

Diplomatic agent. The words "diplomatic agent" are very wide and would cover even a political agent of the Government of Pakistan in an area not within the administrative control of Pakistan.⁸

6. Objection to admissibility. Objection regarding admissibility of the documents must be taken at an early opportunity to meet the ends of justice by informing the prosecution or other concerned party.⁹ Exclusion from consideration of a document on the ground that it had not been formally proved is not warranted where objection as to mode of proof of document is not taken before trial Court.¹⁰

Admission of a document in evidence without objection from opposite side, would dispense with requirement of its formal proof. Therefore where objection to admission of the document was not taken before the trial Court it cannot be allowed to be taken at appellate stage.¹¹

Court to give ruling on admissibility. Failure by Trial Court to give a ruling on question of admissibility of foreign public document when objection as to its admissibility had been taken would cause prejudice to plaintiff who produced foreign public document in support of his suit. It was held that plaintiffs could have sought public document in support of foreign public document in accordance with time to produce admissible copies of foreign public document that foreign public document Art. 89(5) if Trial Court had given its decision holding that foreign public document was inadmissible in evidence on account of non-fulfilment of conditions laid down in Art. 89(5). Case was remanded to Trial Court to be decided in accordance with law.¹²

PRESUMPTIONS AS TO DOCUMENTS

90. Presumption as to genuineness of certified copies. (1) The Court shall presume every document purporting to be a certificate, to be certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by an officer of the Federal Government or a Provincial Government, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such document.

Evidence Act, 1872. This Article is reproduction of S. 79, Evidence Act.

8. AIR 1927 Bom. 11 (DB).
9. 1995 P. Cr. L.J. 275=NLR 1995 Cr. L.J. 474.
10. 1995 P. Cr. L.J. 275=NLR 1995 Cr. L.J. 474+NLR 1984 AC 487=1984 Law Notes 367=PLD 1984 Lah. 287=PLJ 1984 Lah. 265.
11. 1992 MLD 884=NLR 1992 AC 671.
12. NLR 2004 Cr. 182=PLJ 2003 Lah. 1190=2003 CLC 1373.

Synopsis

1. Scope.
2. Shall presume to be genuine.
3. Duly certified.

1. Scope. Article 90 has no application to original documents.¹³

Official reports. Reports of Government officer cannot be regarded as having judicial authority. But although they are opinions on private right of parties, yet, being reports of public officers made in the course of their duties, are entitled to great weight.¹⁴

2. Shall presume to be genuine. A presumption of genuineness attaches to a certified copy of a document only in so far as the contents of that document are concerned.¹⁵

Both parties making contradictory allegations. Where both the parties make contradictory allegations of a positive nature in relation to the same matter and both are prepared to adduce proof, the question then arises whose proof is to be preferred or heard. Preferring and hearing of proof of any one party is termed as "Tajih al Bay'ant". In such cases evidence of the party whose allegation is supported by certain general presumption is to be preferred. Such general presumption is called "Istishab al Hal".¹⁶

Presumption applies to public documents only. The presumption can be raised only in case of public documents or such other documents of which a record is kept by a public officer. A certificate of visitors to a lunatic asylum signed by the Superintendent is a public document, and there is a presumption as to its genuineness and no formal proof of it is necessary.¹⁷ But the pleadings and petitions signed and filed in Court by private persons can only be the acts or records of private persons, who have signed and filed them. They cannot be treated as public documents. When their genuineness is disputed, and the question is whether a particular person has signed the document or not, no presumption of genuineness can be drawn from the mere production of an attested copy.¹⁸

Registration certificate. The genuineness of a certificate of registration can be presumed and evidence of the Registering Officer is not necessary.¹⁹ But presumption attached to copy of registered document goes merely to the extent of document having been registered and not to its having been executed by a particular person when execution thereof is denied.²⁰

13. AIR 1948 Oudh 1=48 Cr. L.J. 542.
14. AIR 1935 Pat. 33=13 Pat. 517 (DB).
15. PLD 1967 A J & K 26 (DB).
16. 2000 MLD 1581=PLJ 2000 Lah. 1406=2001 UC 197.
17. 63 Cal. 425 (DB).
18. 1954 Ker L. Tim 506.
19. AIR 1924 Lah. 389+AIR 1963 Raj. 234.
20. PLD 1979 BJ 31.

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Death certificate. Copy of Death Register issued by District Health Officer carries presumption of truth under Art. 90. It cannot be ignored on account of a slip of memory by witnesses as to factum of death.¹

Revenue record. Entries in Revenue Record prima facie are good evidence of title unless rebutted by some better evidence by the other side. Where opponents had produced only oral evidence as against documentary evidence coming from public record produced by petitioners, Entries in Revenue Record made since long in favour of petitioner, which remained unrebutted, could not be ignored.²

3. *Duly certified.* The Article applies only to certificate and other documents certified by the officers mentioned therein.³ If a certified copy was executed substantially in the form and in the manner provided by law, the Court raises a rebuttable presumption in regard to its genuineness under Art. 90.⁴ Where the certified copy bore a seal in which appeared the signature of the officer and its was mentioned in the seal that the said officer had authority to certify it in view of the last clause of Art. 90, the document must be presumed to be duly certified.⁵ A certified copy of a *Khatamni* without complying with the provisions of law governing its issue, the Court is not bound to draw a presumption of its genuineness.⁷ Similarly a letter not signed by the Chief Secretary but by an officer for him is not a certified copy under Art. 87, and does not attract a presumption arising under Art. 90.⁸

Delay in raising objection to genuineness. Where a certified copy of a death entry was tendered in evidence and exhibited no objection as to its genuineness was raised or recorded. Document in question, could not have been ruled out of consideration on belated objection.⁹

91. *Presumption as to documents produced as record of evidence.* Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume--

1. NLR 2003 Civ. 267=2003 YLR 2554.
2. 1995 MLD 1458.
3. 2000 MLD 1581=PLJ 2000 Lah. 1406=2001 UC 197.
4. AIR 1959 SC 966=1959 Cr. L.J. 1223.
5. AIR 1950 Pepsu 56=2 Pepsu LR 431 (DB).
6. 1995 CLC 331=PLJ 1995 Lah. 184=NLR 1995 UC 335=1995 Law Notes (Lah) 74.
7. AIR 1959 SC 960=1959 Cr. L.J. 1223.
8. AIR 1922 Cal. 298=24 Cr. L.J. 111=50 Cal. 135 (DB).
9. 1995 CLC 331=PLJ 1995 Lah. 184=NLR 1995 UC 335=1995 Law Notes (Lah) 74.

Art.91]

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that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Evidence Act, 1872. This Article is exact reproduction of section 80, Evidence Act.

Synopsis

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| 1. Scope. | 8. Confession made to Magistrate of foreign State. |
| 2. Record or memorandum of evidence. | 9. Dying declaration recorded by Magistrate. |
| 3. Evidence given by a witness. | 10. Memorandum of identification. |
| 4. Evidence in judicial proceedings | 11. Presumption of truth of statement. |
| 5. Deposition recorded by officer authorized by law. | 12. Presumption as to due recording of confession. |
| 6. Statement or confession by a prisoner or accused. | 13. Burden to rebut presumption. |
| 7. Deposition must be signed by Judge or Magistrate. | 14. No presumption as to identity of deponent. |

1. *Scope.* Art. 91 does not deal with the question of the admissibility of evidence but simply dispenses with the necessity of formal proof by raising the presumption¹⁰ that everything in connection with documents had been legally and correctly done.¹⁰ The Article brings out the fact that the Rule that document is accepted in evidence when it is duly proved is not an absolute rule as certain documents of undisputed character, coming from proper custody, can be examined in evidence.¹¹ Thus the Article gives legal sanction to the maxim *Omnia Praesumuntur rite esse acta* with regard to documents taken in the course of a judicial proceeding. The presumptions to be raised under this Article which deals with the subject of depositions of witnesses and confessions of prisoners and accused persons, are considerably wider than those under Art. 90.¹² But it must be remembered that the presumption under Art. 91 is rebuttable.¹³

Plaint in civil Suit. Plaintiff in civil suit is a document and could be referred to in criminal trial to show plaintiff's stand in that suit.¹⁴

Certified copies. Presumption of genuineness would arise in respect of a certified copy of a deposition under Art. 91 in respect of the original.¹⁵

10. 1983 SCMR 573=PLJ 1983 SC 224+AIR 1929 Cal. 617 (SB).
11. 1990 CLC 765.
12. AIR 1957 Pat. 293.
13. 2003 YLR 587=PLJ 2003 Lah. 583.
14. 1986 P. Cr. L.J. 1705.
15. AIR 1920 Oudh 122.

further proof of identity is needed. The Court can turn to the deposition itself to find out whether there is inherent evidence of the identity of the deponent.⁷

92. Presumption as to genuineness of documents kept under any law. The Court shall presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Evidence Act, 1872. This Article in substance reproduces section 81. Evidence Act, which is reproduced below:

81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents. The Court shall presume the genuineness of every document purporting to be the London Gazette or any official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

1. Scope. *Quintus praesumitur esse acta* is a well-established principle as regards official acts. Courts repose great confidence on the fidelity and accuracy of official document kept in due course of business and properly and regularly kept.⁸ A sanction for prosecution is a public document and when a certified copy of such a document is admissible without further evidence, there is no reason why the original should not be presumed to be genuine without calling for the proof of the signature of the Presiding Officer.⁹

Constitutional petition in Court of Record. Recitals and records which were part of the Constitutional petition pertained to a Court of record, could not be disputed on any ground except that of fraud.¹⁰

Settlement Records. Presumption of truth is attached to record of rights generally but to the first ever Settlement Record in particular. Where record of rights which also included the settlement record was being followed with more or less exactness by the Settlement Officers, which included *Majlis-ul-Arz*, *Jamibandi* and the portion of *Shujia-Nash* or genealogical tree of the proprietor. It was held that very strong evidence is required to rebut the presumption of correctness attached to the first Settlement of an area. Where no evidence of any consequence had been adduced in rebuttal of the entries of the Settlement Record, interference with the authenticity of the record was declined by Supreme Court.¹¹ Where Settlement Register of 1876 was signed by Acting Director of Revenue Settlement and was

7. AIR 1951 Madh B 92.
8. AIR 1947 Cal. 283.
9. AIR 1951 All 816-ILR (1952) 1 All. 862-52 Cr. L.J. 1474 (DB).
10. PLD 1991 SC 102.
11. 1997 SCMR 1840.

dated from the Revenue Settlement Office. It was held that it cannot be too clearly permitted, that any such record would not be held to be conclusive evidence of ownership; but on the other hand one cannot be blind to the importance of such a document which appears *de facto* to have settled the bounds of the possession of certain plots for a period of thirty-five years (that is to say, from 1876 to 1910).¹² A certified copy of *fard hissa kashi baghar*, a document drawn up at the first Regular Settlement, is admissible in evidence to prove matters contained in it.¹³

Transfer of claim of claimants would be deemed to have been made by competent authority as under Art. 92 presumption of regularity would be attached to official record.¹⁴

Revenue records. There is a presumption of correctness of revenue records, therefore where an entry in the record of rights shows the suit lands in the name of the plaintiff, the onus is on the defendant to prove that the said entry in favour of the plaintiff is not correct.¹⁵ Similarly a *wajib-ul-arz* which is prepared after due publicity and as per directions prescribed by law is prima facie evidence of the customs recorded therein. A record of existence of right of pre-emption is evidence of a contract binding all the parties to it and their representatives. The burden of rebutting such presumption shall be on the party repudiating the contract.¹⁶

Correctness of entries in the survey record may be presumed but the presumption is rebuttable.¹⁷

Excise Record. Where entries in Excise and Taxation Department Register were made without notice to the parties concerned, no presumption of absolute genuineness could be raised in respect thereof.¹⁸

Order sheet of Court. An order sheet of a Judicial Officer is presumed to be a genuine public document and the Court would require evidence to justify its rejection.¹⁹

University record. Where original Award List and Notification of Examination was produced by University. Presumption of regularity was attached to such documents and very strong or at least tangible reliable material was required to condemn such documents.²⁰

Mutation entry. No presumption of correctness is attached to the date of death of the last holder given in a copy of a mutation entry.¹

12. AIR 1922 PC 325.
13. AIR 1917 Oudh 14.
14. 2004 AC 83 (SC).
15. AIR 1963 Orissa 29.
16. 2 All. 876 (FB)+AIR 1917 Oudh 14.
17. AIR 1949 Him Pra. 11.
18. 1999 YLR 610.
19. AIR 1937 Pat. 534 39 Cr. L.J. 103.
20. 2004 YLR 659-PLJ 2004 Lab. 12 (FB).
1. AIR 1954 Punj. 33 (DB).

93. *Presumption as to maps or plans made by authority of Government.* The Court shall presume that maps or plans purporting to be made by the authority of the Federal Government or any Provincial Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Evidence Act, 1872. This Article is reproduction of section 83, Evidence Act.

Synopsis

1. Scope.
 2. Private maps.
 3. *Thak* and survey maps.
 4. Other maps and plans.
 5. Maps and plans made for the purposes of any cause.
1. **Scope.** Art. 93 lays down that the Court shall presume that maps or plans purporting to be made by the authority of the Federal Government or any Provincial Government were so made and are accurate.¹ The word "accurate" referring to presumption as to accuracy of maps under Art. 93 means accuracy of drawing and correctness of measurement; it does not refer to laying down boundaries according to the rights of parties, but to be binding on the parties it must be shown by evidence that the map was drawn in the parties' presence or in that of their agents.²
2. **Private maps.** A map prepared for private purpose does not fall under Art.91.³ The Article does not deal with the admissibility of private map. If such a question arises in a litigation, the answer must depend upon the relevancy of the map in relation to the question in controversy.⁴
3. **'Thak' and survey maps.** A map is admissible in evidence without its field book. Failure to produce the field book affects the weight to be attached to the map and not its admissibility.⁵

Revenue survey. A Revenue Survey is conducted by a public officer in the exercise of his statutory authority, and he must have given an opportunity to all the persons interested in the proceedings to make their claims and to produce their evidence in support thereof. The maps thus prepared after due inquiry are presumed to be correct unless they are shown to be wrong.⁶ There is thus no special sanctity attached to the entries in a survey record or *Khowari*.⁷ They are not conclusive and may be shown to be wrong but they may be good evidence if there is nothing shown to the contrary.⁸ Therefore it is safer to rely on existing pillars, where there are any, treated as boundaries than on settlement maps and consequent measurements.¹⁰

2. AIR 1965 Cal. 282.
3. 25 Suth W.R. (Civ.) 179.
4. 29 Cal. 187 (PC).
5. 17 Cal. L.J. 642 (DB).
6. AIR 1924 Pat. 402 (DB).
7. AIR 1935 PC 123+AIR 1955 NUC (Pat) 4574.
8. AIR 1959 Him Pat 11+AIR 1933 Pat. 555.
9. 30 Cal. 291 (PC)+AIR 1933 Pat. 671 (DB)+AIR 1916 PC 141.
10. AIR 1943 All 46 (DB).

Maps are not evidence of title. The settlement maps, however important they may be, and whatever be their evidentiary value, cannot take the place of documents of title.¹¹

Report based on maps. Where a certain Revenue Survey map was referred to in the report of a Commissioner, but the map was not produced, their Lordships of the Privy Council received the report of the Commissioner as admissible inasmuch as no objection was taken to the report, and the Commissioner himself was neither examined nor cross-examined.¹²

Maps not generally available. Maps which are not generally available and are therefore produced in Court by the Government and are kept open for inspection by the opposite party, are as good as other official maps and may be relied upon.¹³

4. **Other maps and plans.** A presumption of accuracy attaches to all maps prepared by public servants in the course of performance of their duties. Therefore a plan signed by an Executive Engineer and a Sub-Divisional Officer to the P.W.D., when land was transferred to the District Board, must be presumed to be accurate under Art. 93.¹⁴

Reliability of maps. Accuracy as to the information contained in a map must depend upon the source from which information is obtained. Where sufficient evidence as to informants who have been questioned is not forthcoming and it is not also clear how far that evidence has been tested by checking the evidence of one of the informants as against that of another, and it is admitted that corrections have been made in the map from time to time, contents of such map cannot be relied upon as authoritative.¹⁵

Maps prepared for private purpose. A map prepared by a public servant for a private purpose and not in performance of his duties is not a map to which a presumption of accuracy is attached under this Article. Thus where the map produced by the Government to show the area of supply of electricity was not prepared under the authority of the Government, no question of presumption arose under Arts. 50 and 93.¹⁶

Reanell's map. A Reanell's map has a presumption of accuracy especially in river and road surveys under Art. 93.¹⁷

'Kiswari' map. In the case of a *kiswari* map, there is presumption both as to physical features and statements as to possession made therein.¹⁸

11. AIR 1948 Oudh 139.
12. AIR 1923 PC 1.
13. AIR 1965 Cal. 282.
14. AIR 1937 Loh. 155=38 Cr.L.J.433.
15. AIR 1939 PC 143.
16. AIR 1958 Cal. 85.
17. 4 DLR 222 (DB)+AIR 1921 Cal. 661 (DB).
18. AIR 1922 Pat. 51 (DB).

Diara maps. Diara maps are presumed to be correct and the presumption will in no sense be rebutted by the mere absence of the location of a particular junction.¹⁹

City maps. Printed maps (commissioner's maps) of different wards in a city are admissible under Art. 93 and also under Arts. 50 and 97.²⁰

5. **Maps and plans made for the purposes of any cause.** Maps made for the purposes of any cause prepared neither under the authority of the Government nor published for general sale must be proved to be accurate.¹ The onus of proving that such a map is accurate lies on the party who produces it.² Such maps and plans must be proved by the persons who made them. They are *post litem motam* and lack the necessary trustworthiness. Where maps are made for the purposes of a suit, there is, even apart from fraud, which may exist, a tendency to colour, exaggerate, and favour, which can only be counteracted by swearing the maker to the truth of his plan.³

Where documents or maps showing road prepared under Govt. authority for public purpose were brought on record. They were relevant and admissible in evidence, and their authenticity was also duly proved by P.Ws. The Court could not refuse to take into consideration their evidentiary value.⁴

No objection to plan by any party. Where both the parties rely upon a plan without taking objection as to its accuracy, the plan is not inadmissible on the ground that its accuracy had not been proved according to the provisions of Art. 93.⁵

94. Presumption as to collections of laws and reports of decisions.

The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Evidence Act, 1872. This Article is exact reproduction of S. 84, Evidence Act.

Synopsis

1. Scope.
2. Value of foreign publication on law.

1. **Scope.** The provisions of Arts. 56, 57, 112, 49, 85 and 9 deal with matters such as relevance of a judgment, the mode of proof, the presumption as to the

19. AIR 1937 Cal. 574 (DB).
20. AIR 1942 Bom. 161 (DB).
21. PLD 1959 Dacca 26-16 DLR 424 (DB)+AIR 1937 PC 69+14 Cal L J 578 (DB) (Map prepared for one case--No presumption as to accuracy in another case)+AIR 1965 Cal. 282.
2. AIR 1965 Cal. 282.
3. AIR 1959 Ker. 358.
4. PLJ 1997 Lah. 1389-1997 CLC 1606.
5. AIR 1940 Lah. 309.

genuineness to be drawn and so on but they do not deal with the question of the binding nature of the judgments or even of the effect of those judgments.⁶

2. **Value of foreign publication on law.** The only effect of Arts. 52 and 94 read together is that the Court may take judicial notice of a publication containing foreign law, if it is issued under the authority of the foreign government concerned and may accept the law as set out in the publication as the law in force in the particular foreign country at the relevant time. But such a publication cannot be evidence of the fact that what is contained in it is the whole law. What the whole law of a foreign country at a particular point of time is, cannot therefore be proved except by calling in an expert as provided for in Art. 59.⁷

95. **Presumption as to powers-of-attorney.** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice-Consul, or representative of the Federal Government, was so executed and authenticated.

Evidence Act, 1872. This Article is reproduction of S. 85, Evidence Act.

Synopsis

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|---|---|
| 1. Scope. | 4. Authentication of power-of-attorney. |
| 2. Power-of-attorney executed before or authenticated by certain persons. | 5. Statements in power-of-attorney--proof of. |
| 3. Registered power-of-attorney. | 6. Power-of-attorney executed in foreign country. |

1. **Scope.** This Article is neither mandatory,⁸ nor exhaustive. There are different other legal modes of executing a power-of-attorney.⁹ Execution of power-of-attorney could thus be proved in any other manner in accordance with provisions of Qanun-e-Shahadat or it might not be required to be proved if admitted in accordance with law of evidence.¹⁰ Therefore, although the power-of-attorney was not authenticated by a notary public as required under Art. 95 the same being executed by the petitioner and duly registered under the provisions of Registration Act is a valid document.¹¹

Onus of proof. Where a document was repudiated by its executant or any one claiming under him as a forged document, the party claiming under said document

6. AIR 1935 Nag. 236=ILR 1935 Nag. 613=1950 Cr. L.J. 1275.
7. AIR 1956 Cal. 48 (DB).
8. PLD 1986 Quetta 107=NLR 1986 ClJ 398=KLR 1986 CC 363.
9. 1989 SCMR I=1989 PSC 42+1989 CLC 8-AIR 1939 Bom. 347 (21 Mad. 492 *Relid on*)+21 Mad. 492.
10. 1989 SCMR I =NLR 1989 SCJ 42.
11. 1986 Dhaka L.R. 240.

9. Statements in power-of-attorney—proof of. Statements in a power-of-attorney are required to be proved like any other statements.⁹

6. Power-of-attorney executed in foreign country. Power-of-attorney executed and authenticated before a Pakistan Consul would be deemed to have been regularly executed.¹⁰ Once the document was attested by the First Secretary of the Embassy of Pakistan, the same would be construed as valid document. Where power of attorney had been stamped by the First Secretary, High Commissioner of Pakistan in the foreign country; Commissioner for oath of the said country had also attested in the same. Presumption was that the document was power-of-attorney and duly executed and authenticated unless shown otherwise.¹¹ Power-of-attorney in order to raise and sustain presumption, under Art.95, of its execution before and authentication by, *inter alia*, a Pakistan Consul or Vice Consul has to be so executed or authenticated. For a person executing such power-of-attorney in order to qualify for presumption, under Pakistan Law, the exercise is required to have been gone into at the Pakistan Embassy in the relevant country. No presumption would arise when such document had not been authenticated in accordance with requirements of Art. 95.¹² The mere fact that word "executed before him" was not written by such Consul or difference in date on power-of-attorney and date of attestation or even difference in place of residence of executant, and Pakistan Consul by itself would not lead Court to presume that execution of authentication of document was not before Pakistan Consul or that it was not regularly performed.¹³ But where the power-of-attorney was not signed by the alleged executant in the presence of First Secretary and endorsement on the document regarding its authentication itself negates the assumption that the contents of the documents were admitted to be true by the executant because the First Secretary has recorded in his endorsement that the office of the High Commissioner in England assumes no responsibility for the contents of the document. No presumption can be raised under this Article.¹⁴

Power-of-attorney executed before Notary Public in England and authenticated by such Notary would be valid and effective under the provisions of Art. 95.¹⁵

Attested in foreign language. Only a presumption is raised if attested in accordance with the provision of Art. 95 but it does not require that a power of attorney to be valid must be attested by the persons mentioned in Art. 95. Where power of attorney had notarial stamp but it was in a language which was not understandable as the same was attested in a foreign country in a language other than English. Principal did not object to the authority of agent based on the disputed

9. AIR 1974 Mad. 580.
10. 1986 CLC 1472.
11. PLD 2003 Kar. 420. (Original not produced).
12. 1990 CLC 645.
13. 1986 CLC 1472.
14. PLD 1984 SC (A J & K) 157-1984 PSC 939.
15. MLR 2002 CW. 507.

power of attorney. It was held that power of attorney was admissible, unless principal had disputed the authority of his attorney to represent him.¹⁶

96. *Presumption as to certified copies of foreign judicial records.*
 (1) The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Pakistan is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Federal Government in or for such country to be the manner commonly in use in that country for the certification of copies or judicial records.

(2) Any officer who, with respect to any territory or place not forming part of Pakistan, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897 (X of 1897), shall for the purposes of clause (1), be deemed to be a representative of the Federal Government in or for the country comprising that territory or place.

Evidence Act, 1872. This Article is reproduction of S.86, Evidence Act.

Synopsis

1. Scope.
2. Presumption where document is not admitted.
3. Who may attest foreign judgment.

1. Scope. Foreign document can be proved by the original or by certified copy thereof, which must be certified by legal keeper of document, certificate of Notary Public and Pakistan's Diplomatic Agent in that country. Presumption of genuineness and accuracy would attach to certified copies of foreign judicial record, if they were certified in the said manner.¹⁷ Article 96 does not relate to the admissibility or otherwise of a copy of a judicial record of a foreign country. It merely enables the Court to raise a presumption that each judicial record is genuine and accurate if it bears a certificate as required by this Article. It is thus plain that the genuineness of the record is certainly capable of being proved by other means. The absence of certificate merely excludes the raising of a presumption. The Article nowhere says that a copy of a judicial record of a foreign country is not admissible in evidence unless it bears a certificate as required by it. This becomes obvious from the nature of the certificate itself which does not deal with the authenticity of the document as such, but merely certifies that the manner in which the document has been certified in the manner commonly in use in that country.¹⁸ Where the petitioner had admitted in his evidence that a judgment was given by a foreign Court granting divorce to him, and the copy of judgment produced by the plaintiff is not properly authenticated as

16. 2004 CLD 399=2004 CLJ 266=PLJ 2003 Lah. 1244=2003 YLR 2843.
17. 1995 CLC 210.
18. PLD 1959 Kar. 760=PLR 1960 (1) W.P. 441 (DB)+27 Cal. 639 (PC).

provided in Art. 96 the judgment was admissible in evidence on the admission of the petitioner.¹⁹ Therefore judicial records by a Berlin Court which were not authenticated and certified in a manner prescribed by Arts. 89 and 96, but were authenticated in the manner prescribed by sections 14 and 15 of the English Extradition Act (which applied to Pakistan), were held admissible.²⁰

Where a copy of a judgment has not been properly certified, the Court should not disallow the production of the copies of judicial record relating to a foreign Court in evidence, without first giving the party a sufficient opportunity either to have them certified by the representative of the Federal Government or to have them proved by any other mode of proof.¹

Judgment Certified by Occupied Kashmir High Court. As Azad Government is the *de jure* Government of the entire State of Jammu and Kashmir and the High Court across the cease-fire line is neither established nor maintained by this Government, certification of a copy of judgment by the said High Court's issuing agency is a nullity in the eyes of law and has to be ignored.²

2. Presumption where document is not admitted. To give rise to a presumption under the Article it is not necessary that the judicial record of the foreign country should have already been admitted in evidence. While Art. 89 (6) lays down three conditions for admitting a foreign judgment in evidence, the admission of the judgment is not a condition precedent for drawing the requisite presumption under Art. 96. The presumption may be drawn before the said judgment is admitted and by virtue of presumption of genuineness of the copy of the judgment arising under Art. 96, the third condition under Art. 89 (6), viz., the character of the document according to the law of the foreign country may be said to have been proved and the judgment may be admitted.³

3. Who may attest foreign judgment. Copies of foreign judgment must bear certificate of genuineness by a representative of Government of Pakistan. Copies of judgment of Indian Courts which do not bear certificate of genuineness and accuracy by a representative of the Government of Pakistan in India as required by Art. 96 are inadmissible as evidence of the facts recited therein.⁴ The endorsement of the Ceylon Ministry of External Affairs coupled with the attestation of the representative of Pakistan Government in Ceylon is sufficient compliance with Art. 96. The mere fact that the attestation does not specially contain a statement that "I certify that the certified copies of the Colombo Court are certified in the manner commonly used in that Country" will not render the attestation a worthless endorsement, because in law attestation means that the document in question was executed before the attestator by a authorised person.⁵

19 PLD 1963 Kar. 567-15 DLR (W.P.) 105.
20 39 Cal. 164-172 Cr. L.J. 505 (DB).

1. AIR 1951 Ajmer 54.
2. PLD 1970 A J & K 88.
3. AIR 1964 SC 538.
4. PLD 1969 SC 446.
5. PLD 1960 Kar. 594.

97. Presumption as to books, maps and charts. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Evidence Act, 1872. This Article is reproduction of S. 87, Evidence Act.

Synopsis

1. Official reports.

3. Maps and charts.

2. Historical works.

1. Official reports. Official reports regarding the nature of any estate are valuable and in many cases the best evidence of facts stated therein, but opinions therein expressed should not be treated as conclusive in respect of matters requiring judicial determination, however eminent the authors of such reports may be.⁶ But there would appear to be no objection in referring to the report for the purpose of gathering historical facts which are not in issue.⁷

2. Historical works. No presumption of accuracy attaches to facts stated in a book of history. A Court can only presume that the History was written or published by the person and at the time and place, by whom or at which it purports to have been written or published. The presumption is with regard to publication, authorship, etc., but not with regard to accuracy.⁸ Where history of a particular sect prepared by an Extra Assistant Settlement Officer does not form part of the settlement record, it has no presumption of truth attached to it but may be of some value if at the time it was prepared there was no dispute relating to the matter in issue.⁹

3. Maps and charts. The maps prepared by Revenue Survey after due inquiry are presumed to be correct.¹⁰ But they are not conclusive evidence and may be shown to be wrong.¹¹ Accuracy of information in a map depends upon the source from which it is obtained. A map cannot be relied upon as authoritative when it is acknowledged that corrections have been made in it from time to time.¹² Similarly a map cannot be relied upon inasmuch as no scale is given in it nor is it mentioned under whose authority the map was prepared. Even where it is proved that such a map was produced from proper custody, its evidentiary value would be nil.¹³

6. AIR 1928 PC 10.
7. AIR 1953 Madh-B. 97 (FB).
8. AIR 1952 Madh-B 146.
9. AIR 1934 Lah. 1 (DB).
10. AIR 1935 PC 125.
11. AIR 1917 PC 141.
12. AIR 1939 PC 143.
13. PLD 1956 Dacca 51=PLR 1953 Dacca 320 (DB).

98. *Presumption as to telegraphic messages.* The Court may presume that message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Evidence Act, 1872. This Article is reproduction of S. 88, Evidence Act.

Synopsis

1. Scope.
2. Person who sent the message.
3. Facts stated in telegram.
4. Admissibility of telegram under Article 22.

1. **Scope.** The presumption under Art. 98 is only with regard to the terms of the message transmitted, i.e., that a message forwarded to the addressee from the telegraph office corresponds with the message delivered for transmission at the office of origin.¹⁴ The presumption that telegraphic message forwarded corresponds to one delivered. Remains undisturbed where there is only word against word.¹⁵ In the absence of proof that the message was sent from the telegraph office to the person concerned, the telegram cannot be held to have been proved.¹⁶

2. **Person who sent the message.** The letter portion of the Article expressly directs that the Court shall not make any presumption as to the person by whom a telegraphic message was delivered for transmission.¹⁷ Therefore the sanction of the Local Government to prosecute a person for an offence under section 124-A, Penal Code communicated by telegram must be proved to have emanated from the Government.¹⁸ Where there is no evidence to show that a telegraphic message was sent by the person by whom it was purported to be sent, and on the other hand he specifically denies it, the message cannot be held to be proved.¹⁹ Where a Railway employee was transferred from one place to another by a wireless communication, and he refused to obey the order. It was held that the authenticity of the order had to be proved.²⁰

Circumstantial evidence of authorship. The proof of authorship of a telegraphic message need not be direct and may be circumstantial. The contents of the message received, in the context of the chain of correspondence may well furnish proof of the authorship of the messages at the dispatching end.¹

14. 1990 MLD 276+PLD 1556 Lah. 649.
15. NLR 1991 UC 509.
16. 10 Cr. L.J. 520 (DB) (Cal).
17. PLD 1956 Lah. 649.
18. AIR 1920 Mad. 928-20 Cr. L.J. 453 (SB).
19. AIR 1954 SC 316-1954 SCR 919-33 Pat. 313.
20. PLD 1956 Lah. 649.
1. AIR 1957 SC 857-1958 SCR 328-1957 Cr. L.J. 1346.

3. **Facts stated in telegram.** The contents of a telegram are not evidence of the facts stated in it.²

4. **Admissibility of telegram under Article 22.** Where the original of a telegram has not been proved to be in the handwriting of the sender, Art. 98 is a bar to its being presumed that the alleged sender was the sender of the message. But Art. 98 is not a bar to a telegram being considered along with the rest of the evidence in the case and it can be admitted under Art. 22 for the purpose covered by it.³

99. *Presumption as to due execution, etc., of documents not produced.* The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Evidence Act, 1872. This Article is reproduction of S. 89, Evidence Act.

Synopsis

1. Object and scope.
2. Presumption to be raised on non-production of document.
3. Secondary evidence.

1. **Object and scope.** Article 99, is intended to penalise non-production of documents rather than raise a presumption of innocence. The Article has no application to a case where secondary evidence of the original is given on the ground that the latter is lost, in which case, when the document produced as secondary evidence is an unstamped copy, it may be presumed that the original was stamped. This presumption may be raised under Art. 129.⁴ The presumption under the Article must not be a conjecture nor grounded on data which the evidence itself shows to be inexact.⁵ Once a presumption is drawn under Art. 99, it cannot be easily rebutted by the production of the original document at a later stage.⁶

2. **Presumption to be raised on non-production of document.** Where a document which is found to be in the possession of one party is not produced by him, a presumption may be raised as to that document under this Article. Thus where the plaintiff's allegation that a document had been executed and was in defendant's possession is found to be correct, the defendant cannot without producing the document, contend that it was not stamped according to law.⁷ Where the party in possession of a deed does not produce it even when notice is given to do so but challenges its validity. It must be presumed that the said deed had been properly attested, stamped and executed in the manner required by law, which would

2. AIR 1945 PC 174=ILR (1945) 1 Kar. (PC) 351.
3. AIR 1933 Pat. 96=34 Cr. L.J. 421 (DB)+AIR 1926 Bom. 71 (DB).
4. 1932 Mad. W.N. 432 (DB).
5. 2 Beng LR 44 (PC).
6. AIR 1956 Bom. 65=ILR 1955 Bom. 999 (DB).
7. AIR 1953 Him. Pra. 52.

obviously also include any requirement as to compulsory registration.⁸ Where appellant company had to make out a case for setting aside the award given against it, it had to prove that the arbitration agreement executed by it was unexecuted, because this was one of the grounds on which it was entitled to challenge the award. It should have produced the agreement or had it produced. As it took no steps in this respect and the Court has to presume under Article 99 that this agreement was "stamped and executed in the manner required by law".⁹

Original lost or destroyed. In a redemption suit, the plaintiff in order to establish a mortgage, relied upon a certified copy of a petition of compromise filed in 1857 and bearing a one-ripe stamp, which contained a recital relating to the mortgage. The record of the proceedings in which the compromise petition was filed was destroyed in the Mutiny. Upon an objection that the document being not properly stamped was inadmissible; it was held that the officer before whom it was presented must be presumed to have satisfied himself that it was properly stamped.¹⁰

Execution of document disputed. Where the execution of registered document is disputed, no presumption would be attached to it and its execution has to be proved as fact.¹¹

3. Secondary evidence. Courts will not permit production of secondary evidence of a document by allowing a penalty to be paid. Section 34 of the Stamp Act has no application to such a case.¹² Therefore where an entry about a mortgage in a *bahi* is not stamped, and no presumption under Art. 99 can be drawn, no secondary evidence may be allowed.¹³

Where instead of original document a photostat copy was exhibited in evidence without the leave of the trial Court to lead secondary evidence, after the proof of loss or destruction of the original one, no presumption of correctness or its due execution can be drawn.¹⁴

100. Presumption as to documents thirty years old. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

8. PLD 1977 SC 109-PLJ 1977 SC 104.
9. PLJ 1978 SC 336.
10. AIR 1916 PC 41.
11. 2003 YLR 1404-PLJ 2003 Loh. 737.
12. 23 Mad. 49 (PC).
13. AIR 1938 Loh. 90.
14. PLD 2003 SC 410-PLJ 2003 SC 632=2003 SCI 754.

Explanation. For the purpose of this Article and Article 92, documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

Evidence Act, 1872. This Article is reproduction of section 90, Evidence Act.

Synopsis

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| 1. Scope. | 9. Discretion must be exercised judicially. |
| 2. Mark or seal. | 10. Presumption is rebuttable. |
| 3. Anonymous document. | 11. Wills, presumption as to. |
| 4. English law, applicability. | 12. Duly executed and attested. |
| 5. Document--meaning of. | 13. Signature on behalf of others. |
| 6. Thirty years old document. | 14. Recitals in ancient documents. |
| 7. "Produced from proper custody". | 15. Legal effect of document. |
| 8. Discretion of Court to raise presumption. | 16. Interference by appellate Court. |

1. Scope. Where documents are thirty years old, prima facie, presumption of truth is attached to such documents.¹⁵ Under Art. 100 all that the Court is entitled to presume is that the signatures and every other part of a document which purports to be in the handwriting and in the case of a document executed or attested, that it was duly executed and attested by the person or persons by whom it purports to be executed and attested.¹⁶ Where the signature of a particular person is not in issue or sought to be established, Art. 100 cannot apply even if the accounts are old and are produced from proper custody.¹⁷ In case of imaginary persons like Imams there can be no question of signatures and handwriting, and an attempt to apply Art. 100 to such documents is merely futile.¹⁸

Where both sale deeds were written on plain paper, full description of scribe and marginal witnesses were not given; receipts were never acted upon by persons claiming under them; alleged scribe and marginal witnesses were not produced nor

15. 2001 YLR 2272.
16. 8 D.L.R. 640-AIR 1935 Nag. 156=26 All. 581 (PC).
17. AIR 1953 SC 431
18. AIR 1935 Nag. 156.

implies that the persons who put down their signatures on behalf of the executants had the authority to do so.² Thus where a sale-deed executed more than 30 years ago by an illiterate person was signed by another person and the executant admitted execution before the sub-registrar, it was held that the authority to sign may be presumed.³

14. Rectials in ancient documents. The Article only dispenses with proof as to execution. There is no presumption as regards accuracy of the document or its contents.⁴ Therefore documents more than thirty years old and produced from proper custody, are not entitled to any weight unless supported by corroborative evidence.⁵

15. Legal effect of document. Once execution of an old document is proved by raising necessary presumption under Art. 100, the document becomes primary evidence of its contents. No presumption however arises under Art. 100 as to correctness of contents of such documents even though contents be proved on record. Presumption as to correctness may nevertheless arise under Art. 129 in such a case, besides there being external evidence in support of facts recited in the document.⁶

Presumption under this section is only as to genuineness of a document. It does not in any way give any added importance or effect to the document simply because it is thirty years old. Thus as a mutation itself does not create title in property and if factum of sale is denied, such sale is required to be proved by independent evidence. From the fact that mutation was 30 years old, truth of contents of the document cannot be presumed.⁷

16. Interference by appellate Court. It is the trial Court that should be asked to presume a document to be genuine under Art. 100. Where no such request has been made to the trial Court, it is too late in the day to ask the High Court to presume that the document is genuine.⁸ It must however be noted that the question whether the presumption is in favour of the genuineness of a document under Art. 100, can be raised or not is a question of law, and it can, therefore, be urged at any stage of the litigation.⁹

An appellate Court will always be slow to interfere with the discretion of the Court below, vested in it under Art. 100, in refusing or admitting a document,¹⁰ and the appellate Court will not interfere unless the discretion has been exercised arbitrarily, capriciously or perversely or without due consideration of relevant facts

2. AIR 1925 All. 1 (FB) (AIR 1917 All. 7; AIR 1925 All. 393; AIR 1920 All. 294 (2) & AIR 1923 All. 420 Overruled)-AIR 1927 All. 231=49 All. 55 (DB).
3. AIR 1924 Oudh 265.
4. 8 DLR 640-AIR 1929 Lah. 78-AIR 1956 Cal. 205 (DB).
5. PLD 1982 SC (A J & K) 37=PLJ 1982 SC (A J & K) 57=NLR 1982 SCl 339.
6. 1980 SCMR 760=PLJ 1980 SC 103.
7. PLJ 1989 Lah. 46=NLR 1989 AC 1.
8. AIR 1950 Raj. 47=ILR (1953) 3 Raj. 292.
9. AIR 1946 Bom. 193.
10. AIR 1914 Cal. 670 (DB)+AIR 1932 Lah. 43 (DB) (Presumption of proper custody can be raised by Court after finding of fact and interference by appellate Court is not justifiable)+26 All. 581 (PC).

and circumstances of the case.¹¹ Where the trial Court exercises its discretion under Art. 100 and admits a document and the first Appellate Court finds no reason to interfere with it, the High Court should not overrule the discretion and reject the document.¹²

Presumption drawn by lower Court. Though in the first Court a presumption under Art. 100, regarding genuineness of a document is drawn and the document is filed, yet an appellate Court is not bound to draw such presumption.¹³ Where the trial Court does not inform the party affected, before the opportunity for adducing evidence has passed, that it was going to raise a presumption under Art. 100 and thus all further evidence is shut out, the appellate Court is entitled to refuse to draw a presumption under this Article.¹⁴ Similarly the High Court will remand the case involving a question of title or arrive at a finding itself, where the lower Court erroneously relies on a copy in respect of which the presumption could not be made.¹⁵

Opportunity to be heard must be given before interference. Where an appellate Court is constrained to interfere, the party producing the document should be given an opportunity of supporting the presumption.¹⁶

101. Certified copies of documents thirty years old. The provisions of Article 100 shall apply to such copy of a document referred to in that Article as is certified in the manner provided in Article 87 and is not less than thirty years old; and such certified copy may be produced in proof of the contents of the document or part of the document of which it purports to be a copy.

Evidence Act, 1872. This Article is reproduction of S. 90-A, Evidence Act.

1. Scope. Provisions of Art. 100 deals with original document while certified copies are the subject matter of Art. 101.¹⁷

Provisions of Art. 100 would equally apply to certified copies of thirty years old documents, in terms of Art. 101.¹⁸

Under Art. 101 of Qanun-e-Shahadat, it is not the age of original document but it is the age of certified copy which is relevant for the purpose of admissibility.¹⁹

11. 1980 CLC 216+PLD 1967 Lah. 90 (DB)+AIR 1933 Lah. 347.
12. 1983 SCMR 849+AIR 1940 PC 160.
13. AIR 1914 Mad. 473=37 Mad. 455 (DB).
14. 1982 CLC 1712=PLD 1982 SC (A J & K) 175=NLR 1982 SCl 578+108 Ind Cas. 412 (DB) (Mad).
15. AIR 1963 Lah. 788.
16. AIR 1919 Lah. 69+AIR 1935 Oudh 482+AIR 1954 Raj. 47 (DB).
17. PLJ 2003 Lah. 420=2002 YLR 2505 (DB).
18. 1999 CLC 200=1999 AC 166.
19. PLJ 2003 Lah. 420=2002 YLR 2505 (DB).