insignificant, some time even on significant matters after a long time. Therefore, any contradiction 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 rejecting a wholly trustworthy testimony on the score of some minor contradictions, omissions or improvements. Adverse inference could be drawn only when the improvements 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 which the witnesses 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:

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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).

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 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 shahadah* (شہادہ علی الشہادہ) by which a witness can appoint two witnesses to depose on his behalf, except in the case of *Hudood*.

Evidence Act, 1872. This Article is reproduction of S.60, Evidence Act, with the last proviso added to the Article.

Synopsis

1. Scope.
2. Direct and circumstantial evidence.
3. Oral evidence must be direct.
4. Evidence of facts which could be seen.
5. Evidence of facts which could be heard.
6. Fact perceived by senses--evidence of.
7. Opinion evidence.
8. Hearsay evidence.
9. Objection to admissibility of hearsay evidence.
10. Evidence which is not hearsay.
11. Opinion of expert expressed in treatise.
12. Evidence in cases of fraud.

1. Scope. It is a cardinal rule of the law of evidence that the best available evidence should be brought before the Court. Arts. 71, 75 and 102 are based on this rule.[6] If best piece of evidence is available with prosecution but the same has been withheld by prosecution, then it is presumed that prosecution had some sinister motive behind it for withholding the said piece of evidence.[7]

Value of direct evidence. No doubt, the loyalty for truth exhibited by the witnesses appearing in our Courts, leaves much to be desired. This, however, does not absolve the Court of its duty of sifting the corn from the chaff and of selecting from oral evidence, the portions which can be accepted as satisfying judicial standards.[8]

6 AIR 1957 And Pra 595=1957 Cr. L.J. 1069.
7 2004 SD 258 (DB).
8 PLD 1970 Lah. 303 (DB).

First Information Report. Article 71 applies to oral evidence which means the evidence recorded by the Court and does not apply to first information report lodged with the police.[9]

Witness unable to give evidence. If a witness is unable to give evidence then he can appoint two witnesses to depose on his behalf, except in the cases of Hudood. As the prosecution cannot produce a deceased person as a witness, so it has right to produce two witness on behalf of the deceased in support of the prosecution case. Although the word 'Qisas' has not been used with the word Hudood in this proviso yet there is no dispute over this fact that the standard of evidence in the cases of Hudood is totally similar as in the cases of Qisas.[10]

2. Direct and circumstantial evidence. What is meant by direct evidence and by circumstantial evidence is that as proof one goes directly to establish the culpability of the accused person in the commission of the offence; but the other brings the guilt home to him by placing certain circumstances from which the inference is absolutely irresistible that the accused has committed the offence. It is as proof the circumstantial and direct evidence is to be dealt with. Circumstances before or after the occurrence or circumstances going to corroborate the evidence of witnesses do not come within what is known as circumstantial evidence.[11] Expression "direct evidence" under Art. 71 is used in the sense of "original" evidence as distinguished from "hearsay" evidence and its not used in contradiction to "circumstantial" or "presumptive" evidence.[12] Where sufficient reliable direct evidence is available circumstantial evidence loses its value and need not be considered.[13] It must, however, be noted that circumstantial evidence is more cogent than evidence of eye-witnesses as it is not difficult to produce false ocular evidence, on the other hand it is extremely difficult to produce circumstantial evidence of a convincing character,[14] because men may lie but circumstances do not lie.[15] Therefore, there are cases where facts are of such a nature which warrant to assess respective versions of parties by keeping direct and circumstantial evidence in juxtaposition.[16] When prosecution witnesses are related *inter se* and closely related to deceased, are found to have some rivalry against accused, then the circumstantial evidence definitely bears weight and fair play is to judge it together to arrive at a right conclusion.[17]

9. 1997 P. Cr. L.J. 376=PLJ 1997 SC (AJK) 46.
10. 1994 Law Notes (Kar) 225.
11. AIR 1952 Cal. 494=ILR (1953) 1 Cal. 348=1952 Cr. L.J. 944.
12. PLD 1996 Lah. 402=PLJ 1996 Cr.C. 1117 (DB).
13. PLJ 2001 Sh.C. AJK 43+1999 UC 147 (Sh.C. AJ&K)+AIR 1960 Mad. 362 (DB).
14. 1990 P. Cr. L.J. 1042.
15. NLR 2000 Cr. 400=PLJ 2000 Cr.C. 91+1990 MLD 344.
16. 1999 UC 145 (Sh.C. AJ&K).
17. PLJ 2001 Sh.C. (AJK) 43.

Circumstantial evidence to be taken as a whole. Pieces of circumstantial evidence, though not sufficient in themselves to sustain conviction, cannot be easily thrown out when put together they make out a very strong case against accused.[18]

Injured witness, evidence of. Evidence of injured PWs is not admissible as direct evidence. They cannot be relied upon as eye-witnesses under Art. 71.[19]

3. Oral evidence must be direct. Oral evidence in all cases must be direct.[20] Direct evidence alone is admissible under Art. 71 and it is mandatory to rely upon the same, whereas indirect evidence is not admissible. The word "must" appearing in the opening part of Art. 71, conveys the basic intention of the Legislature and imposes a duty upon the Court to insist upon the production of direct evidence.[1] The witness must make a declaration regarding perceiving by his own senses the fact that he is stating.[2] It is incumbent upon a witness that when he enters into a witness-box before stating any fact he must say that either he saw that fact or he heard it from some one about the said fact, and then he would give evidence so that Court could assess evidence of the witness and form an opinion as to the category in which the witness fell. Without proving the facts that the witness had either seen or heard the fact, his further statement could not be judged properly. Witness without first disclosing his source of information, is not legally competent to depose the fact as it is hit by Art.71.[3] Therefore, evidence of a witness who neither heard nor saw anything nor perceived anything would not come within the ambit of Art. 71. Such evidence would not be admissible in evidence.[4]

The evidence of an arbitrator appointed with the consent of parties by Investigating Officer who was not an eye-witness of occurrence, had no legal sanctity as it was contrary to scheme, intention and scope of Qanun-e-Shahadat and, thus, was liable to be discarded.[5] Even in cases of secondary evidence of contents of documents, the deponent must have read the document.[6] Thus where the assignee of a joint creditor filed a suit against a stranger auction purchaser for setting aside the sale alleging that the defendant was trustee of joint debtors. It was held that in the absence of either direct evidence to prove that the money belonged to joint debtors or that it was supplied or found by some third person for the benefit of the joint debtors the plaintiff cannot succeed.[7] Where question involved was as to when a document was executed. It was necessary for the party concerned to examine stamp vendor,

18. 1999 SCJ 413=PLJ 1999 SC 264.
19. NLR 1997 AC 16.
20. 1997 CLC 1691=PLJ 1997 Lah. 1008=1997 Law Notes 696+AIR 1935 Pesh. 165=37 Cr. L.J. 225 (DB).
1. 1996 P. Cr. L.J. 1076 SC (AJ&K).
2. 1982 CLC 2505=PLJ 1982 SC (AJ&K) 104.
3. 2003 P. Cr. L.J. 1353 (DB).
4. 2004 SD 258 (DB).
5. 1995 P. Cr. L.J. 2024.
6. AIR 1924 Rang. 363=2 Rang. 400 (DB).
7. (1866-67) 11 Moo Ind App 28 (PC).

scribe, executant, attesting witnesses or some of them in corroboration of his evidence.[8]

Unregistered instruments, registration of which is not compulsory, when proved by all attesting witnesses and against which there is no evidence on the other side, ought not to be set aside and treated as worthless, on a mere possible suspicion of perjury and forgery.[9]

Marriage, proof of. Where marriage of two persons is in dispute and there is no documentary evidence such as marriage register, oral evidence direct and positive is admissible.[10] Where in a dispute the question of marriage was in issue, on the evidence adduced by both parties the Court held that whilst the evidence of marriage given by many apparently credible witnesses having presumably no motive to misrepresent the fact or to deceive the Court and incapable of being themselves deceived by it, was direct and positive, that by which it was met was for the greater part, indirect and inferential turning on the improbability and inefficacy of the marriage of a dancing girl. The Court relied on the former direct evidence.[11]

Admission in maker's own favour, proof of. A statement of a living person containing an admission in his own favour is inadmissible in evidence unless regularly established by production of the person himself, or some other witness.[12]

Maps and plans, proof of. Maps or plans made for the purposes of any cause must be proved to be accurate. They must be proved by the persons who made them.[13]

4. Evidence of facts which could be seen. Oral evidence of the contents of a document must be given by some person who has seen those contents, that is to say, who have read the document. Evidence that the witness saw the document and heard it read out by someone else is only hearsay, so far as its contents are concerned.[14]

Genuineness of document. Where petitioner challenged execution of deed of sale in respect of land in dispute in favour of respondent and contended that copy of deed produced was a forged and fictitious document which did not bear thumb-impression of deceased. Evidence of scribe of document as well as that of attesting witnesses to the effect that document carried thumb-impression of deceased was of no avail as these witnesses were not shown original document at the item they were deposing before Court. Controversy as to execution of sale-deed also stood unresolved because in order to prove execution of document by deceased, production of original sale-deed carrying his thumb-impression was necessary and a certified copy thereof could not be substitute for original document.[15]

8. 1981 CLC 867 (DB).
9. 6 Beng LR 501 (PC).
10. 26 All. 108 (PC).
11. (70-72) 14 Moo Ind App 346 (PC).
12. AIR 1955 NUC (Him Pra) 1302.
13. AIR 1959 Ker. 358 (DB).
14. NLR 1991 SD 410=AIR 1927 PC 15.
15. 1987 CLC 1788.

Statement of witness to police. To prove the statement of an eye-witness to the police, the production of the writer of the statement is necessary.[16]

Opinions and impressions of witnesses. Only what a witness actually saw and heard as to what a mob was doing and saying, is admissible to prove the nature of the assembly; his opinion and impressions that the assembly appeared to be unlawful are not admissible.[17]

5. Evidence of facts which could be heard. The fact of deposing might be proved by any one who has seen and heard a witness depose.[18] Therefore where the crucial point in the case was, whether the apparent death of the plaintiff took place shortly before mid-night or at dusk, and the witnesses stated that while they were seated in a common room in a sanatorium at about 8 p.m., a man came with the news that the plaintiff was just dead and he made a request for men to carry the body for cremation and the question was as to the admissibility of the evidence of these witnesses. It was held, that the statement and request made by the man was a fact within the meaning of Ss. 3 and 59, Evidence Act, and that it was proved by the direct evidence of witnesses who heard it, within the meaning of Art. 71.[19] Where the informant of the first information report died a natural death before he could be examined as a witness, the evidence of the witness who recorded the report is inadmissible to prove that a certain person was in fact present at the time of the occurrence, but his statement is admissible to prove that the informant had mentioned his (eye-witness's) name to him.[20]

Transcript of speeches. Transcript of speeches is admissible in every sense of the term, because the person hearing the speech and making notes of it contemporaneously has been examined and he has proved the transcripts prepared by himself.[1]

Dying declaration. The rule permitting the admission of dying declaration is subject to the rule against hearsay. It is immaterial to whom the declaration is made. It may be oral or it may be reduced in writing by any other person but in either case, it may be duly proved.[2]

A dying declaration recorded by a clerk in the presence and supervision of a Magistrate does not become inadmissible merely because the scribe is not produced to prove it. Where the Magistrate deposes about its authenticity it should not be rejected from evidence.[3]

16. AIR 1942 Lah. 59=43 Cr. L.J. 428 (DB).
17. AIR 1928 Pat. 91=28 Cr. L.J. 906.
18. AIR 1929 Mad. 187.
19. AIR 1947 P.C. 19=73 Ind. App 246=ILR 1947 Kar. (PC) 85.
20. AIR 1961 Madhya Pradesh 45 (DB)+(1960) 1 W.L.R.55.
1. PLD 1976 SC 57=PLJ 1976 SC 72.
2. AIR 1951 Him Pra 1=52 Cr. L.J.50.
3. AIR 1951 Pepsu 111=3 Pepsu LR 303=52 Cr. L.J. 883 (DB).

Statement to accused. A statement made by an accused immediately after the occurrence of an offence is relevant, but a statement made by another person to the accused, must be proved by the person who heard it.[4]

6. Fact perceived by senses--evidence of. The evidence of the senses of the person who is called as a witness must be direct.[5]

7. Opinion evidence. Evidence of experts, professionals or academicians is generally in the form of an opinion. This, as a matter of fact, is a departure from general rule that a witness cannot be asked his opinion upon a particular question, for the witness is required to speak of facts alone which are in his knowledge. But where matters of skill, expertise or professional knowledge are involved, the witness might be asked his opinion and the opinion given would be evidence in the case.[6] Where a person expresses an opinion about certain facts, his opinion can be admitted in evidence only if he is produced in Court and he deposes personally on the matter, otherwise not.[7] A medical certificate tendered by a party without the medical man giving the certificate swearing to an affidavit, is the worst form of hearsay evidence because he is repeating merely what the doctor had told him in writing.[8] Therefore medical certificate tendered in support of an application for the issue of a commission for the examination of a witness on the ground of illness is inadmissible in evidence. In such matters the doctor himself should be called to give evidence.[9]

Medical report. Opinion of doctor regarding cause of death, the mode of death, the type of weapon employed or distance from which it was fired, if supported by necessary data would be accepted almost as a statement of fact though opinion in such a case would be an inference made, or a conclusion drawn by witness from facts given to him.[10] But the other view is that a doctor's medical report is a mere record of the opinions held by him and those opinions can be proved only by examining the doctor.[11] Where in a suit for a claim upon an insurance policy the question was whether the assured had made false representations and given false answers to the doctor of the company and merely the report of the doctor was put in evidence. It was held that the doctor could and should have been examined by the defendant company and statements made by him in correspondence with the company were certainly no evidence of the correctness of the allegations made therein.[12]

Chemical Examiners' report. Chemical Examiner's report is not binding on the Court. Therefore, where after occurrence and before medical examination victim had

4. AIR 1924 Lah. 733=25 Cr. L.J. 1005 (DB).
5. 7 All. 385 (FB).
6. NLR 2000 Cr. 232=PLD 2000 Lah. 216 (DB).
7. PLJ 2000 Lah. 429+AIR 1950 Cal. 173 (DB).
8. AIR 1950 Cal. 173 (DB).
9. AIR 1950 Cal. 173 (DB)+AIR 1961 Mad. 158.
10. NLR 2000 Cr. 232=PLD 2000 Lah. 216 (DB).
11. 25 Mad. 183 (DB).
12. AIR 1948 Mad. 298 (DB).

passed stool, negative report of Chemical Examiner was not fatal for prosecution case.[13]

Post 'mortem report'. A medical witness who performs a *post mortem* examination is a witness of fact, though he also gives an opinion on certain aspects of the case. The value of a medical witness is not merely a check upon the testimony of eye-witnesses; it is also independent testimony, because it may establish certain facts, quite apart from other oral evidence. If a person is shot at close range, the marks of tattooing found by medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones and depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.[14]

In case of conflict of ocular evidence with medico-legal report. Conviction might be based on ocular evidence by excluding medico-legal report provided ocular evidence is confidence inspiring to such an extent that circumstantial evidence in shape of post-mortem report looses its weight in presence of such direct evidence.[15] A doctor's opinion about the probable duration of time between death and post-mortem examination of the deceased is always an opinion which cannot be substituted as against substantive direct evidence unshaken and unchallenged.[16]

Health officer, report of. The report of a Health Officer is not legal evidence unless he is examined in the case.[17]

Conduct, evidence as to. The conduct or outer behaviour under Art. 64 must be proved in the manner laid down in Art. 71. That portion of Art. 71 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of Art. 64 in the sense that opinion expressed by conduct must be proved only by the person where conduct expresses the opinion. Conduct as an external perceptible fact may be proved either by the testimony of the person himself whose opinion is evidence under Art. 64 or by some other person acquainted with the facts which express such opinion. The testimony is in each case direct within the meaning of Art. 71.[18]

Opinion as to custom. Opinion of law committee of a Municipality as regards a custom, is inadmissible in evidence, when the members are not called as witnesses.[19]

Previous convictions, evidence of. Report of a probation officers as to previous conviction of an accused received behind the back of the accused cannot be used

13. PLJ 2000 Cr.C. 1219.
14. AIR 1960 SC 706.
15. 1999 UC 145 (Sh.C. AJ&K).
16. 1998 P. Cr. L.J. 1009 (DB).
17. AIR 1958 Madh Pra 350=1958 Cr. L.J. 1319.
18. AIR 1959 SC 914+AIR 1960 Pat. 480 (DB).
19. AIR 1931 All. 499 (SB).

against the accused, when the probation officer has not been examined, and his report has not been formally proved.[20]

Habitual offender, opinion of witness as to. The statement of a witness that he suspected the accused is not hearsay evidence but forms one of the grounds for his belief that the accused is a habitual offender, and so is admissible in evidence.[1]

Police-officer, opinion of. Opinion of police-officer or an Investigating Agency is not binding upon Court.[2]

8. Hearsay evidence. A statement which is merely hearsay can be safely ignored.[3] Where a witness does not depose as to a fact from personal knowledge but states that it was brought to his notice by another person, such evidence is hearsay.[4] Therefore a statement said to have been made by a witness to another person is not admissible.[5] For the same reason, hearsay evidence as to what happened at time of *zina bil jabr* would not be admissible as evidence.[6] Where in case of a fatal accident, the plaintiff admitted that he did not see the accident, his evidence relating to accident being hearsay evidence was not admissible.[7] Where a witness stated that he reached the place of occurrence after the accused persons had left the place. Such witness stated in cross-examination that names of accused persons were given to him by other prosecution witnesses alleging that they were involved in the commission of offence. It was held that statement of prosecution witness being hearsay, could not be relied upon.[8] Where *A* stated that on going to the place of occurrence he learnt from *B* and *C* as to who attacked them. But *B* and *C* were not asked whether they had met *A* and as to what they had told him. The statement of *A* was not admissible in evidence.[9] Similarly the evidence of a witness based on the record prepared by his wife who was not examined, was held to be hearsay evidence.[10] Where the statement of a prosecution witness, examined earlier, to another prosecution witness, who is examined later, is sought to be made use of by the prosecution, without the earlier prosecution witness having been asked about it in his examination, the earlier prosecution witness to whom the statement is ascribed must be given an opportunity to explain it. The witness should at least be recalled for the purpose. In the absence of such opportunity the statement of the earlier prosecution witness is inadmissible in evidence.[11]

20. 1958 Cr. L.J. 175 (Ker).
1. AIR 1929 All. 650=31 Cr. L.J. 755 (DB).
2. 2000 P. Cr. L.J. 1752=PLJ 2000 Cr.C. 1346+PLJ 2000 SC 1765.
3. PLD 1985 Kar. 595 (DB).
4. PLD 1964 Kar. 356 (DB)+AIR 1956 Raj. 58 (SB)+1984 PSC 640 (SC Ind)+1981 P. Cr. L.J. 434 (DB)+PLD 1975 Kar. 84 (DB).
5. PLD 1975 Kar. 84 (DB)+AIR 1934 Sind 100=35 Cr. L.J. 1332 (DB).
6. NLR 1993 SD 366=1993 SCMR 550 (SAC).
7. 1996 CLC 530=NLR 1996 CLJ 417.
8. 1991 P. Cr. L.J. 301 (DB).
9. PLJ 1982 Cr.C. 315 (DB)+PLD 1964 Kar. 356 (DB).
10. PLD 1951 A J & K 54.
11. AIR 1956 SC 738=1956 Cr. L.J. 1372.

Conversation between accused and another person. Conversation between accused and another person taking place in presence of witness, would be admissible under Art. 71. Such statement is not hearsay evidence.[12]

Relationship of parties. Statement of witness regarding relationship of parties who had no direct and special means of knowledge regarding such relationship would be hearsay.[13]

Statement of person not called as witness. A statement oral or written by a person not called as a witness comes under the general rule of hearsay and is not admissible.[14] 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.[15]

Hearsay evidence is not admissible. Hearsay evidence ought not to be admitted,[16] or used to corroborate evidence of another witness.[17] The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its costs, but that it may unconsciously be regarded by the judicial mind as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance.[18] Where an affidavit of a witness was produced as to the contents of a medical report regarding the age of a girl, the affidavit was held to be pure hearsay and was not admissible.[19] Evidence of a witness that he had been told that a certain offer was made by a party to another during negotiations *pendente lite* is hearsay evidence and is not admissible.[20] The evidence of a family bard to prove relationship,[1] or a statement of an Honorary Magistrate as to what the accused's father stated or promised,[2] is not admissible in a criminal trial, when such person is not examined as a witness.[3] The evidence that the person adopted was known in the village as the son of his adoptive parents is inadmissible as being hearsay.[4]

Where plaintiff's version, that sale of goods was by sample and not on "as is where is" basis, was supported by the evidence of a person who was present at the time of auction of such goods while defendants' version that such sale was on "as is

12. NLR 1993 Cr. 496=1993 P. Cr. L.J. 1976 (SAC).
13. 1997 CLC 1691=PLJ 1997 Lah. 1008=1997 Law Notes 696.
14. 1984 PSC 640 (SC Ind)+AIR 1935 All. 1023 (SB)+AIR 1955 NUC (Cal) 2931.
15. PLD 2002 Kar. 152=PLJ 2002 Cr.C. 275=NLR 2002 Cr. 449 (FB).
16. 1990 MLD 355 (DB)+PLD 1964 Kar. 428 (DB)+AIR 1921 Cal. 111 (DB)+AIR 1954 Orissa 198 (DB).
17. 1981 P. Cr. L.J. 434 (DB).
18. AIR 1916 P.C. 250+AIR 1959 Madh Pra 84 (DB).
19. AIR 1964 SC 1625.
20. PLD 1969 Quetta 21.
1. AIR 1938 Lah. 303.
2. AIR 1935 Pesh. 73=36 Cr. L.J. 1442.
3. AIR 1942 Cal. 214=43 Cr. L.J. 548 (DB).
4. AIR 1941 Rang. 183.

where is" basis was supported by persons who were not present at the place of auction, thus, a hearsay. Plaintiff's version was accepted as correct.[5]

Exception to rule of inadmissibility of hearsay evidence. Articles 47 and 64 are exceptions to the general rule that hearsay evidence is inadmissible in evidence. According to Art. 46 statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts under certain circumstances. According to Art. 64 when the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship, of any person who, as the member of the family or otherwise, has special means of knowledge is a relevant fact.[6]

'Res gestae'. Anything said immediately after the occurrence by the people gathered cannot be termed as hearsay because the same is admissible as *res gestae*.[7]

Statement of witness referring to other people's opinion only for effect. Where a witness is making a statement of facts as he knows them but attributes that statement to others only to create greater effect, the statement is not hearsay as it is in fact a statement by the witness of his own views or opinions. Thus where the evidence of a wife shows that she herself was displeased with the party concerned and it was really to emphasis the displeasure of her family and its head that she brought in her husband's name, the party concerned cannot derive any advantage from the technical objection to the reception of the statement as that of the husband's and as such inadmissible as hearsay.[8]

Statement in letters and telegrams. A letter written by a witness is no evidence of the facts therein stated and the only legitimate use to which the letter can be put would be to use it in cross-examination for the purpose of discrediting the witness by contradicting him; similarly the contents of a telegram are not evidence of the facts stated in it.[9] Where sender of a telegram is not examined in Court, contents of the telegram are not proved and are inadmissible in evidence.[10]

Statement as to facts by counsel. A statement of a counsel concerning relevant facts in a case cannot be accepted otherwise than in the witness box.[11]

Reputation, evidence of. Evidence of those who know a person and his reputation is not hearsay and is admissible. But the evidence of those who do not know the person but have only heard of his reputation is hearsay and inadmissible.[12]

5. PLD 1993 Kar. 227.
6. 1990 MLD 355 (DB).
7. 1992 SCMR 1625=PLJ 1992 SC 410=NLR 1992 SCJ 687=1992 Law Notes 611.
8. AIR 1964 SC 72.
9. AIR 1945 PC 174=ILR 1945 Kar. (PC) 351.
10. 1981 CLC 615 (DB).
11. AIR 1935 Nag. 69 (DB).
12. AIR 1948 Pat. 84=48 Cr. L.J. 409.

The fact that a person is an habitual offender may be proved by evidence of general repute or otherwise; such evidence of general repute does not offend against the rule against reception of hearsay evidence.[13] A history sheet maintained in the police station is not admissible in evidence at all as proof of a man's character because it may be based on information that the police receives from time to time. It would therefore be hit by provisions against reception of hearsay evidence.[14]

Newspaper report. Statement of a fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing that he had perceived the fact reported.[15] A newspaper report as to proceedings of a Legislature is only hearsay evidence. It is not one of the documents referred to in Art. 89 (2) by which such proceedings may be proved.[16] Therefore a petitioner in writ proceedings cannot rely upon news items or Press interviews or letters as pieces of evidence when the petitioner has filed no affidavit either of the correspondent who was responsible for the news items or of the person granting the interview.[17] Newspapers, could, however be admitted in evidence where their contents happened to be events of local interest or of public nature which would be generally known throughout the community and where testimony of eye-witness was not readily available.[18]

Statement of police officers not based on personal knowledge. Anything depicted by the Investigating Officer which is not based on the Officer's personal observation but is based on information received by him cannot be admitted in evidence as hearsay.[19] Where what the Sub-Inspector states about facts is the result of the investigation of his predecessor-in-office, his evidence amounts to hearsay and is, therefore, inadmissible.[20] Evidence given by a police officer that he received information from a source that the accused were going to commit an offence at a certain place is inadmissible.[1] Where in a prosecution under section 42 read with section 123 of Motor Vehicles Act, 1939 for not issuing tickets to passengers, the enforcement squad inspector and the head constable deposed that when they demanded tickets they were informed by the passengers that none had been issued to them, the evidence is clearly hearsay. Primary evidence of those facts could have been given only by the passengers.[2]

Government officers. The Home Secretary is admittedly the departmental head responsible for the conduct of business of a province. Therefore the Home Secretary could give evidence in Court about the satisfaction of the Governor relating to

13. AIR 1934 All. 735=36 Cr. L.J. 33.
14. AIR 1959 Cal. 342=1959 Cr. L.J. 694 (DB).
15. PLD 1986 SC (AJ&K) 120=PLJ 1986 SC (AJ&K) 99=1986 PSC 1188+KLR 1986 CC 88 (DB)+PLD 1985 A J & K 83 (DB)+1981 CLC 615 (DB)+AIR 1961 Punj. 215.
16. AIR 1953 Him Pra 41.
17. AIR 1959 All. 643.
18. PLD 1985 A J & K 83 (DB).
19. 1985 P. Cr. L.J. 391 (AJ&K) (DB)+AIR 1958 All. 746 (DB)+AIR 1941 Pat. 478.
20. 40 Cr. L.J. 19 (Oudh).
1. AIR 1948 Cal. 125=48 Cr. L.J. 663 (DB).
2. AIR 1952 Cr. L.J. 588.

matters which resulted in an order under the Defence of Pakistan Rules being passed.[3]

9. Objection to admissibility of hearsay evidence. Art. 71 provides that oral evidence must in all cases whatever, be direct. If under Qanun-e-Shahadat, two alternative modes of giving evidence are permitted and if before the second mode can be utilised, certain conditions must be fulfilled, it is open to the parties to admit that those conditions are fulfilled in which case the second manner of leading evidence is permitted under this Order. But the parties cannot admit by consent irrelevant evidence as relevant.[4] The failure of an advocate to object to admission of evidence cannot so alter the character of the testimony as to convert into corroborative evidence that which the law regards as merely fit for rejection as hearsay.[5] Where however the evidence is such that it could be treated as direct evidence if the source of knowledge of the facts deposed is disclosed but it is not disclosed because the witness is not questioned in his cross-examination about the source of his knowledge, the evidence cannot be rejected as inadmissible.[6]

10. Evidence which is not hearsay. Evidence of a statement made to a witness by a person not himself called as witness may or may not be hearsay. Such evidence is hearsay and inadmissible when object of evidence is to establish what is contained in the statement but it is not hearsay and is admissible in evidence when fact of its being made is proposed to be established and not the truth of the statement.[7] The admission of a person whose position in relation to property in a suit, it is necessary for one party to prove, against another under Art. 32 is in the nature of original evidence and not hearsay. The admission is admissible though the person is alive and not examined.[8] Similarly the evidence of persons recognising a particular person on his appearance as son of so and so cannot be excluded.[9] It is admissible evidence for a living witness to state his opinion on the existence of a family custom and to state as ground of that opinion, information derived from the deceased person. It must be an expression of independent opinion based on hearsay and not repetition of hearsay.[10] Where the question is as to the time when a certain lady became insane, the evidence of a person who speaks of his own knowledge of the fact that at a particular period the insanity of the woman was rumoured and generally believed in the district with which the witness was conversant, is not mere hearsay.[11]

A catalogue or a price list cannot be regarded as hearsay evidence. Any person who receives a catalogue can prove it and thereby prove the statement made by the seller regarding the price at which he would be prepared to sell. Such a catalogue is

3. PLD 1968 Lah. 728=PLR 1969 (1) WP 61 (DB).
4. AIR 1962 Guj. 68 (DB).
5. AIR 1928 PC 127+AIR 1963 Punj. 449.
6. PLD 1966 Dacca 305 (DB).
7. PLD 1979 SC 53=NLR 1979 Cr. 209+AIR 1961 MP 45 (DB).
8. 5 Mad. 239 (DB).
9. AIR 1942 Cal. 498 (SB).
10. 23 All. 37 (PC)+AIR 1933 Oudh 246 (DB).
11. 6 Beng LR 509 (PC)+AIR 1929 PC 71.

therefore admissible in evidence without the sellers issuing it being called in as a witness.[12]

11. Opinion of expert expressed in treatise. Even if an expert is not examined in Court, the Court is entitled to consider and act upon the opinions of expert contained in treatises under Art. 71.[13] Thus a statement in the text-book of "Obstetrics and Gynecology" by Dugald Baird, that the first perceptions of the foetal movements are generally first felt about mid-term and that the movements are often not felt by primigravidae till the end of the twentieth week while multiparae may recognize them as early as the end of the 16th week, and the statement in Eden and Holland's "Manual of Obstetrics" that quickening is usually found to occur between the 18th and 20th weeks and that the multiparae from former experience, notice the movements earlier than women pregnant for the first time were all admissible. They were preferred to the statement in Modi's Medical Jurisprudence to the effect that the first perception of the foetal movement occurred at any time between the 14th and 18th week.[14]

12. Evidence in cases of fraud. In all cases of fraud which is not capable of proof by direct evidence, the Court has to fall back upon inferences to be drawn from circumstances established by evidence. The party alleging fraud is nevertheless bound to establish it by cogent evidence and suspicion cannot be accepted as proof.[15] The onus of proof regarding dishonest or fraudulent representation is upon the prosecution and not on the defence.[16] It is the duty of prosecution to prove affirmatively that the accused knew that the representations made by him were false. In the absence of circumstances from which it can be gathered that any such knowledge can be imputed to the accused, the benefit of reasonable doubt should be given to the accused. The burden of proof is never shifted to the accused. And if explanation is given by the accused and the Court thinks that the explanation may reasonably be true, though it is not convinced about its truth, it should acquit the accused.[17]

The fact that a *hundi* was not actually paid when it was presented for payment would not by itself make the accused guilty of cheating. In such cases what the prosecution can do is to place before the Court the circumstances on which it may legitimately be found that the accused had not the intention to meet the demand evidenced by the negotiable instrument. The non-payment is an important circumstance in the case.[18] Where the accused obtained some goods and on delivery thereof issued a cheque stating that such cash could not be paid on that day. Subsequently on delivery of a second lot of goods a second cheque was issued. Near about this time the drawer had deposited two cheques of higher amount in his bank.

12. AIR 1949 Nag. 282=ILR 1948 Nag. 922 (DB).
13. AIR 1916 Mad. 338 (FB).
14. AIR 1965 SC 364.
15. AIR 1935 All. 995=58 All. 342 (DB).
16. AIR 1918 All. 403+AIR 1919 All. 373 (Accused pawning six rings stating they were gold where they were not).
17. PLD 1957 SC (Ind) 393+AIR 1960 AP 311.
18. AIR 1957 All. 246=1957 Cr. L.J. 438 (DB).

It was held that in the absence of evidence with regard to the two cheques issued in favour of the accused showing that he knew that those were bogus cheques it was not possible to hold that the implied representations which the accused made when he issued the cheques that they would be honoured, were false.[19]

19. AIR 1955 NUC (Bom) 5305.