

the police *thana* with a clerk and a peon of the bank. The evidence was held admissible to prove that the amount in question was in fact in the box.¹

6. **Orders of court, execution of.** Where an injunction is granted and the question is whether it is executed or not, it should be presumed to have been executed both under Arts. 29 and 129, Illus. (D), as Court should presume common course of business to have been followed.²

ADMISSIONS

30. **Admission defined.** An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Electronic Transactions Ordinance, 2002. For the purposes of this Ord. in Article 30, for the full stop at the end a colon shall be substituted and thereafter the following explanation shall be added, namely:

Explanation.—Statements generated by automated information systems may be attributed to the person exercising power or control over the said information system.

Ord. 51 of 2002, S. 29 and Sch. item 2

Evidence Act, 1872. This Article is exact reproduction of S. 17 of the Act.

Synopsis

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1. **Admission--general.** Definition of admission in Art. 30 is not exhaustive inasmuch as it does not define "persons" whose statements amount to admissions; nor the circumstances under which a statement must be made so that it amounts to an admission.³ Such persons and circumstances are elaborated in Articles 31, 32 and 33.⁴

3. AIR 1959 Madh. Pw. 77.
 4. AIR 1924 Nag. 385.
 5. NLR 2003 Civ. 44=PLJ 2002 Lah. 731.
 6. NLR 2003 Civ. 44=PLJ 2002 Lah. 731.

An admission is a concession or voluntary acknowledgment made by a party or someone identified with him in legal interest, of the existence of certain facts which are in issue or relevant to an issue in the case. The predominant characteristic of this type of evidence consists in its binding character. Admissions are broadly classified into two categories: (a) judicial admissions, (b) extra-judicial admissions made by a party during the proceedings of a case. They are informal admissions not appearing on the record of the case.⁷

Admissions are confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. More accurately regarded, they are statements of a fact which is relevant to the cause of his adversary.⁸

Civil cases. In civil action admission is classified in two categories, namely, (i) admissions in pleadings; and (ii) evidentiary admissions; whereas admissions in admissions are considered conclusive, evidentiary admissions are not held conclusive unless they operate as estoppels.⁹ An evidentiary admission which is relevant but not conclusive and same may be shown to be wrong. Admission which is wrong in point of fact and evidently made in ignorance of legal rights, is wrong and would have no binding effect on the person making such admission.¹⁰ Thus concurrent findings of Courts below wherein they had found impugned gift as invalid were in contravention of law and in disregard of well-settled principles relating to evidential value of admission contained in duly sanctioned mutations, liable to interference in second appeal.¹¹ A party to suit can seek decree on admission made in pleadings or otherwise without waiting for determination of any other question between the parties.¹²

Admissions by strangers: Generally the statements of persons, who are strangers to the suit, cannot be categorized as admission.¹³ The statement of a witness produced by a party must be given due weight and should be examined in the light of other evidence on record. It would be wrong to give such a statement the status of an admission by a party.¹⁴

Admission by one co-plaintiff or co-defendant. Admission of a co-plaintiff or a co-defendant does not bind the other.¹⁵ Admission in respect of liability of one partner in his individual capacity could not bind his co-partner.¹⁶

Admission must be in favour of opposite party. An admission in pleadings means the admission of an averment by the opposite party.¹⁷ An admission made by a party is his own favour is not an admission.¹⁸

7. AIR 1957 All. 1=ILR (1956) 2 All. 399 (FB).
 8. Black's Law Dictionary, 6th edition, 1993, p. 47.
 9. 1984 CLC 609=NLR 1984 AC 211 (DB) (AJ&K).
 10. PLD 1992 Pesh. 144.
 11. 1992 CLC 235.
 12. 1995 MLD 273=PLJ 1995 Kar. 106=NLR 1995 AC 465=1995 Law Notes (Kar) 18 (DB).
 13. 1983 CLC 1643.
 14. 1980 CLC 1540 (SC A J & K).
 15. 2000 SCMR 1588.
 16. PLD 2001 SC 79.

Effect of admission. Admission clearly and unequivocally made, would be best evidence against the party making it.¹⁷ Facts admitted need not to be proved.¹⁸ When the plaintiff discloses a cause of action, the plaintiff is entitled to get a decree on the admissions of the defence.¹⁹ An admission of the claim of the other party settles a civil dispute. Therefore, admissions are the strongest evidence possible and even a strange construction of a document will be assumed to be correct in view of an admission.²⁰ Where plaintiff in his statement before Court admitted part of defendant's claim, the value of tubewell. It was held that he will be liable to make payment of the admitted amount in addition to payment of decretal amount.²¹ Supreme Court refused to grant leave to appeal where suit had been decided on basis of document on record coupled with admission of defendant.²²

Where respondent had made an admission, which he neither disowned nor explained before High Court, the Court could not discard the admission on the ground that such admission was wholly misconceived and erroneously made.²³

Qualified admission. Any admission as contemplated by O. XII, R. 6, C.P.C. has to be unequivocal admission which could amount to estoppel against the party making such admission. Where admission on which claim to a decree was based was a qualified admission which did not amount to conceding claim of the plaintiff. The defendant had yet to file written statement while application in terms of O. XII, R. 6, C.P.C. had been filed before defendants had submitted their written statement. Plaintiff was held to be not entitled to a decree.²⁴

Admission must be taken as a whole. Where Court intends to proceed to pass order or decree on the basis of admission made by a party, admission as a whole has to be taken into consideration and no part of it can be separated, and judgment passed on that basis.²⁵

Erroneous admission. An admission, could be relevant, but not conclusive proof of fact which could be proved to be incorrect or to have been erroneously made.²⁶ An admission, wrong in fact, is not binding.²⁷ Therefore, an admission which was wrong on the point of fact and made in ignorance of legal right had no binding

17. AIR 1946 Sind 117=ILR 1949 Kar. 207 (DB).
18. PLD 1958 Lah. 699=PLR 1958 (2) WP 1078 (DB).
19. PLJ 2000 Lah. 912=2000 YLR 1449.
20. 1998 MLD 1252 (DB)+PLJ 1998 Lah. 379=PLD 1997 Lah. 153.
1. AIR 1921 Pat. 280.
2. AIR 1914 PC 220.
3. PLD 1995 Lah. 255=PLJ 1995 Lah. 468=NLR 1995 Civ. 637=1995 Law Notes 373 (DB).
4. 1994 SCMR 1966.
5. 1995 SCMR 1243=PLJ 1995 SC 301=NLR 1995 Civ. 422=1995 Law Notes 237.
6. 1995 MLD 273=PLJ 1995 Kar. 106=NLR 1995 AC 465=1995 Law Notes (Kar) 18 (DB).
7. 2000 YLR 1824+PLD 1993 Lah. 569=PLJ 1993 Lah. 303=NLR 1993 AC 604.
8. 1999 SCMR 2578.
9. 2001 MLD 427+2000 YLR 1824.

effect on the person making it.¹⁰ An erroneous admission would not be enough to affect the relief to which a party may be otherwise entitled.¹¹

2. **Statement need not be communicated.** The word "statement" has been used in Arts. 30 to 34, 46, 53 and 140 in its primary meaning of "something that is used in Arts. 30 and communication is not necessary in order that it may be stated."¹²

3. **Admission and confession.** The term "admission" is a term of wider connotation and it can be used to indicate "confessions" also.¹³ The character of the statement of an accused person is not affected by the fact that it is made in a case against himself or against someone else. It is the contents of the statement which determines its species and by merely giving the label of admission to a confession it does not change its essential character and does not cease to be a confession.¹⁴ The acid test which distinguishes a confession from an admission is that where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is needed to authorise a conviction, it is an admission.¹⁵ Where the accused stated that the woman was a consenting party and that they had sexual intercourse with her consent. It was held that these are merely acknowledgments of subordinate facts not directly involving guilt and, therefore, fall short of being confessions.¹⁶

Confession must be accepted as a whole. If confession of accused was to be accepted then it was to be accepted as a whole and not in part.¹⁷

Extradition proceedings. Evidence of accused on his own behalf in extradition proceedings in prima facie admissible as an admission and no particular formality is required to let it in.¹⁸

Written admission necessary. It is more satisfactory if a body entrusted with functions such as the customs authorities are entrusted with, takes the precaution of getting the admission of the accused in writing, when its decision is mainly to depend upon such admission.¹⁹

4. **Admission must be clear and definite.** Statements to operate as admissions must be clear in their meaning.²⁰ For claiming judgment on admission, the admission should be clear unambiguous and unqualified. The document containing admission would have to be read as a whole, if it was a qualified one having effect of denying right or entitlement to relief claimed. Such qualified admission could not be treated

10. 2003 YLR 587=PLJ 2003 Lah. 583+2002 MLD 975=2002 CLJ 197.
11. PLD 1993 Pesh. 81+PLD 1992 Pesh. 144.
12. AIR 1959 SC 356=1959 Cr.L.J. 389.
13. Madh. BLJ 1954 HCR 1269.
14. AIR 1959 All. 518=1959 Cr.L.J. 940 (DB).
15. AIR 1959 All. 518 (DB)+1947 Marwar LR 8 (Cr) (DB).
16. PLD 1959 Lah. 38.
17. PLJ 1999 Tr.C. 323.
18. AIR 1929 Sind 15=29 Cr.L.J. 962=22 Sind LR 458.
19. AIR 1961 SC 264.
20. AIR 1936 PC 150.

as unqualified to be acted upon.¹ An admission by the defendant that he had executed a document relied on by the plaintiff, accompanied by a pleading that the document is of no effect is no admission at all of the defendant's liability.²

Every admission should be given plain, literal and fair meaning and its scope should not be widened or restricted on the basis of suspicions or surmises.³ If an admission is capable of two interpretations the one unfavourable to the person making it should not be put on his admission.⁴ Where in a suit for recovery of money claimed to have been advanced by plaintiff to defendant as a "Qar-ee-Hasna", Defendant admitted payment of money through cheques but claimed that plaintiff owed him money which he had paid to him through those cheques. It was held that where payment of money was admitted there was no presumption in law that it was intended to be repaid. Person who had come to Court for recovery of money was required to prove that money advanced was intended to be repaid. Plaintiff having failed to prove that he had advanced money as loan to defendant, acknowledgment of receipt of money by defendant on plea that plaintiff owed him money would not detract from the conclusion that plaintiff had failed to prove his case.⁵

Admission accompanied by contradictory statement. Where a person makes an admission and then makes a statement nullifying its effect, he must prove the latter statement to make the admission ineffective. Where plaintiff made an admission that specified share in land was held by one of the defendants but claimed that same was purchased by his father through sale-deed. Failure to prove such sale would bind the plaintiff to his admission that such land was held by one of the defendants.⁶

5. Admission must be based on personal knowledge. An admission comes under this section only if it springs from personal knowledge of facts. Where goods were loaded in the wagons by the sender and not by the railway employees and the information given by the sender was accepted as correct for the purpose of charging freight and a receipt was made out as follows: "said to contain 200 bags". There was no admission on the part of the railway authorities that the wagons did contain 200 bags, and if at the destination, the wagon was found to contain less number of bags, the railway administration was not liable.⁷

An admission about a past event on the basis of personal knowledge cannot be rejected merely because the event to which it relates happened, when he was not *sui juris*. Thus the fact that the party who was a child on the date of the document, made the statement that the consideration under the document in question was paid by a certain person will not hinder the statement from being regarded as an "admission".

1. 1986 CLC 1434.
2. AIR 1941 Rang. 117 (DB).
3. AIR 1954 Manipur 11-AIR 1960 Pat. 407 (DB)-AIR 1961 Bom. 169 (DB).
4. AIR 1961 Bom. 169 (DB)-AIR 1956 SC 593+29 AIL 184 (PC).
5. PLD 1994 Pesh. 235-NLR 1994 AC 695 (DB).
6. 1988 CLC 2403.
7. AIR 1956 Mad. 176.

under the law, by supposing that because of his childhood at that time, he could not be expected to speak out of personal knowledge.⁸

6. Implied admission. An admission to be effective must be a positive admission, an implied admission is not ordinarily contemplated by this Article unless it clearly amounts to an admission though it is not stated in so many words to be so. Thus where 'N' as a plaintiff in a previous suit at first claimed that there was an exchange of property. He subsequently amended the plaint abandoning his plea of exchange. This is an admission made in a previous suit *inter partes* to the effect that there was no exchange.⁹ An offer of compromise by the defendant is not an admission of the plaintiff's claim.¹⁰ Similarly an accused pleading not guilty to a charge under section 112, Motor Vehicles Act and stating that he did not drive the car on the wrong side that day cannot be assumed to have admitted the fact of driving the car. He merely denies that he was on the wrong side of the road. Prosecution must establish that he was driving the car on that particular day.¹¹

Payment of compensation under Land Acquisition Act. Payment by the Government of the price awarded in land acquisition proceedings under the Land Acquisition Act as the market value of the land acquired does not amount to an admission by the Government that the price correctly represents the market value.¹²

Defendant not contesting claim. Admission of a claim is a positive act and it cannot be inferred from negative or indifferent attitude of the person concerned. Thus the indifference of the defendant in not appearing in Court and not contesting the claim of the plaintiff cannot necessarily lead to the inference that he has admitted the claim of the plaintiff.¹³

Non-denial of allegation. Where a party required to deny any fact on oath, fails to deny it, he would be taken to have admitted the fact.¹⁴ Where a witness made certain utterances on oath and the other party failed to cross-examine him on his deposition and did not put suggestion as to the deposition being untrue, it would amount to admission of those facts on the part of the other party.¹⁵ Where in a previous suit the allegations in the plaint as to the ancestral character of certain property are not denied by the defendant in his written statement, the failure to deny may be treated as an admission of the ancestral character of the property for the purposes of that suit but it is not an admission which is capable of being proved under Art.30 for the purposes of a subsequent suit as the absence of denial cannot be treated as a positive admission as contemplated by Art. 30.¹⁶

8. AIR 1957 Ker. 178.
9. PLD 1965 Dacca 395.
10. (1836-37) 1 Moo Ind App 154 (PC).
11. AIR 1955 NUC (All) 4809.
12. AIR 1959 AP 52 (DB).
13. AIR 1958 Ker. 203=ILR 1955 Ker. 80 (DB).
14. PLD 1996 Kar. 365.
15. 1999 YLR 2604.
16. AIR 1946 Lah. 256.

Constitutional petition, non-denial of allegation in. Respondent is enjoined upon to traverse allegations made in the petition, expressly or by implication otherwise it has to be deemed as an admission of the allegations.¹⁷

7. Plea in exception. A plea of self-defence is not a confession of guilt. Such a plea can only be used as an admission of the presence of the accused at the place of occurrence and nothing more.¹⁸ Such a plea is required to be tested with the facts stated by the accused person and a Court cannot abdicate its duty by accepting the plea straightaway without applying its mind to the question whether the statement of facts does or does not bear out his plea, and if the Court does not do so, it relegates the function to the accused himself and empowers him to sit on judgment of his own acts.¹⁹

8. Admission by conduct. An admission may either be express or be inferred from the conduct of a person.²⁰ Silence on the part of a party during the trial of a case in regard to any matter brought against him might possibly be of some value afterwards as amounting to an admission on his part that which was alleged and with regard to which he had kept silent was true.¹

Document. To be an admission a document need not have been written by the person against whom it is sought to be used; it is sufficient if it be proved that the document has been in his possession and that his conduct in reference to it created an inference that he was aware of its contents and admitted their accuracy.²

9. Entries in account books. Entries in an account book maintained by a party may become relevant against him as his admission.³

10. Former depositions. It is not correct to say that an admission of a question of fact made by a party in the course of a proceeding has in another proceeding no value whatever and cannot be regarded as a good piece of evidence, relying on which the opposing party may contend that the claim made in the subsequent proceeding is unjustifiable. The Court is certainly entitled to consider admissions solemnly made by a party in the course of proceedings in other suits relating to the same subject-matter.⁴ Evidence given by the defendant as a witness in a previous suit is admissible as an admission in a subsequent suit.⁵ Similarly a deposition in a former suit admitting relationship of landlord and tenant can be used as an admission in a subsequent suit for a *kabuliyat* to prove that relationship.⁶ But admissions cannot override statutory requirements. Thus the admission of a party cannot make a

17. PLD 1993 AJ&K-1=PLJ 1993 AJK 59 (FB).
18. PLD 1957 Kar. 824=10 DLR (WP) 55 (DB).
19. PLD 1964 Pesh. 12 (FB).
20. 10 Cr.L.J. 193 (SB) (Cal).
1. 19 South W.R. (Civ.) 283.
2. 11 Cr.L.J. 453=37 Cal. 467 (DB).
3. (1851-54) 5 Moo Ind App 432 (PC) (But they cannot without further proof be sufficient evidence against a customer to recover a debt from him).
4. AIR 1960 Bom. 153 (DB).
5. 1921 Cal. 781 (DB).
6. 9 South W.R. 162 (DB).

a registered one, unless there has been due compliance with the Registration Act. If the defendant had in a previous suit between the parties admitted the document in suit had been duly registered, it would not be sufficient to hold that the document is duly registered in the absence of any circumstances showing that the admission amounts to estoppel.⁷

Cross-examination on contradiction in depositions. Where a fact was admitted in one forum or at one time and disputed at another the effect could be dealt with in accordance with the concept of admissions and, for such purpose, even in contradictory proceedings, unless the factum of admission was not denied, cross-examination would be warranted and called for. But where there were inconsistent admissions in the Court in England and here, the contradiction was not denied by the defendant. It was held that the question involved with reference to averment in a foreign Court being a purely legal matter no useful purpose would be served by permitting the cross-examination.⁸

11. Recitals in deeds. Statements in a mortgage deed as to interest of father and son (executants) are, as against subsequent purchaser from the son, simple admissions which could be rebutted by evidence.⁹ Recital of payment of consideration in a mortgage document is admission by the mortgagor and may be proved against the person claiming under him though not a party to the document.¹⁰ Similarly recitals of necessity in a deed are admissible in evidence as admissions by the manager or the father.¹¹

The receipts of loans are the best admissions. They are not conclusive proof of the advance of the alleged loans and like any other admissions can be disproved. The burden of disproving them would be upon the defendant.¹²

12. Statement in income-tax proceedings. One view is that it is permissible in law for an assessee to file a statement which may in terms or impliedly admit a matter in dispute in income-tax proceedings without affecting the merits of the issue in civil litigation.¹³ But the other view is that such admission constitutes an admission of liability of the firm to the creditor in respect of the amount mentioned therein.¹⁴

13. Construction of admission. Every admission should be given plain, literal and fair meaning and its scope should not be widened or restricted on the basis of suspicions or surmises.¹⁵ If the Court wishes to proceed upon an admission, it should consider the admission as a whole or reject it altogether.¹⁶ Where an admission is

7. AIR 1963 Mysore 355 (DB).
8. 1991 CLC 694.
9. AIR 1914 Low Bur 225 (DB).
10. AIR 1915 Mad. 1156 (DB).
11. AIR 1955 NUC (Mad) 3917.
12. PLD 1961 Kar. 537.
13. AIR 1953 Orissa 283.
14. AIR 1958 AP 200.
15. AIR 1954 Manni Pur 11.
16. NLR 1984 AC 211=1964 CLC 609 (DB) (AJ&K)+AIR 1955 Cal. 465 (DB)+AIR 1937 Pat. 418 (DB)+AIR 1935 All. 946 (FB).

accepted even those portions which are in favour of the maker of it must be accepted as such.¹⁷ A party cannot split up the statement and pick out the portion which may be favourable to him and ignore the rest.¹⁸ Where an admission, is made subject to a condition, it must be either accepted with that condition or not at all.¹⁹

Criminal cases. An admission made by a person whether it amounts to a confession or not, cannot be split up and part of it used against him. An admission must be used either as a whole or not at all.²⁰ The Court cannot accept only that part in which the accused admits his having inflicted a fatal injury to the deceased and reject the part in which he says that he did so in self-defence.¹

Splitting up of statement. Where a claim can be divided into independent parts, and one portion of the claim is admitted and the other portion denied, the plaintiff is entitled to ask for a judgment on the admitted portion and proceed to the trial on the other.²

14. Withdrawal of admission. Admissions are not conclusive and may be shown to be wrong.³ Admission is no doubt a strong piece of evidence against its maker, but it is also open to him to adduce evidence to show that it is not in fact an admission but is the result of bona fide mistake of fact.⁴ Admission of facts are only relevant and not conclusive and, therefore, may be shown to be wrong.⁵ An admission, which was wrong on a point of fact or is made in ignorance of a legal right, has no binding effect on the person making it.⁶ An admission made under a mistake may be allowed to be withdrawn and the plaint amended.⁷ Similarly a decree-holder who makes an erroneous admission in an application is entitled to retract that admission.⁸ A gratuitous admission made by a person may be withdrawn unless there is some obligation not to withdraw it.⁹ Similarly a voluntary admission of title in the defendant but without proof thereof can be withdrawn at any time.¹⁰ But an admission on a mixed question of law and fact,¹¹ or an admission forming the foundation of a judgment should not be allowed to be withdrawn in appeal.¹² When the petitioner made before a Tribunal a statement of compromise, couched in unambiguous language not admitting of any probability of misapprehension

- 17. 71 Ind Cas 270.
- 18. PLD 1986 SC AJK 120-PLJ 1986 SC AJK 99=1986 PSC 1188-AIR 1933 Lah. 179-34 PLR 149-141 Ind Cas 264.
- 19. AIR 1955 Trav-Co. 152-AIR 1915 PC 9-42 Ind App 103.
- 20. PLD 1986 SC AJK 120-PLJ 1986 SC AJK 99=1986 PSC 1188-PLD 1964 Pesh. 12 (FIR)
- 1. PLD 1965 Pesh. 11
- 2. AIR 1916 Cal 467 - 471 J. 138 (DB).
- 3. 1983 CLC 1643
- 4. 1985 Dhaka L R (SC) 212.
- 5. 2003 YLR 587 PLJ 2003 Lah. 583.
- 6. 1991 CLC 1248-PLD 1988 SC 749.
- 7. 1985 Dhaka L R (SC) 212-AIR 1940 Bom. 281-ILR 1940 Bom. 480.
- 8. AIR 1911 Lah. 6-32 PLR 413-130 Ind Cas 406.
- 9. AIR 1939 All. 348-182 Ind Cas 801 (2)-AIR 1953 Madh-B 184 (DB).
- 10. 26 Cl. 81 25 Ind App 161 (PC)
- 11. AIR 1915 Oudh 163.
- 12. AIR 1925 PC 150.

are admissions, if they are made during the continuance of the interest of the persons making the statements.
Evidence Act, 1872. This Article is reproduction of section 18 of the Act.

Synopsis

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| 9. Statements by third parties. | 20. Statements by predecessor-in-interest. |
| 10. Statement by witnesses. | |
| 11. Admission by agent. | |

¹³ 1988 CLC 211-NLR 1986 Civ. 574 KLR 1986 CC 112 (DB).

- 21. Admission by manager of joint Hindu family.
- 22. Statements in a will.
- 23. Admission by accused.

1. Scope. Article 31 deals with the admission made by a party to a proceeding or by his agent. The circumstances under which statements made by these persons are admissions are enumerated in the Article.¹⁴

Art. 31 does not by itself make an admission therein mentioned relevant, and an admission unless it is relevant is not admissible in evidence.¹⁵

Proof of admission. An admitted fact does not require any proof unless the admission is otherwise explained by its maker.¹⁶

Effect of admission. Admissions may be made by party to proceedings himself or by his agent which shall be binding upon the principal. Certain other statements can also be conferred with status of admissions so as to conclusively bind the parties.¹⁷ An admission cannot pass title by overriding statutory provisions. Title to land does not pass by admission when the statute requires a deed of transfer. But an admission contained in a deed of release can be used to rebut the presumption of correctness of settlement record.¹⁸

2. "Proceeding". "Proceeding" refers to a proceeding in which the matter stated by a party is in issue or relevant to an issue and not to the proceeding wherein the statement was made.¹⁹

3. Admissions by party. An admission of fact made in civil litigation binds the party making such admission.²⁰ It is the best evidence against party making the admission,¹ because what is admitted by a party to be true must be presumed to be true unless the contrary is shown.² Thus where defendants admitted their liability to the extent of specified amount, plaintiff's suit to the extent of that amount was decreed.³ Where possession of a party was accepted by his opponent, such possession would carry presumption that the possession continued with the party unless party in possession was evicted in due course of law.⁴ But admissions of fact are only relevant, and are not conclusive, and therefore may be shown to be wrong. *Qanun-e-Shahadat* expressly provides that admissions are not conclusive proof of the matters admitted.⁵ Thus where an illiterate lady who did not understand the meaning of legal

- 14. NLR 2003 Civ. 44=PLJ 2002 Lah. 731.
- 15. AIR 1921 Nag. 153.
- 16. 61 Cal. WN 170.
- 17. NLR 2003 Civ. 44=PLJ 2002 Lah. 731=2002 YLR 2479=2003 CLJ 539.
- 18. AIR 1956 Cal. 669 (DB).
- 19. AIR 1933 Rang. 292=35 Cr.L.J. 131 (DB).
- 20. 2000 YLR 1449=PLD 1985 Kar. 530.
- 1. 2000 YLR 1449=PLD 1985 Kar. 530.
- 2. AIR 1954 SC 355=AIR 1951 Orissa 313 (DB) (Party is not estopped or concluded by him unless another person has been induced to alter his position or condition)-AIR 1932 Cal. 58 (DB).
- 3. 1998 CLC 816 (DB).
- 4. 1986 CLC 2958.
- 5. PLD 1975 SC 311.

words, like "deceit" had admitted in her statement, *factum of deceit against her and in the same statement denied the existence of any such deceit, deceit in question, was not proved in absence of production of copy of decree or judgment in question, Fact asserted in examination-in-chief when not subjected to cross-examination, would be deemed to have been admitted.*⁷

A Court is not free to ignore or get over definite and clear statements of admission made by parties in the witness box by ascribing them to inadvertence or mistake especially when there is not even a suggestion made in re-examination to that effect.⁸ No one would like to make any admission against his own interest, unless same is true.⁹ Such admission could not be treated as an innocent admission as it would be a new phenomenon having no legal foundation at all.¹⁰ Similarly an admission made by parties to a witness duly testifying, cannot be cancelled as mere hearsay in view of Art. 30.¹¹ But if the statement is ambiguous it must be put to the party who must be given an opportunity of explaining it before it can be used against him as his admission.¹²

An admission by a party within Art. 34 could not be used as evidence in plaintiff's favour. Erroneous omission to object to the admission of such testimony does not make it available as a ground of judgment.¹³

Admission in written statement. Admission in the written statement would be binding on defendant.¹⁴

Admission in previous suit. A party would be bound by admission recorded in pleadings in a suit, in which it was filed and not in a subsequent suit.¹⁵ Where appellant in previous suit, as a defendant had taken a definite plea that he was heir of deceased and had led evidence in support of such plea. In subsequent suit he produced evidence to the effect that he was the son of deceased and entitled to her property. No attempt was made in cross-examination to show that he had made a wrong statement. One of the co-heirs/respondent had admitted that appellant was his brother. It was held that respondent's statement was a strong piece of evidence in favour of appellant. Appellant as a son of deceased was a co-heir with respondents and thus, entitled to inherit his share in the property in question.¹⁶

A mere withdrawal of a suit does not destroy the effect of an admission made by a party therein.¹⁷ The defendant's admission in the former suit of his relation to

- 6. 1995 MLD 690=NLR 1995 UC 733=NLR 1995 CLJ 426.
- 7. 1992 CLC 235.
- 8. AIR 1955 Tax-CO. 199 (DB).
- 9. 2003 SCMR 41=PLJ 2002 SC 1247=2003 UC 451=2003 SCJ 532.
- 10. 2003 SCMR 41=PLJ 2002 SC 1247=2003 UC 451=2003 SCJ 532.
- 11. NLR 1995 CLJ 24.
- 12. AIR 1963 All. 260.
- 13. 19 All. 76=23 Ind App 106 (PC).
- 14. 2002 SCJ 359=2002 SCMR 326=2002 UC 398.
- 15. 2001 YLR 1103+1992 SCMR 2300=1992 Law Notes 1153.
- 16. 1991 SCMR 1381.
- 17. AIR 1956 Cal. 577 (DB).

police officer at the time of laying a trap is admissible in evidence.¹⁶ Where a person merely admits having accompanied the co-accused as an informer of the police without admitting having taken any part in what the co-accused did, the statement does not amount to a confession.¹⁷

Unrecorded confession. An unrecorded confession can be proved by oral testimony of a Magistrate.¹⁸

Extra-judicial confession. An extra-judicial confession being only an admission can be considered along with other evidence.¹⁹

F.I.R. by accused. Where a person after committing an offence proceeds to the police station and report the matter to the officers concerned, who take down such statements as the first information under S. 154, Cr.P.C. by reason of the provision contained in Art. 38 such a statement is inadmissible in evidence against the accused if it is in the nature of a confession.²⁰ It cannot also be used to corroborate or contradict other witnesses.²¹ It is however to be noted that the F.I.R. may in such cases be admitted in favour of the accused.²²

Non-confessional statement in F.I.R. If the statement made by the accused in first information does not amount to a confession, it is admissible in evidence.²³ A report made by A to the police that B has beaten him is not a confession and is admissible against A in his trial for having murdered B's wife the same day a short time before.²⁴ The information by the accused to the police officer that the deceased was surprised when he was in the act of committing the theft and that when he was about to attack the accused with deadly weapons, the accused in exercise of his right of defence of property and person, used his gun and wounded the deceased is not a confessional statement and is therefore admissible.²⁵ Where a person accused of murdering the deceased lodged a first information report with the police that he assaulted with *bhala* some unknown thief who had cut a portion of his crop. The information of occurrence received by the police long afterwards is neither a confession nor is it hit by section 162, Criminal P.C. The statement can be admitted in evidence as an admission.²⁶

16. I.L.R. (1950) 2 Cal. 632.
17. AIR 1951 Cal. 475=52 Cr.L.J. 819 (DB).
18. AIR 1934 All. 351=56 Cr.L.J. 45 (DB).
19. AIR 1955 Kutch 1+AIR 1940 Pat. 163 (DB).
20. PLD 1965 SC 366=17 DLR SC 420+PLD 1956 S C 420=9 DLR SC 11+AIR 1961 Lah. 146 (DB)+PLD 1960 Pesh. 137 (DB)+AIR 1957 SC 366+AIR 1948 Lah. 43=48 Cr.L.J. 977 (DB).
1. AIR 1957 SC 366=1957 SCR 657=I.L.R. (1957) 1 All. 361.
2. PLD 1960 Lah. 137=PLR 1961 (2) W.P. 207=13 DLR (W.P.) 62 (DB)+AIR 1938 Lah. 43=48 Cr.L.J. 977 (DB)+AIR 1952 Mad. 586.
3. PLD 1961 Lah. 146 (DB)+AIR 1962 Raj. 3 (DB)+AIR 1948 Lah. 19 (DB).
4. AIR 1917 PC 25=18 Cr.L.J. 471.
5. AIR 1957 Cal. 372 (It was held that the informant did not seek to give any information relating to commission of cognizable offence and even if the statement was hit by Art. 28 the information could not possibly be treated as F.I.R. within meaning of S. 154, Cr.P.C.)
6. AIR 1948 Pat. 62=26 Pat. 40=48 Cr.L.J. 565 (DB).

F.I.R. partly confessional. There is no bar to splitting up of the first information report where the confessional part is separable from the rest of the statements which are otherwise admissible and to exclude from it any of the inadmissible parts and admitting the rest of it.²⁷ If the first information report is a document containing not only the confession of the accused for committing the crime with which he is charged, but also relates to several other matters which are relevant to the trial, there is nothing in the provisions of Qanune-e-Shahadat making the latter inadmissible. One must of course be taken that such statements are properly separable from the confessional part.²⁸ An old man of fifty murdered his young wife aged sixteen, suspecting her of infidelity and reported the matter to the police after the occurrence. In his report he gave a history of the facts previous to the date of occurrence which prompted him to do the deed. It was held that the preliminary narrative was admissible against the accused, if proved.²⁹ But if there is a confession then the statement of confession is inadmissible including that portion which relates to the preparation for the commission of the offence. The existence of a motive to commit an offence is itself taken to be an incriminating circumstance in determining the guilt of the accused and when there is a confession of the commission of the offence all incriminating circumstances intimately connected with the commission of the offence and forming part of the confession must be excluded. If after excluding such circumstances, there remains some other admissions which are relevant to the case, they may be admitted as admissions of the accused under Art. 34.³⁰ Thus where the question is whether the accused exercised a right of defence of property which was in his possession, his statement in the first information report that the opposite party in the fight were in peaceful possession of the property since two or three weeks before the fight, is admissible as his own admission to show that the accused was not in possession and therefore he was only an aggressor.³¹

Only accused's own admissions are admissible. No one except the accused himself can admit anything in a criminal trial on behalf of an accused person.³² A counsel for an accused person cannot make admissions upon questions of fact binding upon the accused.³³

An admission of one accused cannot be used against his co-accused.³⁴ For the same reason letters written by an accused are evidence only against him and not against any other accused.³⁵

32. Admission by persons whose position must be proved as against party to suit. Statements made by persons whose position or

7. AIR 1964 Pat. 210 (DB)+AIR 1962 Raj. 3 (DB)+AIR 1960 Raj. 101 (DB).
8. AIR 1962 Raj. 3 (DB).
9. AIR 1964 SC 1850+AIR 1921 Cal. 111=22 Cr.L.J. 562 (DB).
10. AIR 1964 SC 1850+AIR 1962 Raj. 3 (DB).
11. AIR 1953 Cal. 307=1953 Cr.L.J. 712.
12. AIR 1950 I Cal. 462 (DB).
13. AIR 1959 All L.J. 340 (DB).
14. AIR 1957 SC 747=1958 SCR 161=1957 Cr.L.J. 1325.
15. AIR 1957 SC 747=1958 SCR 161=1957 Cr.L.J. 1325.

liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Evidence Act, 1872. This Article is exact reproduction of S. 19 of the Act.

Synopsis

1. Scope.
2. Master and servant.
3. Guardian and ward.
4. Principal and agent.
5. Landlord and tenant.
6. Statement of trustee.
7. Statement by predecessor-in-interest.
8. Recitals in documents.

1. Scope. The word 'statement' has been used in this Article meaning as 'something that is stated'.¹⁶

The admissions of a person whose position in relation to property in a suit, it is necessary for one party to prove against another, are original evidence and not hearsay, though such person is alive and has not been cited as a witness.¹⁷ The Court should not lightly ignore such admissions.¹⁸ But a party who made the admission may prove them to be untrue unless another person has been induced by them to alter his position.¹⁹

Admission made in ignorance of facts. Wrong admissions made in ignorance of rights are not binding.²⁰ Thus an admission by a young man of 19 regarding the status of the undivided family concerning which the elder members were long uncertain has no binding effect.¹

16. AIR 1959 SC 356=1959 Cr.L.J. 389.
17. 5 Mad. 239.
18. AIR 1919 Mad. 902 (DB).
19. 15 Bom. LR 209 (DB).
20. AIR 1944 Bom. 233+AIR 1941 Oudh 429 (DB).
1. (1863) 9 Moo Ind App 195 (PC).

Admission in suit between defendant and third party. Proceedings in a previous suit between the defendant and third person are relevant and pleadings of the suit are admissible as admissions.²

Compromise in previous suit relating to property not subject of suit. Statements in a compromise affecting property not subject of suit are nevertheless admission in evidence in a subsequent suit as admissions.³

Admission must relate to property in suit. An admission will be relevant only if specifically relate to the property in dispute. Where the issue is, whether there was a subsisting mortgage between the parties, any admission showing that a mortgage existed is relevant. But if a specific mortgage is alleged, an admission of some mortgage is not relevant.⁴

Statements before police. A statement made to a police officer is not admissible in evidence of confession under Arts. 31 to 34 in a civil case.⁵

2. *Master and servant.* A statement by a servant about his position and liability is admissible in evidence against his master.⁶ But a report by a servant against another servant, is not admissible against the master even where it corroborates the account of the affair.⁷

3. *Guardian and ward.* An admission by the guardian of an infant is not binding on the infant as to his proprietary rights but is receivable in evidence for other purposes.⁸ Thus the statement by a plaintiff as the guardian of a party to a previous criminal case, may be admissible in a subsequent civil suit.⁹

4. *Principal and agent.* Report by plaintiff's manager acting as an agent of the plaintiff is admissible against the plaintiff.¹⁰ Similarly an admission made by an agent (principal debtor) against his surety, is admissible in evidence against the surety subject to the circumstances of each case and the fact that it is made while the liability subsists.¹¹

Criminal cases. Before recitals in a document by a person alleged to be an agent of the accused can be used against the accused, in a criminal case, agency must be satisfactorily proved.¹²

2. AIR 1930 Pat. 405 (PC).
3. AIR 1977 Pat. 15 (DB).
4. 1913 Mad WN 924 (DB).
5. AIR 1960 Cal. 494.
6. 39 Cal. WN 736.
7. 40 Cal. WN 865.
8. AIR 1918 Cal. 34 (DB) (Court of Wards).
9. 26 All. 108=31 Ind App 38 (PC).
10. AIR 1941 Pat. 260 (DB).
11. 25 Mad. L.J. 51 (DB).
12. AIR 1954 SC 660=1954 Cr.L.J. 1679.

5. Landlord and tenant. An admission made by a landlord is not binding on his tenant. A compromise between the proprietors to become joint proprietors is not binding on the tenant.¹³

In case of an admission of tenancy by a tenant, the court must admit the tenant's admission as a whole and must consider whether land in possession is the same as the one comprised in the lease.¹⁴

6. Statement of trustee. Admissions and conduct of a trustee of a public institution is admissible in favour of the trust but it cannot be allowed to prejudice the case of the institution materially.¹⁵

7. Statement by predecessor-in-interest. A statement by the predecessor-in-title who is in the best position to know all about his property ought not to be lightly set aside on the mere ground that they were made for a fraudulent purpose. If some one alleges that the statements are incorrect the burden lies on him to prove the allegation.¹⁶

An admission made by a person having a reversionary interest in the property at the time is evidence against another person claiming the reversionary interest under title derived from the former.¹⁷ But a statement made by a person after he has lost interest in property would not be relevant under this section. Thus any statement made by a pre-emption decree-holder after he had transferred the land with all the rights he possessed under the decree, is not a statement made on behalf of the transferee as at that time the pre-emptor transferor had no title in the property.¹⁸

An admission made by a presumptive reversioner that an alienation by a Hindu widow was proper is not binding on the actual reversioners even though they be his sons. Nobody has a vested right so long as the widow is alive and the eventual reversioner does not claim through anyone who went before him. The actual reversioners do not claim as heirs of their father but as heirs of the last holder.¹⁹

Statement in favour of plaintiff. A sketch map filed with the plaint in a previous suit instituted by the predecessor of the plaintiff is not an admission in favour of the plaintiff as to the non-existence of the building merely because it was not shown on the map.²⁰

8. Recitals in documents. Recitals in documents wherein an admission has been made by the predecessor-in-interest of a party is admissible in evidence. A recital of consideration in deed and admission as to receipt of consideration made before the registering officer, are evidence against persons who claim through the

- 13. AIR 1919 Pat. 309.
- 14. 11 Cal. L.J. 382 (DB).
- 15. AIR 1930 Lah. 579-11 Lah. 503 (DB).
- 16. 1912 Pun LR No 187, p. 588 (DB).
- 17. 64 Ind Cas 334 (DB) (Cal).
- 18. AIR 1953 Punj. 163-ILR 1954 Punj. 15.
- 19. AIR 1954 SC 505-1955 SCR 467.
- 20. AIR 1947 Oudh 98-22 Luck. 270.

accruant of the deed.¹ An admission of an adoption in an adoption deed is one both of the fact and of the validity of the adoption.² A recital in a gift deed that the possession of the gifted property has been given to the donee is an admission binding on persons claiming under the deceased donor.³ It must however be noted that recitals in a sale-deed are not conclusive admissions. They can be shown to be wrong. But a Judge while considering weight of a recital in a partition deed cannot ignore it merely on a guess of his own.⁴

A recital in a document executed by several persons is binding on all of them and one of such persons can make use of recitals as an admission against the others.⁵ Self-serving statement. A recital found in a document written by a party to a dispute which supports his own case is not admissible under this section.⁶

Admission in criminal case is not admissible in civil suit. An admission recorded in the judgment of a criminal court is not admissible in a subsequent civil suit where the same matter is in issue.⁸

33. Admission by persons expressly referred to be party to suit. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound.

A says to B "Go and ask C; C knows all about it." C's statement is an admission.

Evidence Act, 1872. This Article is reproduction of S. 20 of the Act.

Synopsis

- 1. Scope and object.
- 2. Reference to third party.
- 3. Statement in suit by nominee of party.
- 4. Agreement to abide by statement of referee.
- 1. Scope and object. Object and purpose of reference under Art. 33 is to treat the statement of the referee as the statement of the party itself.⁹

- 1. 10 All. L.J. 87.
- 2. AIR 1920 Mad. 648-43 Mad. 867 (DB).
- 3. AIR 1958 Mad. 527.
- 4. AIR 1937 Cal. 159-ILR (1937) 1 Cal. 665 (DB).
- 5. AIR 1938 Mad. 133.
- 6. AIR 1937 Pat. 561.
- 7. AIR 1939 PC 146.
- 8. AIR 1916 PC 256-43 Ind App 73-43 Cal. 707.
- 9. PLD 2002 Lah. 190-PLJ 2002 Lah. 964.

4. **Agreement to abide by statement of referee.** Where parties to a proceedings agree to abide by a statement of a third person, it is a statement within the meaning of Art. 33.¹⁵ An agreement to abide by the statement of any particular witness is not reference to arbitration nor opposed to public policy or repugnant to provisions of the Contract Act.¹⁶ Such an agreement is perfected into an adjustment of the claim in terms of the statement and acceptance by the other for which the statement. There is an offer by one party and the referee really becomes a consideration is reciprocity. The statement of the referee really becomes an admission of both parties which is binding upon them and its conclusiveness follows from the principal of estoppel.¹⁷ Appellant would be estopped to challenge effectiveness and binding nature of statement of referee inasmuch as, he had appointed him with his own free consent for decision of matter in issue; he had agreed that whatever decision such referee would give that would be binding on him and he would not challenge its validity. He did not challenge statement of referee recorded in Court twice, either by way of cross-examination or through written objection petition. Appellant by his conduct, thus, could not be allowed to raise any objection to decision given by referee. He could not be allowed to take shelter under objection to decision given by referee. He could not be allowed to take shelter under legal technicalities which have always been considered to create no hurdles in the way of substantial justice.¹⁸ In case of appointment of referee by the parties themselves for resolving dispute between them. Appellate Court resolved the controversy between the parties on the basis of referee's report. Referee had taken evidence which was necessary in resolving the dispute in question. Concurrent findings of all the Courts below were on merits. No misreading of evidence was pointed out. The judgment was upheld.¹⁹ However, the statement unless it amounts to an adjustment of the suit is not conclusive. Therefore, in a case where the statement of a referee is not clear but ambiguous the Court can take further proceedings to resolve the ambiguity. No adjustment of the suit can take place on the basis of the statements which are self-contradictory. The High Court did not accept that the Courts can hold further proceedings only in the case of an award by an arbitrator and not in the case of a referee under Art. 33.²⁰

Agreement between counsel to appoint referee. A person cannot be appointed referee by Court on mere agreement of counsel when parties are present in Court.¹

Appointment without agreement of one party. Referee's appointment at the instance of plaintiff while defendants were not represented was not warranted.²

Minor party to suit—effect. Where one of the defendants was a minor, reference to an outside party for information on the matter in question was receivable as an admission against the party proposing such reference. Agreement of parties for

15. 2004 YLR 295.
16. AIR 1933 All. 861=56 All. 39 (SB).
17. PLJ 2000 SC 513=2000 SCMR 440+AIR 1952 Punj. 344=ILR 1953 Punj. 248.
18. PLJ 2000 SC 513=2000 SCMR 440.
19. 1994 SCMR 1771.
20. PLD 1980 BJ 45.
1. 1996 MLD 674=NLR 1996 Civ. 123=1996 Law Notes 106 (Lah).
2. PLD 1995 Lah. 305=PLJ 1995 Lah. 369.

decision of suit on the footing of the statement of referee, being merely a mode of evidence was not an "agreement or compromise" of such a character that leave of Court was necessary.³

Breach of agreement. Where a party agrees to the appointment of a referee and gives his consent to the case being decided on the statement made by the referee, the agreement cannot be called an adjustment of the suit within the meaning of O.23, R.3. It can at the most be called an agreement to adjust the suit. In such a case, a party is not debarred from resiling from the agreement before the statement is actually made by the referee. Breach of such an agreement might entitle a party to sue for damages, but the suit cannot be adjusted in accordance with the same.⁴ Therefore where a sole witness had been appointed a referee defendant's application before Appellate Court before recording of statement of sole witness that he had no confidence in him, would render the contract between parties for appointment of sole witness to be abrogated and no judgment and decree could be passed on his statement.⁵ But in a recent case, where appellant applied two days before statement of referee in Court for cancellation of his appointment, his application was rejected and suit was decreed in terms of his statement.⁶

34. *Proof of admissions against persons making them, and by or on their behalf.* Admissions are relevant and may be proved as against the person who makes them, or his representative-in-interest, but they cannot be proved by or on behalf of the person who makes them or by his representative-in-interest, except in the following cases:-

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under Art. 46.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

3. PLD 1991 SC 1131=PLJ 1991 SC 499=NLR 1992 SCJ 38=1991 PSC 1388.
4. AIR 1961 Punj. 31+AIR 1933 All. 861 (SB)+57 Punj LR 327.
5. 1996 MLD 674=NLR 1996 Civ. 123=1996 Law Notes 106 (Lah).
6. PLJ 2001 Lah. 245 (DB).

A may prove a statement by *B* that the deed is genuine, and *B* may prove a statement by *A* that the deed is forged, but *A* cannot prove a statement by himself that the deed is genuine, nor can *B* prove a statement by himself that the deed is forged.

(b) *A*, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course. *A* produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. *A* may prove these statements, because they would be admissible between third parties, if he were dead, under Article 46, paragraph (2).

(c) *A* is accused of crime committed by him at Peshawar. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if *A* were dead, it would be admissible under Article 46, Paragraph (2).

(d) *A* is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) *A* is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him. It was genuine. *A* may prove these facts for the reason stated in the last preceding illustration.

Evidence Act, 1872. Article 34 is reproduction of section 21 of the Act.

Synopsis

- | | |
|---------------------------------------|---|
| 1. Admissions of persons making them. | 8. Admissions otherwise relevant. |
| 2. Representative-in-interest. | 9. Admission must be taken as a whole. |
| 3. Admission by agent. | 10. Admission in unregistered document. |
| 4. Admission by accused. | 11. Confronting a party with his admission. |
| 5. Admission in prior proceedings. | 12. Value of admission. |
| 6. Admissions in pleadings. | |
| 7. Self-serving admissions. | |
| 13. Proof of admission. | |

1. Admissions of persons making them. An admission is a concession or voluntary acknowledgment made by a party or someone identified with him in legal interest of the existence of certain facts which are in issue or relevant to an issue in

The predominant characteristic of this type of evidence consists in its case. The predominant characteristic of this type of evidence consists in its binding character.⁷ Therefore an admission by one defendant in a suit is binding on the defendant when the said defendant was jointly interested with such co-defendant in the subject-matter of the suit, the admission being related to the defendant in his character of a person jointly interested with the other parties against whom the evidence was sought to be interested.⁸

Kinds of admissions. Admissions are broadly classified into two categories: (a) judicial and (b) extra-judicial. The former are formal admissions by a party during proceedings of the case. The latter are informal, not appearing on the record of the case. The former admissions are fully binding on the party making them. They constitute a waiver of proof (*vide* Art. 113). Extra-judicial or informal admissions are also binding on the party against whom they are set up. But they are binding only partially, except in cases where they operate as or have the effect of estoppel in which case again they are fully binding and may constitute the foundation of the rights of the parties (*vide* Art. 45).⁹

Admission is evidence against the makers. Every admission is evidence against the party making it.¹⁰ An admission is a substantive piece of evidence and it is not used only for the purpose of impeaching the credit of the witness, or in order to contradict him, and once it is proved, it is a well-established rule of law that it is for the party making it to affirmatively establish that the admission made by him was false or untrue and should, therefore, not to be acted upon.¹¹ In the absence of his doing so, the Courts should not lightly go behind the admissions to determine as to whether they should be relied upon or not.¹² Thus a person who has in an affidavit made a statement of value for purposes of customs duty assessment, will be bound thereby when he subsequently sues for damages for the destruction of the goods.¹³ A partnership form and declaration signed by the plaintiff firm and one *M* which were filed in the Stock Exchange were held admissible as admissions against the plaintiff under Art. 34.¹⁴ Deposition of an insolvent examined under Art. 50 and reduced to writing is admissible as evidence against him in a criminal charge.¹⁵ An admission in a side-deed by its executors that the garden belonged to their father and after his death to them, is admissible in a suit for possession of the garden.¹⁶ An admission of guilt in an application dictated to a petition writer and then presented to a Magistrate is admissible in evidence.¹⁷ Where plaintiff's claim to ownership of suit land and

7. AIR 1957 All. 1=ILR (1956) 2 All. 399 (FB).

8. PLD 1967 A J & K 67 (DB).

9. AIR 1957 All. 1=ILR (1956) 2 All. 399 (FB).

10. AIR 1954 Raj. 49 (Admissions not admissible against third parties)+AIR 1926 Oudh 41+AIR 1920 Mad. 815 (DB). (If unexplained).

11. PLD 1967 A J & K 67+AIR 1946 Lah. 65 (FB)+AIR 1917 PC 12+AIR 1933 Lah. 885 (DB).

12. 38 Cal 432 (PC).

13. AIR 1919 PC 85.

14. AIR 1954 Cal. 179.

15. AIR 1920 Cal. 170=21 Cr.L.J. 78=46 Cal. 996.

16. 9 Cal WN 89 (PC).

17. AIR 1939 All. 242=40 Cr.L.J. 559=ILR 1939 All. 377.

the suit land and put in evidence a certified copy of that statement. It was held that the certified copy was evidence in the case and the admission contained was substantive evidence.³ If the decree-holder wants to rely upon certain admissions made in a previous execution, it is his duty to file certified copies of those documents and to prove them in case they are not admitted by the judgment-debtor. It is not quite fair to rely upon papers on the Court files unless they are duly tendered in evidence by the party which wanted to rely upon them and the other party had notice that they are going to be relied upon as evidence.⁴

Admission in documents. Where in a document executed by a woman, there is an admission and the document is proved, the admission should also be held to be proved even though the woman is not examined.⁵ In that behalf it may be noted that the admission of execution of a document can be proved by the registration endorsement coupled with proof of the identity of the person who presented it for registration with that of the executant.⁶

35. When oral admissions as to contents of documents are relevant. Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Evidence Act, 1872. Article 35 is exact reproduction of section 22 of the Act.

Synopsis

1. Oral evidence about inadmissible document.
2. Proof of proper execution of document.

1. Oral evidence about inadmissible document. Where the document sued on is a promissory note and the suit itself is brought on it as the original cause of action, the admissions of its contents by the defendant do not avail the plaintiff when the document is inadmissible for want of stamp.⁷ If the promote is not admissible the contents of the promote cannot be proved by oral evidence. Therefore the terms of the loan stated in the promote cannot be proved by oral evidence.⁸

2. Proof of proper execution of document. Where on the evidence it is clear that the promissory notes were read out by one of the promisors in the presence and hearing of the promisee, co-promisor and the witness before they were signed, the evidence of the promise and the witness is admissible to show that there was an

3. AIR 1955 NUC (Assam) 4205.

4. 1955 Raj, LW 521.

5. AIR 1935 Lah. 628.

6. AIR 1943 PC 83.

7. 12 Bom. 443 (SB).

8. 26 All. 178.

Art. 35] admission expressly by one promisor and impliedly by the other, of the contents of the promissory note.⁹

36. Admission in civil cases when relevant. In civil cases no admission is relevant, if it is made either upon an express condition of evidence of it is not to be given or under circumstances from which the Court can infer that the parties agreed together that evidence which the Court should not be given.

Explanation. Nothing in this section shall be taken to exempt any Advocate from giving evidence under Art. 9.

Evidence Act, 1872. Article 36 is exact reproduction of section 23 of the Act.

Synopsis

1. Letters marked "without prejudice".
2. Statements of parties during negotiations for compromise.
3. Conditional admission.
4. Admission in arbitration proceedings.

1. Letters marked "without prejudice". The use of the words "without prejudice" in a letter or document means that for the purpose of a discussion and the possibility of coming to a settlement the writer would be frank but that what is said with that object in view shall not be used in evidence, if the object with which it was written fails and the dispute goes to Court.¹⁰ Therefore an admission made in a letter written "without prejudice" is not a binding admission.¹¹ However the rule excluding documents marked "without prejudice" from being admitted in evidence has no application unless some person is in dispute or negotiation with another and terms are offered for the settlement of the dispute or for negotiation.¹²

A unilateral inscription on a letter of words "without prejudice" does not imply an agreement under this section to bar its proof.¹³ Where a letter does not offer any terms for settlement or it is not written with the object of frank discussion in negotiation of a settlement, the mere fact that the words "without prejudice" are used in it, would not bar its admissibility in evidence. Where a letter stated "the money was received from you and I have purchased shares for you but I have handed them to another person. To settle your dispute I would pay Rs.to you without prejudice". It was held that in spite of the words "without prejudice" the letter amounted to an acknowledgment of liability.¹⁴

9. 1948 Bur LR 810.

10. 1985 Dhaka LR (SC) 54+23 Bom. 177.

11. PLD 1976 Kar. 992+PLD 1961 Kar. 50+10 Cal. WN 42.

12. 23 Bom. 177.

13. AIR 1930 Oudh 105=5 Luck 465.

14. AIR 1951 Hyd. 47=ILR 1951 Hyd. 440.

Document may be used for collateral purpose. A letter marked "without prejudice" written by the appellant cannot be used to determine the extent of his liability, but in so far as it shows the relationship between the appellant and respondent as debtor and creditor and that they tried to settle the account, the letter can be taken into consideration.¹⁵

2. **Statements of parties during negotiations for compromise.** An offer of compromise is rejected under this section only in those cases where it appears clearly to have been made on the faith of a pending negotiation to which the party was led by the confidence of an arrangement being effected. In the absence, however, of any express or strongly implied restriction as to confidence, an offer of a compromise is clearly admissible and may be material as an evidence of liability.¹⁶ However, ordinarily where negotiations are being conducted with a view to settlement, it should be presumed that these negotiations are being conducted "without prejudices". In such circumstances it is not open for one of the parties to give evidence of an admission made by another.¹⁷ Where the admission is merely a suggestion made in the course of a negotiation and is not even unconditional, it is no admission at all.¹⁸

13 **Offer incorporating admission rejected by other party.** Where defendant's offer to discount by way of compensation at U.S. \$ 70 per metric ton of the commodity in future shipments in view of long standing business relationship between parties was to assuage their feeling as marketing gimmick. But such offer was rejected by plaintiffs they could not now be heard to say that said offer constituted admission of plaintiff's claim.¹⁹

Compromise. A court is precluded under this section from making use of admissions in a deed of compromise which is subject-matter of a dispute between the parties.²⁰ An admission in a written statement which follows a compromise of the dispute is not admissible in evidence in any subsequent suit.¹ An admission contained in the draft compromise filed in a suit, which also gave liberty to the parties to repudiate any of its clauses if it affected them prejudicially, should be excluded from evidence.² It follows that admissions made for the purpose of a compromise are not of much value when the efforts to compromise fail.³

Admission to third party for compromise. Admissions to a person to whom a party went for compromise are not inadmissible in evidence unless there was an express agreement that evidence of those statements was not to be given.⁴

15. 1985 Dhaka L.R. (AD) 54.
16. AIR 1917 Cal. 487 (DB)+AIR 1920 Pat. 841 (DB).
17. AIR 1936 All. 157 (DB)+11 Cal WN (Notes) XXVI.
18. AIR 1923 Pat. 303 (DB).
19. PLD 1999 Kar. 25.
20. PLD 1976 Kar. 992+1877 Pun Re No. 83, p. 217.
1. AIR 1962 Raj. 196 (DB).
2. 48 Cal WN 15.
3. AIR 1922 Oudh 231 (DB).
4. AIR 1926 Lah. 548.

Agreement to give evidence of admission. Where the parties to the suit agree to an admission as evidence in the case there can be no objection to its admissibility.⁵

3. **Conditional admission.** Where an admission is made conditionally and the condition is not fulfilled, the admission cannot be admitted in evidence to prove liability of the maker. Where A contracted to sell his property to B, later on A by a letter requested B to relieve him of his obligation under the contract of sale and later compensation. B in his reply marked "without prejudice" offered to accept compensation if the amount was paid within 48 hours. It was held that the words "without prejudice" were intended by B to convey that if the offer was not accepted, no further use of the offer in his letter was to be made and that therefore the letter could not be admitted in evidence under this Article.⁶

4. **Admission in arbitration proceedings.** An admission before an arbitrator or *panchayat* is admissible in evidence. It is for the Court dealing with the facts to attach whatever weight it thinks proper to such an admission. This Article does not apply to such an admission.⁷

31 **Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having inference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Evidence Act, 1872. Article 37 is exact reproduction of section 24 of the Act.

Synopsis

1. Scope and object.
2. Confession--what is.
3. "Made by an accused."
4. Confession must be voluntary.
5. Confession under police restraint.
6. "Appears to the Court."
7. Inducement, threat or promise.
8. Confession made in hope of pardon or promise.
9. "Proceeding from a person in authority"
10. Person in authority--who is.
11. Admissibility of confession.
12. Confession before Magistrate.
13. Duty of Judge.
14. Admissibility of oral testimony of Magistrate.
15. Confession to be taken as a whole.

5. AIR 1930 Sind 105.
6. AIR 1959 All. 440=ILR 1949 All. 735 (DB).
7. AIR 1954 Madh. B 58.