him.
>
> (2) A certificate under subsection (1) shall not be admissible in evidence unless the party intending to produce it has before the trial given to the party against whom it is intended to produce it reasonable notice of such intention and a copy of the certificate.[23]

In a similar vein, section 27 of the Dangerous Drugs Act reads:

> In any proceedings against any person for an offence against this Act the production of a certificate signed by a Government Chemist or any Analyst designated under the provisions of section 17 of the Food and Drugs Act, shall be sufficient evidence of all the facts therein stated, unless the person charged requires that the Government Chemist or any Analyst be summoned as a witness, when in such case the Court shall cause him to attend and give evidence in the same way as any other witness.

Documentary evidence of this type is also admissible in India,[24] Seychelles,[25] Solomon Islands,[26] and Singapore.[27] In St. Lucia a recent amendment to the dangerous drugs legislation makes it permissible for an analyst's report to be received in evidence as *prima facie* evidence of any statement contained therein in any summary proceedings under the Act. Moreover, if in any such proceedings a "designated officer" is required to attend and give evidence as to the subject matter of his report, the party requiring his attendance will be required to pay a sum of money into court as costs.[28]

The regulation of driving speeds and driver-alcohol consumption has resulted in a great deal of evidence of measurement and blood, breath and urine analysis being heard in court. In Britain a certificate relating to the taking and analysis of specimens of blood and urine is accepted as proof of the matter contained therein unless challenged by the accused;[29] and in New South Wales, certificates relating to breath analysis are similarly admissible in evidence.[30] Also in New South Wales, a provision is in operation to the effect that at any inquest or where a person is charged before a justice or justices with an indictable offence, it shall not be necessary, unless there is judicial direction to the contrary, for any person who makes a scientific examination of any article or body to give evidence of the result of the examination. Rather, a certificate containing a statement that he made the examination, his qualifications and his conclusions shall be *prima facie* evidence of the contents of the certificate. There is a proviso, however, that where the certificate is tendered by the prosecutor, the justice or justices shall not dispose of the case summarily without the consent of the accused.[31] A similar measure relating to medical reports exists in the Canadian province of Ontario, although it requires the leave of the court and notice to be given to all other parties to the case. In addition, where a legally qualified medical practitioner has been required to give evidence *viva voce* and the court is of the opinion that the evidence could have been produced as effectively by way of a medical report, the court may order the party that required the doctor's attendance to pay as costs such sum as it considers appropriate.[32]

Expert evidence is, of course, not always merely a statement of the results of tests and analyses. Such results may often be subject to differing interpretations and it is the expert's opinion, his conclusions, which form the crucial part of his evidence. In order to avoid having cases drawn out by the hearing of a multiplicity of expert witnesses giving repetitive opinion evidence, the Canadian Evidence Act provides that where the prosecutor or defence intend to examine as witnesses at a trial, professional or other experts entitled according to law and practice to give opinion evidence, not more than five of such witnesses may be called upon by either side without the leave of the court.[33]

The reception of expert evidence in documentary form is also permissible in a few jurisdictions. This is not as common as formal scientific and technical evidence because it is much more likely to be challenged or disputed. Section 180 of the Malawi Criminal Procedure and Evidence Code reads as follows:

> (1) Whenever any facts ascertained by any examination, including the examination of any person or body, or by any process requiring any skill in pathology, bacteriology, biology, chemistry, physics, botany, astronomy or geography and the opinions thereon of any person having that skill are or may become relevant to the issue in any criminal proceedings, a document purporting to be a report of such facts and opinions, by any person qualified to carry out such examination or process (in this section referred to as an "expert") who has carried out any such examination or process shall .... on its mere production by any party to those proceedings, be admissible in evidence therein to prove those facts and opinions if one of the conditions specified in subsection (3) is satisfied ...
>
> (3) The conditions referred to in subsection (1) are -
> (a) that the other parties to the proceedings consent; or
> (b) that the party proposing to tender the report has served on the other parties a copy of the report and, by endorsement on the report or otherwise, notice of his intention to tender it in evidence and none of the other parties has, within 7 days from such service, served on the party so proposing a notice objecting to the report being tendered in evidence under this section.[34]

The 1976 amendments to sections 12 and 13 of the Evidence Act of British Columbia, effective as of July 15, 1976, provide that a statement in writing setting out the opinion of an expert is admissible in evidence if a copy of the written statement is furnished to every party to the proceeding who is adverse in interest at least 14 days before the statement is given in evidence.[35] The opposite party may require that the expert be produced for cross-examination. Before this amendment, these sections applied to medical evidence only, but they now extend to all expert evidence.

Another area in which the written word may be more explicit and expeditious in terms of the hearing of evidence is that of the conduct of a business. Not only is such evidence often minutely detailed, making it difficult to grasp through oral presentation, but, where the business operation is a large one, the person(s) who recorded the matters when they occurred may have difficulty in recalling them with exactitude, and it may even be difficult to produce such person in court.

The English Criminal Evidence Act, 1965, makes admissible as evidence in criminal cases certain commercial records which, until the decision of the House of Lords in Myers v. Director of Public Prosecutions[36] had been generally thought to be properly admissible. In that case, it was held that manufacturers' records of cylinder block numbers were inadmissible to confirm the identification of stolen cars as this evidence was hearsay which could not be brought within any established exception to the rule against the admission of such evidence. The Act provides that where in any criminal proceedings direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall be admissible as evidence of that fact in certain circumstances. The first is that the document must form part of a record relating to a trade or business and have been compiled in the course of that trade or business from information supplied, directly or indirectly, by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the documents. In addition, the person who supplied that information must be dead, "beyond the seas", unfit to give evidence due to a physical or mental condition, or cannot with reasonable diligence be identified or found, or, finally, cannot be expected (having regard to the time which has elapsed since he supplied the information) to have any recollection of the matters dealt with in the information he supplied.[37] In this section "document" includes any device by means of which information is recorded or stored.

Similar measures have subsequently been enacted in other Commonwealth countries. Legislation in Tasmania[38] and South Australia[39] contain a proviso that the enactment does not require a judge to admit such a writing in evidence if it appears that the interests of justice would not be served thereby. In Victoria it is provided that the court may at any stage of the proceeding, if, having regard to all the circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused, order that such a statement shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence, notwithstanding that the maker of the statement or the person who supplied the information is available, but is not called as a witness.[40]

Technological advances are now providing us with instant information and total, accurate recall, and there is a dawning realisation of the advantages such information may have in accelerating court proceedings. A 1979 amendment to the Evidence Act of South Australia provides that computer output is admissible in criminal proceedings.[41] It is not restricted to business "documents". Even more innovative has been an experiment in the courts of British Columbia with video-taping. Suspected impaired drivers are asked to perform physical sobriety tests and their performance is recorded on videotape. The tape is made available for viewing by the charged driver and his counsel prior to a court appearance and the prosecution will submit the tape in evidence. British Columbia is the only Canadian province to allow the use of videotapes as evidence. This experiment has had a profound effect on the disposition of "drinking driving" cases. The videotaping is credited with a 25 per cent drop in impaired driving charges and a 40 per cent decrease in "not guilty" pleas in the town of Vernon where the experiment is being conducted. This data implies that the prosecution on seeing the tapes will drop unjustified charges which they would previously have proceeded with; and the defendant, upon seeing incontrovertible proof of his own performance, will not challenge the evidence and plead guilty. It has been estimated that in its first year of operation, the "Vernon experiment" saved approximately $41,000 in court costs.[42]

Oral evidence in criminal proceedings is thus being displaced to a limited extent, mainly by the reception of undisputed documentary evidence. As other methods of recording and reproducing events and facts become more reliable, fallible human recollection may be able to be dispensed with in an increasing number of instances, although the right of the defendant to challenge and cross-examine witnesses must be preserved.

The hearing of evidence is not its only time-consuming aspect; the hearing of arguments and judicial decisions on the admissibility of evidence also consumes a substantial amount of time in a number of hearings. If a defendant makes a "confession" to the police and subsequently alleges it was not made voluntarily, a voir dire will have to be held to determine whether it was in fact a voluntary statement and consequently, admissible in evidence at trial. Hearsay evidence, to which it is thought inexperienced jurors might attach too much weight, is generally excluded under the "best evidence" rule. The English Criminal Law Revision Committee in its 11th report set out five reasons for excluding certain types of evidence: because it would be too prejudicial to the accused; because it is too unreliable; because of the way in which it was obtained; because its reception might confuse the issue or for over-riding reasons of policy not related to its value.[43]

The desirability of drastically altering the rules regulating the admissibility of evidence has been vigorously debated for some years, particularly in the United Kingdom and the United States. In Britain the discussion has centred around the Eleventh Report of the Criminal Law Revision Committee which recommended that fairly substantial changes be made to the laws of evidence in that country.

> Since the object of a criminal trial should be to find out if the accused is guilty, it follows that ideally all evidence should be admissible which is relevant in the sense that it tends to render probable the existence or non-existence of any fact on which the question of guilt or innocence depends. This is the only possible meaning of relevance for the purpose of any reasonable discussion of the law of criminal evidence. It also follows that ideally every person who can give relevant evidence should be a compellable witness ....[S]trict and formal rules of evidence, however illogically they may have worked in some cases, may have been necessary in order to give accused persons at least some protection, however inadequate, against injustice. But with changed conditions they may no longer serve a useful purpose but on the contrary have become a hindrance rather than a help to justice. There has also been a good deal of feeling in the committee and elsewhere that the law of evidence should now be less tender to criminals generally.[44]

The Committee recommended, inter alia, that the suspect's "right of silence" when interrogated by the police should be restricted. It was proposed that if the accused failed to mention a fact at the interrogation stage which he later relies on, the court may draw the proper inferences.[45] The Committee favoured the abolition of the accused's right to make an unsworn statement; and, although it was not proposed to make the accused a compellable witness, it was recommended that if he refused to give evidence on his own behalf, this could be taken into account. Substantial changes in the requirements for corroboration were also proposed along with substantial inroads into the rule against hearsay. These recommendations and others provoked a heated debate and, as a result, the Eleventh Report remains unimplemented. Radical changes in the law of evidence have, however, been implemented in two other Commonwealth countries.

The overriding principle on which the Criminal Procedure and Evidence Code of Malawi is based is "that substantial justice should be done without due regard for technicality". To this end, the accused has been made a compellable witness; appeals on evidentiary grounds have been restricted and the rules regarding confessions relaxed. If an accused refuses or neglects to be sworn, give evidence, answer any question lawfully put to him or produce any document or thing which he is required to produce, such refusal or neglect may be commented upon by the prosecution and may be taken into account by the court in reaching its decision.[46] It is also provided in section 240 of the Code that the improper admission or rejection of evidence is not of itself a ground for granting a new trial or reversing a decision on appeal if it appears to the appeal court that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision or that if the rejected evidence had been received, it ought not to have varied the decision.

Section 176 of the Code reads:

> (1) Evidence of a confession by the accused shall, if otherwise relevant and admissible, be admitted by the court notwithstanding any objection to such admission upon any one or more of the following grounds (however expressed) that such confession was not made by the accused or, if made by him, was not freely and voluntarily made and without his having been unduly influenced thereto.
>
> (3) Evidence of a confession admitted under subsection (1) may be taken into account by a court, or a jury, as the case may be, if such court or jury is satisfied beyond reasonable doubt that the confession was made by the accused and that its contents are materially true. If it is not so satisfied, the court or the jury shall give no weight whatsoever to such evidence. It shall be the duty of the judge in summing up the case specifically to direct the jury as to the weight to be given to any such confession.

Under this confession rule, the alleged confession in its full details is put before the court during the prosecution's case, but its weight is not determined until the conclusion of the case. As one commentator has pointed out, it is perhaps difficult to expect jurors to give "no weight whatsoever" when they are directed to do so <u>after</u> the completion of the case.[47]

The reforms introduced into the law of evidence of Singapore by the Criminal Procedure Code (Amendment) Act, 1976 and the Evidence (Amendment) Act, 1976, were "borrowed" from the proposals of the English Criminal Law Revision Committee. The right to silence and the right of the accused person to make an unsworn statement from the dock are removed;[48] silence on the part of a person suspected of having committed an offence when being questioned can be used against him[49] and a wider class of hearsay evidence is made admissible.[50] When these changes were proposed they were met with criticisms similar to those which were voiced in England,[51] but in this instance, these criticisms were overridden and the proposals implemented.

Experience to date in restructuring the admissibility of evidence suggests that extreme caution must be exercised to ensure that efficiency and expediency do not trample the interests of the accused underfoot. There must be a delicate balancing of the extent to which changed circumstances enable certain out-of-date protections to be removed and any reforms of the laws of evidence.

Footnotes

[1]In this section I have relied heavily on a memorandum prepared by the Commonwealth Secretariat for the meeting of Commonwealth Law Ministers, Winnipeg, August, 1977.

[2]Id. para. 1.

[3]Great Britain, Criminal Law Revision Committee, Report no. 9, Evidence: Written statements, formal admissions and notices of alibi (London, 1966), Cmnd. 3145, para. 22.

[4]R.S.C., 1970, c. C-34. It is proposed that section 582 be amended to provide that the section applies to all proceedings and that the Crown be able to make admissions - Uniform Law Conference of Canada, Proceedings (1978) p. 55.

[5]These provisions have been made applicable to summary proceedings by the Summary Proceedings Act, 1957, as amended by the Summary Proceedings Amendment Act, 1961.

[6]Tasmania Evidence Act, 1910, section 109; Western Australia Evidence Act, (1977 reprint), section 32.

[7]The corresponding reference for Lesotho is section 269 of the Criminal Procedure and Evidence Proclamation, No. 58 of 1938, as amended; and for Swaziland, section 272 of the Criminal Procedure Act, No. 67 of 1938.

[8]R. v. Longford, (1970), 17 F.L.R. 37; (1971), Australian Digest 117.

[9]Summary Jurisdiction (Scotland) Act, 1954, section 36 and Criminal Procedure (Scotland) Act, 1975, section 150.

[10]Scotland, Committee on Criminal Procedure in Scotland (Thomson Committee), Criminal Procedure in Scotland (second report) (Edinburgh, 1975), Cmnd. 6218, para. 36.04.

[11]Uganda, Trial on Indictments Decree, No. 26 of 1971, section 64.

[12]Bermuda Evidence Act, 1905, section 28B, inserted by the Criminal Justice Act, (No. 271 of 1970); Hong Kong Criminal Procedure Ordinance, cap. 221, section 65C, inserted by Act No. 5 of 1971; Malawi Criminal Procedure and Evidence Code (cap. 8.01), section 183; Singapore Criminal Procedure Code, cap. 113, section 371B, inserted by Act No. 12 of 1972 and Seychelles Criminal Procedure Code, section 127B.

[13]Great Britain, Criminal Law Revision Committee, supra footnote 3 at paras. 7-9.

[14]A. Samuels, "Written Statements - Documenting Evidence in Criminal Cases", (1978), 142 Justice of the Peace 632.

[15]56 Vic. No. 3, as amended, section 4.

[16]Indian Code of Criminal Procedure, 1973, section 291.

[17]Singapore, Criminal Procedure Code (Edition of 1970), cap. 113, as amended, section 364.

[18] Singapore, id. at section 371A; Western Australia Justices Act, (1977 reprint), section 69; Seychelles Criminal Procedure Code, section 127A and Malawi Criminal Procedure and Evidence Code, section 175.

[19] Bangladesh Law Reforms Ordinance, 1978, (No. XLIX of 1978), see note at (1979), 5 Commonwealth Law Bulletin 616.

[20] Inserted by the Tasmanian Criminal Code Act, 1975.

[21] Indian Criminal Procedure Code, 1973, section 296.

[22] South Australia Criminal Law and Penal Methods Reform Committee (Third Report), Court Procedure and Evidence (Adelaide, 1975), p. 153.

[23] From memorandum prepared by the Jamaican government for the author. A similar provision exists in section 42 of the Food and Drugs (Scotland) Act, 1956.

[24] Indian Criminal Procedure Code, 1973, section 293. This provision covers the evidence of any chemical examiner, the Chief Inspector of Explosives, the Director of the Fingerprint Bureau, the Government Serologist and the directors of two named scientific institutes.

[25] Seychelles Criminal Procedure Code, section 127A.

[26] Letter from the Attorney General of the Solomon Islands dated February 5, 1979. The legislation covers reports by a surveyor, a geologist, an analyst or a medical practitioner.

[27] Singapore Criminal Procedure Code, (Edition of 1970, as amended), cap. 113, section 366. The reports of chemists, pathologists, bacteriologists, botanists, a government appointed document examiner and an inspector of weights and measures are covered by this provision.

[28] St. Lucia Dangerous Drugs (Amendment)(No. 2) Act, (No. 1 of 1979). See note at (1979) 5 Commonwealth Law Bulletin 620.

[29] Great Britain, Road Traffic Act, 1972, section 10.

[30] New South Wales Motor Traffic Act, 1909, as amended, section 4E(12) (a) & (b) and Crimes Act, 1900, as amended, section 414A(2) & (3).

[31] New South Wales Crimes Act, 1900, as amended, section 414A(1).

[32] The Evidence Act of Ontario, R.S.O. 1970, c.
section

[33] Canada Evidence Act R.S.C., 1970, c. E-10, section 7.

[34] Malawi Criminal Procedure and Evidence Code, cap. 8.01, section 180.

[35] Evidence Act, 1960, R.S.B.C. c.34, section 12 as amended by 1976 c.33, section 86. For commentary see D.B. Kirkham, "Experts' Statements Pursuant to the B.C. Evidence Act", (1978), 36 Advocate 29.

[36] [1965] A.C. 1001; [1964] 2 All.E.R. 881.

[37]England Criminal Evidence Act, 1965, c. 20, section 1. See also Canada Evidence Act, supra footnote 33 at section 30 and Trinidad and Tobago Evidence (Amendment) Act, 1978, (No. 36 of 1978).

[38]Tasmania Evidence Act, 1910, as amended, section 40A.

[39]South Australia Evidence Act 1929, as amended, section 45(a).

[40]Victoria Evidence (Documents) Act, 1971, section 55(7).

[41]Evidence Act Amendment Act, 1979, (No. 9).

[42]"Credit goes to T.V. for D.W.I. drop", The Journal, September 1, 1979, p. 2 and The National, September 1979, p. 35.

[43]Great Britain Criminal Law Revision Committee, Eleventh Report: Evidence (London, 197), Cmnd. 4991, paras. 14-19. See also Scottish Law Commission, Research Paper on the Law of Evidence of Scotland (April 1979).

[44]Id. at paras. 14 and 21.

[45]Many of the constitutions of Commonwealth countries include, in provisions "to secure protection of the law", the following - "No person who is tried for a criminal offence shall be compelled to give evidence at his trial." Provisions in this precise form of wording occur, for example, in section 18(7) of the Barbados Constitution (Schedule to the Barbados Independence Order 1966 S.I. No. 1455); section 10(7) of the Solomon Island Constitution (Schedule to the Solomon Islands Independence Order, 1978 S.1. No. 783 and article 20(7) of the Bahamas Constitution (Schedule to the Bahamas Independence Order 1973 S.1. No. 1080). It is arguable that this provision exists it would be unconstitutional for a statute to provide that any inferences against the accused can be drawn.

[46]Malawi Criminal Procedure and Evidence Code, supra footnote 34 at section 256.

[47]V.G. Davidson, "Reforms in Evidence and Criminal Procedure - The Malawi Experiment Considered", (1968) 4 East African Law Journal 31 at p. 34.

[48]Criminal Procedure Code (Amendment) Act, 1976, section 5, (section 121 of the Code).

[49]Id. section 6, (section 122).

[50]Id, section 23, (section 371 B-J).

[51]For example, H. Singh, "Reforms in the Law of Evidence: Some Observations", (1975), 17 Malayan Law Journal 160.