

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 spot 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.