

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.

Evidence Act, 1872. This Article is exact reproduction of section 59, Evidence Act.

Synopsis

1. Scope.
2. Evidentiary value of oral evidence.
3. Conflicting oral evidence.

1. **Scope.** No rule of law requires that particular fact must be proved through production of documents only.¹ Therefore, ownership of land need not be proved only by producing documentary evidence. Factum of ownership could also be proved by oral evidence. Where plaintiff's assertion that they were owners in estate was not challenged in cross-examination and defendants failed to produce evidence in rebuttal, plaintiffs must be deemed to have established their ownership in estate; it must, however, be noted that 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 documentary evidence was worthless, it could not be relied upon.²

In case of conflict, oral evidence would have no value in the face of documentary evidence,³ because men may lie in order to support their causes but documents cannot.⁴

Number of witnesses required to prove a fact. Law has not laid down the number of witnesses who are required to prove a fact.⁵

Negative oral evidence. Negative oral evidence loses its value in the presence of documentary evidence.⁶

Oral evidence with regard to documents. Oral evidence of the contents of documents cannot be admitted under this Article. They can only be proved either by

1. 1990 CLC 729 (DB).
2. 1996 SCMR 662-PLJ 1996 SC 608-NLR 1996 Cr. 403.
3. 1992 CLC 1263.
4. PLD 1993 Kar. 369 (DB)+1986 CLC 770.
5. PLD 1996 Lah. 171-PLJ 1996 Lah. 162 (DB).
6. 1992 P. Cr. L.J. 483.
7. 1993 MLD 1207.

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primary or secondary evidence under Art. 72.⁸ Thus where a Naib-Tahsildar appeared as a witness but did not produce the original record-of-rights. He gave evidence concerning the contents of the original records or their copies, the oral statement of the Naib-Tahsildar with regard to their contents is not admissible in evidence.⁹

Evidence as to circumstances and conduct of parties relating to documents. Evidence of circumstances and conduct of parties which throw light on the contents of a document, which is not produced, can be admitted in evidence. Thus oral evidence of acts and conduct of the parties is admissible to show that a *Kohala* in question was not intended, as it purported, to be an out and out sale, but was only a mortgage.¹⁰ Similarly though an agreement creating mortgage cannot be proved by parole evidence yet oral evidence would be admissible to prove circumstances in which the documents of title came into the possession of the person who claims to be mortgagee, and the mortgagee is also entitled to prove the factum of the mortgage deposit.¹¹

Receipt of payment. Written receipts for payments are important but by no means necessary as proof; nor are they of the nature of primary evidence, the loss of which must be shown in order to let in secondary evidence.¹² Therefore receipts for sums paid in part liquidation of a mortgage-debt can be proved by parole evidence.¹³

Absence of documentary evidence in defence to a claim—effect. Defence to claim could not be held false or ingenuine merely for the reason that in all probability, no documentary evidence to support the same could be produced. Raising of a dispute to challenge or deny a liability is not conditional to the availability or veracity of an evidence, which is likely to be introduced in support thereof.¹⁴

Written statement. Written statement by a person who died and did not appear as a witness at trial, could not be treated as substantive evidence on his behalf. Proof of facts mentioned in written statement is a legal requirement. Therefore, facts disclosed in written statement filed by deceased being neither of the category of which Court should take judicial notice nor falling within the scope of judicial admission which could dispense with the exercise of proving that same were of no legal value as its maker did not make himself available for cross-examination.¹⁵

Sale of goods. A contract of sale of goods can be proved by parole evidence and where the bought and sold notes have been falsified, the aggrieved purchaser is entitled to disregard them and prove his contract by other and antecedent material.¹⁶

8. AIR 1964 Pat. 338 (DB).
9. PLD 1949 Lah. 245 (DB).
10. 28 Cal. 289 (FB).
11. AIR 1937 Rang. 69 (DB).
12. (1900) 4 Cal WN 18 (PC).
13. 1 All. 442.
14. 2002 CLD 614.
15. PLD 1993 Kar. 775.
16. 31 Cal. 614 (PC).

Circumstances: de hors the document, evidence as to. Where a matter has not been dealt with in a document, evidence about it may be lead to show the intention of the parties regarding it. Thus a person depositing a number of jade bangles with another person can give oral evidence to show whether they were put there for safe custody only or as a pledge.¹⁷

Relationship of father and daughters. Where question before the Court was whether plaintiffs were daughters of the vendor, *Nikahnamas* of plaintiffs showed vendor as the father of plaintiffs, which was corroborated by the statement of Pesh Imam who had performed *Nikahs* of plaintiffs and such statement was further reinforced by *Nikah* Registrar who had registered *Nikahs* of plaintiffs. Nothing was brought out in cross-examination to shake evidence of those witnesses who were independent witnesses. Documentary and oral evidence was sufficient for concluding that plaintiffs were daughters of vendor. No reliable evidence was produced in rebuttal. Therefore, plaintiffs were proved to be the daughters of vendor.¹⁸

2. Evidentiary value of oral evidence. Oral evidence has to be examined in the light of documentary evidence which has been brought on record.¹⁹ 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.²⁰ Oral statement would not be of any value where documentary evidence in support of such fact being available was not produced.²¹ Even in absence of cogent documentary evidence, court would be justified to decline to place reliance upon oral statements made by witnesses.²² Mere oral self-serving statement of one of the defendants and a chance witness was insufficient to prove a question of fact.²³ Where employees of Municipal Corporation gave evidence in favour of tenant without bringing record and without having been summoned. They had given evidence rather obligingly and in the absence of supporting record. Their evidence did not inspire confidence.²⁴ Oral evidence given by partisan witnesses cannot be given preference as against the contents of official documents.²⁵ On the question of ownership oral evidence of unauthorised occupants of different plots was of no assistance to defendant for their evidence was tainted, interested and partisan. Such evidence, in absence of any strong circumstantial or documentary evidence, was not by itself sufficient to conclude that defendant was put in possession of plot by previous occupant of the same.²⁶

- 17. AIR 1938 Rang. 38 (DB).
- 18. PLD 1993 SC 62.
- 19. PLD 2002 Lah. 10.
- 20. 2001 CLC 1332 (DB).
- 1. 1995 MLD 690=NLR 1995 UC 733=NLR 1995 CLJ 426.
- 2. 1988 CLC 936.
- 3. PLD 1991 Lah. 262.
- 4. PLD 1991 SC 645.
- 5. PLJ 1984 Lah. 200=KLR 1984 CC 248.
- 6. 1998 CLC 546.

Mere oral assertion is not sufficient to rebut documentary evidence.²⁷ Production of documentary evidence in form of primary evidence is essential for just decision. Evidence of witnesses could not be of any value without producing available oral evidence. When any transaction has been drawn and exhibited in form of document no oral evidence could be allowed to be produced to prove it unless it is shown that original document had been lost or could not be produced or was recorded and that, too, after obtaining permission from the Court for production of secondary evidence.²⁸

Criminal cases. It is a cardinal principle of criminal justice that every accused person is innocent in the eyes of law and it is the bounden duty of the prosecution to prove its case to fill. The evidence brought on the record of the case should be unambiguous and inspiring confidence in such a manner that a prudent man comes to an irresistible conclusion about the guilt of the accused. Therefore, the facts alleged in the prosecution are to be proved by evidence on oath in Court and the evidence by the prosecution for the proof of such facts which consequently results in the conviction of accused. The graver the offence, stronger and inspiring evidence is necessary for conviction of the accused.²⁹

Status of witness. A question of fact was to be proved as a question of fact and status of a witness how, highsoever he might be, would not become privileged because of lower status of opposite party.³⁰

Doctrine of falsus in uno falsus in omnibus. Where the question is whether common set of ocular account can be used for recording acquittal or conviction against accused persons. Previously the Courts acted on the maxim: *falsus in uno falsus in omnibus* (false in one, false in the whole). Subsequently, this view was changed and it was held that principle enshrined in the maxim would not be applicable and testimony of a witness could be acceptable against one set of accused though same has been rejected against another set of accused facing the same trial. However, for safe administration of justice a condition had been imposed, namely, that the evidence which is going to be believed to be true must get independent corroboration on material particulars meaning thereby that to find out credible evidence principle of appreciation of evidence i.e. sifting chaff out of grain was introduced which principle now governs the matter of appreciation of evidence.³¹

Ocular evidence. Ocular evidence may be classified into three categories—firstly, wholly reliable; secondly, wholly unreliable; and thirdly, partly reliable and partly unreliable. The first category furnishes safe basis for conviction without corroboration. Conviction cannot be recorded on testimony of second category of witnesses, though very strong corroboration is available. As regards third category,

- 7. 2000 YLR 1669.
- 8. 2000 MLD 1653=2000 CLJ 8.
- 9. 1995 P. Cr. L.J. 811=NLR 1995 SD 439 (DB).
- 10. 1987 CLC 910=KLR 1987 CC 143.
- 11. NLR 2001 Cr. I=2001 SCMR 905 (SC)=NLR 2001 Cr. 5=2000 SCMR 1758=PLJ 2000 SC 1505=PLJ 2001, Sh.C. (AJK) 43.

conviction may be recorded only if such evidence is corroborated by oral or circumstantial evidence coming from distinct sources.¹²

3. Conflicting oral evidence. Contradictory, inconsistent and ambiguous oral evidence cannot be relied upon.¹³ In such cases the Court must look to documentary evidence in order to see on which side the truth lies.¹⁴ Therefore 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.¹⁵ It follows that where oral evidence of both sides was equally balanced, documentary evidence supporting claim of vendor, was to be accepted in the light of its probative value.¹⁶ 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, would stand established.¹⁷

There is no better criterion of the truth, no safer rule of investigating cases of conflicting oral evidence, where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute and to examine which of the two cases best accords with those facts, according to the ordinary course of human affairs and the usual habits of life.¹⁸ When both parties stand to gain or lose valuable property, the oral evidence is always to be approached with caution and it is safer to rely on that evidence which is in accord with admitted circumstances and probabilities.¹⁹ Where oral evidence led by defendant did not support his claim of adverse possession, and counter-evidence led by plaintiff refuted the claim of adverse possession. Finding based on such evidence in the absence of misreading, non-reading or misconstruing of evidence, could not be set aside in appeal.²⁰

Where oral testimony is conflicting, much greater credence is to be given to men's acts than to their alleged words, which are so easily mistaken or misrepresented.¹

Minor discrepancies. It has long been settled through authoritative judgments that judicial wisdom prefers to ignore minor and insignificant discrepancies in statements of witnesses more particularly when they are examined after a long time on the facts to which they were witnesses. This principle is to be more liberally applied in cases where witnesses are illiterate and rustic villagers. One cannot reasonably expect of such witnesses to be more accurate on point of time and date. Otherwise too, human faculty of memory has been noticed to be fallible on

12. 1995 SCMR 1639.
13. PLD 1992 Kar. 46+1988 CLC 2388 (Contradictory oral evidence).
14. (1846-47) 4 Moo Ind App 403 (PC)+AIR 1946 PC 178.
15. 1987 CLC 2337.
16. 1986 CLC 2977-PLJ 1986 AL&K 74.
17. 1986 CLC 2958.
18. (1836-37) 1 Moo Ind App 19 (PC).
19. PLD 1954 Lah. 480.
20. 1990 CLC 155.
1. (1936-37) 1 Moo Ind App 19 (PC).

significant, some time even on significant matters after a long time. Therefore, any identification or insignificant discrepancies shall not be used as a device to defeat substantive rights.² Standard norms of appraisal of evidence would not call for admitting a wholly trustworthy testimony on the score of some minor contradictions, affecting or improvements. Adverse inference could be drawn only when the admissions were made to alter the case at a later stage in order to bring the same in line with the case of prosecution. Where the feeble effect of changed version with improvements were confronted did not detract from the testimonies which on the whole fit in the circumstances of the case and were credible, reliance could be placed on such testimonies.³

Contradictions as to distance. Contradictions in ocular evidence as to distance would not be fatal to prosecution case for the reason that humanly it is not possible to measure exact distance in an incident where indiscriminate firing was going on.⁴

Contradictions between ocular and medical evidence. In case of conflict between ocular evidence and medical evidence, ocular evidence shall prevail over medical evidence if ocular evidence otherwise is coherent and trustworthy.⁵

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 sense or 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:

2. NLR 2004 Civ. 32=PLD 2003 Pesh. 179.
3. PLD 2002 Kar. 152=PLJ 2002 Cr.C. 275=NLR 2002 Cr. 449 (FB).
4. NLR 2001 Cr. 1=2001 SCMR 905 (SC).
5. NLR 2001 Cr. 1=2001 SCMR 905 (SC).