Introduction
DURING different periods of time and cultural stages, problems concerning evidence have been resolved by deploying methods more than one. The many rules of evidence that have evolved under various legal systems have, in the main, been founded on experience and shaped by varying legal requirements, of what constitutes admissible and sufficient proof. Although evidence in this sense has both legal and technical characteristics, judicial evidence has always been a human rather than a technical problem. Since the means of acquiring evidence are clearly variable and delimited, they can result only in a degree of probability and not in an absolute truth in the philosophic sense. Only Soviet doctrine, under the influence of philosophic materialism, expresses a belief that absolute objective truth can be attained through evidence. In Common Law and Civil Law countries, the evidence, thus, has served only in -
plotting the truth within or on a reasonable range of probabilities.

There was no distinction between civil and criminal matters or between fact and law in earlier cultures, and rational means of evidence were either unknown or of little use. Among the non-rational sources of evidence, the appeal to supernatural powers, of course, not evidence in the modern sense, in the form of ordeals by appealing to the God as the highest Judge, is one. The ordeals chosen by the Judges of the community and trial by battle belong to these non-rational sources.

Offer of oath by the accused for exonerating himself can be termed as a semi-rational method serving as source of evidence believing upon the ultimate will of the God to punish the perjurer. Both these methods lasted until the Fourteenth or Fifteenth century.

The law of Evidence came to be influenced strongly by Roman-canonical law elaborated by Jurists in Northern Italian Universities. Common procedure was introduced all over the continental European Countries on the lines of Roman Law which attempted to implement the scholastic philosophy that all the probabilities of life could be formally ordered through a set of abstract regulations.
Two systems of justice came to be evolved in the course of time. The first known as inquisitorial system originating from medieval Roman-canonical proceeding is distinguishable from other known as adversary system, through the active part played by the Judge, searching the facts, listening to the witnesses and examining documents all by himself. The latter system based on accusatorial or adversary principles is in vogue in the Common Law countries for all civil and criminal cases. Here the Judge does not investigate the facts himself unless the efforts of the parties are incomplete. The entire responsibility lay on the opposing parties to present the facts and support the same by evidence. In both these systems the oral proceedings form major source of evidence, after the abolition of the written proceedings recognised in middle ages with certain exceptions where evidence is allowed and admitted through affidavits of the witnesses.

The relationship of Law of Evidence to a judicial investigation has been compared with the link between logic and reasoning. Ascertainment of facts is a condition precedent before a Court pronounces its judgment as to the existence of the right or liability against a party. This difficult function of ascertaining the facts by the Courts is conducted by means of rules and principles which go by the name of Law of Evidence.
Ordinarily, these rules should not differ from those by which any other seeker after truth regulates his enquiries, such as a Physicist or a Historian engaged in tracing out the past.

Though the role to be performed by the Judge under the adversary-accusatorial system is said to be akin to that of an umpire or a referee in a game, the job performed by him is like that of a Historian with the difference that while the Historian is mostly concerned with a remoter past, the Judge engages himself in reconstructing the events of the recent past for holding certain events as true or false. However, with no plausible answer for a different set of rules of evidence in judicial investigation than in scientific enquiries, it is a fact that a judicial organisation in the English-speaking countries had formulated the doctrine known as 'Law of Evidence' distinguishable from the rules deployed for scientific and historical enquiries.

The Law of Evidence is said to be a child of Jury system. It has developed with the anicient Anglo-Saxon Institution and has remained an entangled part of the English-speaking countries. Most of the rules of evidence relating to admissibility, to presumptions and to impeachment and confirmation of the credit of the witnesses can be traced back to the judicial history associated with Judge 'Twelve'.
The process of reasoning is primarily an affair of logic, but, in law, there are important qualifications restraining the freedom of operation of this process. These limitations on the free process of reasoning constitute the Law of Evidence capable of being reduced to certain principles likely to be shaped into a system. The endeavour of Sir James Fitzjames Stephen, in drafting the Indian Evidence Act can be cited as one such fine exercise.

Every legal system is concerned with making decisions and decisions must often be made in a situation of uncertainty, either as to what has happened in the past or as to what is going to happen in the future. These are the two components in the legal decision making in and by the Courts, though this process of decision-making pertaining to a litigation may start even before reaching the Court. The litigating parties individually or in consultation with their advisers, may take their own decisions, while by intervention of well-wishers or interested interveners, such decisions may also change.

In fact, litigants are in a better position to know and realise the facts than the Court where these
facts need to be demonstrated through evidence before any decision is taken or given. A number of factors operate ultimately leading to the conclusion that it is on the wide range of probabilities such decisions are taken; and it would be rather erroneous to believe that the facts consisting the subject matter of a particular dispute are firstly known to the parties or witnesses concerned fully; andsecondly, that they are properly conveyed to the Court. There cannot be, therefore, any certainty in the matter of knowing and finding facts for reasons more than one. The human faults and weaknesses of perception, memorization and reproduction of the facts also play a significant role, which ultimately must direct that any belief or supposition cannot be based on a certainty, but it is always on a range, a wide range, of probabilities starting from mere possibilities and ending with high probabilities short of certainties.

The rules of relevancy and the like narrow down the process of introduction of the facts through evidence to a great extent with a view to ensuring accuracy and preciseness of the matter. The past events, which mostly are the subject matter of litigation or even an investigation of the crime in the Courts, are in fact reconstructed through such evidence before the Court, which may help the Court to formulate a belief about
their existence or non-existence. It is only after such finding or locating of the facts for their truth or the otherwise, the prevailing law is applied to deliver the ultimate verdict.

The level of probability that will be thought to justify a decision will vary according to the consequences of the decision one way or the other. The more serious the consequences through heavy punishments or the like, greater care and therefore higher degree of probability in the matter of proving a fact is demanded. That is why on the one end we find an event satisfactorily reconstructed on the strength of a mere probability, a little more than a strong possibility, while on the other extreme we do not hold a person guilty of a serious crime like murder unless all other probabilities or possibilities reflecting upon non-commission of the crime are ruled out. Thus, in the matter of decision-making particularly, while finding the fact or reconstructing the events of the past, we scrutinise the evidence on a very broad spectrum of probabilities.

This broad range of the probabilities, the responsibility of leading or adducing evidence on the point by either or both the sides apart, in fact furnishes a playing ground for the mind for picking up the right kind of probability on the strength of the stimulus,
that is, the capacity to influence the mind in evidence. Weak or evidence of lesser strength may point at a probability on the lower range and vice versa. Thus, the reconstruction of the event followed by the application of law presents the possible consequences, and human mind is bound to be under the influence of both these factors; and since it does not happen to be a computer as to yield results on a mechanical basis, a decision is taken while under the influence of the consequences. That is why, probably in a criminal case the degree of proof required for holding a fact established, is higher, since the consequence is of and about not only mere curtailment of liberty of an individual but sometimes a total extinction of the individual himself by way of condemnation in observance of discipline of the society through the rule of law.

The procedural law of evidence, which is still uncodified in most of the countries of the West, has given rise to a number of propositions, some of which have culminated into popular maxims and settled principles or doctrines of law. In the course of time, while working on the above referred broad spectrum or range of probabilities, the Courts have evolved different degrees or standards of proof while holding a particular set of facts as true or not. There are at least two distinct standards of proof evolved in England and also
the common law countries reaching upto the United States of America. Proof beyond reasonable doubt to meet or prevail upon the presumption of innocence which is also an equally popular maxim of law, is the requirement in formulating the belief in a criminal case. The reason for initiation or origin of this rule or doctrine in the ancient times apart, not in very remote past, justification for recognising and adopting this higher standard has been that the innocents should be protected even at the cost of letting a hundred criminals off. The society, thus, for the protection of the peace-loving and the innocent citizens took a risk of liberalising and raising the standard of proof, which has prevailed and survived despite a serious attempt to outlaw the doctrine (higher standard applied in the name of extending) "benefit of reasonable doubt" to an accused.

Codification, needless to say, is a stage of admitting and rejecting the prevalent notions of law according to needs of the time; and once the law on the point is codified, the Courts particularly are prevented from traversing beyond the limits of interpretation of the written word. Something similar to this has happened in India after codifying the Law of Evidence in the year 1872.

Sir James Stephen, the pioneer or founder of
this law, drafted the Code with meticulous care knowing full well the existence of a very broad range of probabilities serving as a guideline in the matter of taking legal decisions. He can not be said to be unaware of the existence of the popular maxims or doctrines like "presumption of innocence" and "benefit of reasonable doubt". Interestingly enough, even after the enforcement of the law through the above enactment in the last more than a century none, much less the Legislature, felt like introducing into this precise law any more principles or maxims of law through regular amendments. What does it show? It certainly reflects upon the stability or perfection of this procedural piece of legislation.

The problem that must haunt the mind of an inquisitive student of law is as to whether after such codification of Law of Evidence in India, is there any relevancy of these maxims or doctrines so recognised and deployed in England and other common law countries, in our country?

The problem did strike the Courts in India on a few occasions at least, but there was no direct confrontation between the precise intention of the Legislature incorporated in the Code and the operation or, I should say, free operation of these maxims and
doctrines of English Common Law. The attempt here has been to make a thorough survey, firstly of the important decisions handed down by the Courts of England and other countries including Australia and America as to understand the true import of the popular doctrine of the BENEFIT OF REASONABLE DOUBT and then to work through the case law and the commentaries based upon such cases decided by the Indian Courts. Incidentally, in the course of study, I could come across some such important decisions and pronouncements by different High Courts and also the Supreme Court of India. The inquisitiveness and not mere temptation to trace out the precise position of the law on the point, has been the guiding force behind this study. An appropriate hypothesis, therefore, has been formulated to go ahead with the problem. I propose to draw my own conclusions towards the end of this thesis after having gone through the process of meticulous examination and scientific analysis of the principle and also the authorities speaking for and against the same. An -- unprejudiced approach to the problem, therefore.