

Chapter IV OF ORAL EVIDENCE

70. Proof of facts by oral evidence.--All facts, except the contents of documents, may be proved by oral evidence.

COMMENTS

Facts that may be proved by oral evidence.--This Article is not properly worded. The Article must be read subject to the provisions of Articles 72 and 76. The true meaning of the Article, therefore, is that all facts may be proved by oral evidence, except the contents of a document, which cannot be proved by oral evidence, unless oral evidence becomes admissible as secondary evidence under the provisions of Article 76.

Oral and documentary evidence. Presumption of truth, oral evidence could not be given preference over documentary evidence. Documentary evidence and particularly registered document, would carry presumption of truth and a very strong and exceptional evidence is needed to rebut the same.¹

Oral evidence. Definition.--Oral evidence has been defined by the Order to the all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. (Article 118). All facts except the contents of documents may be proved by oral evidence. This Article is not happily worded. Contents of documents may be proved by oral evidence under certain circumstances, *viz.*, when evidence of their contents is admissible as secondary evidence.

Mere oral self-serving statement of one of the defendants and a chance witness was insufficient to prove question of fact.²

Abundant oral evidence, including appellant's own witness showing that possession was delivered to the respondent under sale. First Appellate Court thus rightly placed reliance upon oral evidence giving reasons for it.³

No rule of law requires that a particular fact must be proved through production of documents only.⁴

Where oral evidence produced by a party was contradictory, same could not be relied upon.⁵

The contradictory, inconsistent and ambiguous oral evidence could not be relied upon.⁶

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1. 2001 CLC 1332.
 2. PLD 1991 Lah. 262.
 3. 1989 ALD 515.
 4. 1990 CLC 729.
 5. 1988 CLC 2388.
 6. PLD 1992 Kar. 46.

Oral evidence would have no value in face of documentary evidence.⁷

Oral statement would not be of any value where documentary evidence in support of such fact being available was not produced.⁸

Where oral evidence of parties was evenly placed but such evidence when read in conjunction with documentary evidence, supported possession of a party claim of possession of such party, *held*, would stand established.⁹

In absence of cogent documentary evidence, Court, *held*, would be justified to decline to place reliance upon oral statements made by witness.¹⁰

Where oral evidence of both sides was equally balanced, documentary evidence supporting claim of vendee, *held*, was to be accepted in light of its probative value.¹¹

Leave to appeal was granted to consider questions whether oral evidence could or was sufficiently satisfactory to displace documentary evidence produced by parties in the case; whether in holding that petitioners were not sons of S, because they were not so shown in pedigree-table Court should have examined other evidence as regards their parentage.¹²

Mere oral self-serving statement of one of the defendants and a chance witness was insufficient to prove question of fact.¹³

Where in proof of a fact, oral word of one party was against oral word of other party, Court would rely upon documentary evidence and other circumstantial evidence to find as to which party was speaking the truth.¹⁴

Oral evidence could only dislodge the belief created by document in the event of its being of a reliable nature having the force enough to shake the solemnity of the document. Where oral evidence in rebuttal of pedigree-table, *viz.*, documentary evidence, was worthless, contents of pedigree-table would be deemed to have been proved.¹⁵

Oral evidence.--Minor discrepancies in statements of witnesses recorded after lapse of considerable period to be ignored by Courts. Reasons stated.¹⁶

Appeal from consent decree. Conditions.--Consent decree operates as an estoppel for the same is founded on agreement of parties, who would consciously give up their right of appeal in consequence of such agreement. In order to bring the cause

7. 1986 CLC 770.

8. 1995 MLD 690.

9. 1986 CLC 2958.

10. 1988 CLC 936.

11. 1986 CLC 2977.

12. 1991 SCMR 771.

13. PLD 1991 Lah. 262.

14. 1987 CLC 2337.

15. 1992 CLC 1263.

16. 2005 CLC 1415 (b).

in cross-examination and defendants had failed to produce evidence in rebuttal, plaintiffs must be deemed to have established their ownership in estate.¹

Criminal trial.--Facts alleged by the prosecution are to be proved by evidence on oath in the Court and the evidence provides a basis for the proof of such facts which consequently results in the conviction of accused. Principles.²

Execution of document and contents thereof. Proving of.--Principle of law. Where a document is admitted or its execution is proved then the contents of the same are always considered as proved or admitted and no oral evidence to disprove the contents of said document is admissible in terms of said Article.³

71. Oral evidence must be direct.--Oral evidence must, in all cases whatever be direct; that is to say:--

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sensor in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection:

Provided further that, if a witness is dead or cannot be found or has become incapable of giving evidence, or his attendance

1. 1996 SCMR 662.

2. Qanun-e-Shahadat by Mr. Justice Khalil-ur-Rehman Khan pp. 48, 50 and 52; Amir Ali and Woodroff's Law of Evidence, Vol. I, 1963 Edn., p. 172; Islamic Criminal Jurisprudence by Cherif Bassiouni; PLD 1953 FC 93; 1969 SCMR 501; PLD 1952 Lah. 384; PLD 1960 Lah. 172; PLD 1979 Lah. 279; 1976 PCr.LJ 82 and PLD 1992 Lah. 45 ref. 1995 PCr.LJ 811.

3. 2006 CLC 1468 (b); PLD 2007 Lah. 83.

cannot be procured without an amount of delay or expense which under the circumstances of the case the Court regards as unreasonable, a party shall have the right to produce *shahada ala al-shahada* () by which a witness can appoint two witnesses to depose on his behalf, except in the case of *hudood*.

COMMENTS

Scope.--This Article says that oral evidence must be direct, that is, if it refers to-

(1) a fact which could be seen:

the evidence must be of a witness who says he saw it;

(2) a fact which could be heard,

the evidence must be of a witness who says he heard it;

(3) a fact which could be perceived by any other sense or manner;

the evidence must be of a witness who says he perceived it by that sense or that manner;

(4) an opinion or the grounds on which that opinion is held;

the evidence must be of a person who holds that opinion on those grounds.

This Article subject to the proviso, excludes opinions given at second-hand. The use of the word 'must' in the first clause of the Article imposes a duty on the Court to exclude all oral evidence that is not 'direct', whether the party against whom it is tendered objects or not. The word 'direct' is opposed to mediate or derivative of 'hearsay'.

Application of Article 71, Qanun-e-Shahadat Order, 1984.--'Oral evidence' means the evidence recorded by the Court. Article 71 of Qanun-e-Shahadat Order, 1984 applies to oral evidence which means the evidence recorded by the Court and does not apply to first information report lodged with the police.⁴

Affidavit-in-evidence by witness, filing of.--Witness in cross-examination deposed that Law Department of appellant had nominated him to file such affidavit. *Held:* Witness had neither applied his mind nor he had first hand knowledge about allegations contained in such affidavit against respondent.⁵

Means of hearsay.--The term hearsay is used with reference to what is done or written, as well as to what is spoken and, in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, and that in many cases it supposes some better testimony which

4. 1997 PCr.LJ 376.

5. 2005 PLC 431 (a).

might be adduced in the particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which may be practised with impunity under its cover, combine to support the rule that hearsay evidence is "inadmissible". "The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by some one else; sometimes it is treated as nearly synonymous with "irrelevant".

Hearsay evidence.--Where the petitioner failed to furnish detail of corrupt practices in election petition and admitted in his own statement that the listed allegation against returned candidates were not his personal observations or his own hearing, such petitioner having heard such allegations from other persons, *held*, would bring that the evidence within the ambit of hearsay evidence which could not be relied upon in deciding election petition.⁶

Effect.--Plaintiff having admitted that he himself did not see the accident, his evidence relating to accident being hearsay evidence was not admissible.⁷

Mere production of newspaper without examining any witness, does not prove contents of newspaper and copy of newspaper rightly rejected to be admitted in evidence.⁸

Statement of Investigating Officer regarding disclosure of some fact by a prosecution witness before him, was not admissible in evidence and only a hearsay evidence.⁹

Statement which is merely a hearsay, could be safely ignored.¹⁰

Oral evidence must be direct. If a witness deposed against an accused person on the strength of having heard so from two other persons (witnesses) that the said accused was responsible for a criminal act then if those two persons (witnesses) are not questioned whether they had, at all, met the first witness or even spoken to him, the evidence of such witness would be inadmissible.¹¹

Hearsay evidence. Admissibility.--Oral evidence has to be direct. Statement of witness regarding relationship of parties who had no direct and special means of knowledge regarding such relationship would be hearsay. Opinion of such witness could not be given any weight or treated as relevant under provisions of Article 64, Qanun-e-Shahadat Order, 1984.¹²

6. 1987 MLD 1321.

7. 1996 CLC 530.

8. 1981 CLC 615.

9. 1985 PCr.LJ 391.

10. PLD 1985 Kar. 595.

11. PLD 2002 Kar. 152.

12. 1997 CLC 1691.