

FOREIGN LAW:

Foreign law.— In England, the ordinary mode of proving a point of foreign law is to call a witness specially skilled in that law ; but in India it may either be proved under this section by expert testimony, or in the manner laid down in Section 38 of the Act, viz., by the production of official books, or ,reports of the rulings of the Courts of the particular country or by foreign judgments.⁹Foreign Jaw is a question of fact,¹⁰ with which Courts in India are not supposed

1. Sita Ram v. Daulati Dci'!, 1979 SC 1225 (para 12 and 13).
2. See Woodrolfe, Ev, 9th Ed., 442.
3. Jogi Rayt v. E. 105 IC 234: 1928 P98 28 Cr U 906.
4. Mdappa v, Gura 1956 8 129. United Slates S/zipping Board v. F/ic S/up "St. Albans",13l IC 771 1931 PC 189.
6. Lawson on Expert Testimony, 2nd Ed.. 229.
7. Ram D v. Secretary of Slate, 128 IC 441 : 1930 A 587.
8. Baswantrao Bajirao V. E., 1949 N 66 50 Cr U 181 ILR. 1948 N 711.
9. Suganc/rand Bhikamc/iand v. Mangiba! Gulabchand. 1942 13185.
10. K/today `Gangadara Sal V. Swam jnadha Mundali, 92 IC 112 : 1926 M 218 ; Aziz Bano V. Moha.'nmad Ibra/ Ilussa!n. 47 A 823 89 IC 690:1925 A 720.

to be conversant ; opinions of experts in foreign law are, therefore, allowed to be admitted.¹But where the foreign law is laid down in a particularly elaborate Code which is available, it is unnecessary to call expert evidence on the point of foreign law Involved.² Hindu Law or Mohaminadan Law as administered by the Courts of India, is neither "foreign law" nor "science or art", but is the law of the land ; and the opinions of witnesses, however learned they may be in that law, are irrelevant.³But Jewish law is foreign law.⁴ As to the mode of proof of foreign customs and usages, see Sections 48 and 49.

Competency of a foreign law expert.—A person whose knowledge of foreign law is derived solely from study without actual practice, is incompetent⁵. The witness who is called to prove a point of foreign law must be either a practising lawyer or a person peritus virtute officii. i.e., the holder of some official position which requires and therefore presumes a knowledge of that law. A foreign Judge, barrister, or solicitor practising in the Courts of his country is competent⁶ , but not a mere resident of the foreign country, not specially conversant with the law⁷. It is no; enough to show that the witness in fact knows the foreign law lie must be one who, from his position or training, is supposed to know the law⁸.