of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession

thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

116. Estoppel of acceptor of bill of exchange bailee or licensee: No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licenser had at the lime when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1: The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2: If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER IX

OF THE BURDEN OF PROOF

117. Burden of proof: (1) Whoever desires any Court to give judgment as to any legal right or liability dependent On the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations
(a) A desired a Court to give Judgment that B shall be punished for a crime which A says B has committee.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts, which he asserts, and which B denies to be true.

A must prove the existence of those facts.

118. On whom burden of proof lies: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations
(a) A sues B for land of which B is in possession, and which, as A asserts was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.
(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either aide, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden, of proof is on B.

119. Burden of proof as to particular fact: The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations
(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft, to C. A must prove the admission.

(b) B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it.

120. Burden of proving fact to be proved to make evidence admissible: The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations
(a) A wishes to prove a dying declaration by B, A must prove B’s death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

121. Burden of proving that case of accused comes within exceptions: When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Pakistan Penal Code (Act XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations
(a) “A” accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the act.
The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Pakistan Penal Code (Act XLV of 1860) provides that whoever, except in the case provided for by Section 335 voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under Section 325.

The burden of proving the circumstances bringing the case under Section 336 lies on A.

122. Burden of proving fact especially within knowledge: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him

Illustrations
(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him. .

123. Burden of proving death of person known to have been alive within thirty years: Subject to Article 124, when the question is whether a man is alive or dead and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

124. Burden of proving that person is alive who has not been heard of for seven years: When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

125. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent: When the question is whether persons are partners landlord and tenant, or principal and agent, and it has been shown that they have been acting as such. the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively is on the person who affirms it.

126. Burden of proof as to ownership: When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

127. Proof of good faith in transactions where one party is in relation of active confidence: When there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence. The burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations
(a) The good faith of a sale by a client to an advocate is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the advocate.

(b) The good faith of a sale by a son Just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

128. Birth during marriage conclusive proof of legitimacy: (1) The fact that any person was born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless—

(a) the husband had refused, or refuses, to own the child ; or

(b) the child was born after the expiration of six lunar months from the date on which the woman had accepted that the period of iddat had come to an end.

(2) Nothing contained in clause (1) shall apply to a non-Muslim if it is inconsistent with his faith.

129. Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations
The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(e) that judicial and official acts have been regularly performed ;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it;

as to illustration (a) : a shopkeeper has in his till marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to illustration (a) : A. person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery, B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to illustration (b) : A crime is committed by several persons. A, B and C. three of the criminals, are captured on the shop and kept apart from each other. Each gives an account of the crime implicating D and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (c) : A. the drawer of a bill of exchange, was a man of business. B; the acceptor, was a young and ignorant person, completely under A's influence;

as to illustration (d) : It is proved that a river ran in a certain course five years ago. But it is known that there have been floods since that time which might change its course ;

as to illustration (e): a judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

as to illustration (f): the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (g) : a man refuses to produce a document which would bear on a contract of small importance on which he is sued. but which might also injure the feelings and reputation of his family;

as to illustration (h) : a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

as to illustration (i) : a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it,

CHAPTER X
OF THE EXAMINATION OF WITNESS

130. Order of production and examination of witnesses: The order in which witnesses are produced and examined shall be regulated by the law and practice, for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

131. Judge to decide as to admissibility of evidence: (1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed, to be proved is one of Which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

(3) if the relevancy of one alleged fact depends upon an other alleged fact being first proved, the Judge may in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under Article 46.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.