D.V. Krishnamurthy's
Commentary on
PROOF OF DOCUMENTS
[Under the Indian Evidence Act, 1872 & other Cognate Acts]
Civil & Criminal

Edited & Co-authored by

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The purpose of every judicial enquiry is the ascertainment of some right or liability. Before pronouncing on the rights, duties and liabilities of the parties, the Court has to find what facts exist. It is for the parties to convince the Court of the existence of that state of facts which, according to the provisions of the substantive law, would establish the existence of the right or liability, which they allege to exist. How that is done or should be done is regulated by a set of rules and principles, which go by the name of "Law of evidence" and often termed the eye of the law. The law of evidence mainly contained in Act 1 of 1872, is a branch of adjective law dealing with the establishment of facts by production of evidence. The Act drafted by Sir *James Fitzjames Stephen,* the distinguished jurist and legislator, is a unique piece of legislation.

As aforesaid, the party who wishes the Court to believe in the existence of a fact must prove it, unless there is some presumption as to the existence of a fact. The rule is subject to two other exceptions *i.e.,* a fact need not be proved, if, (i) it is admitted by the other party [S.58]; (ii) it is in the nature of facts of which, the Court shall take "judicial notice"[S.57]. Proof is, as explained by *Best* [*Best* Evidence, S.10], the effect or result of evidence, while evidence is the medium of proof. The evidence by which the facts are to be proved must be brought to the notice of the court and submitted to its judgement and the Court must form its judgment respecting them. Such evidence may be in the form of (1) oral evidence; (2) documentary evidence; and (3) material evidence - evidence supplied by material objects for inspection of court *e.g.,* weapons of offence or stolen property. But the Indian Evidence Act only recognizes the first two categories. Though the Court may under Section 60 of the Act require the production of a material thing for its inspection, under the Act, such material is not 'evidence', strictly speaking. "The best evidence must be given of which the nature of case permits", is what is known as the "best evidence rule" and is the most fundamental principle upon which the law of evidence depends. It implies that no evidence shall be brought which *ex natura rei* - according to the nature of the thing, or of the transaction - supposes still better or greater evidence behind in the parties own possession and power. It is a cardinal rule of evidence, not one of technicality, but of substance, which it is dangerous to depart from, that where written documents exist, they shall be produced as being the best evidence of their own contents. [*Divomoyi v. Roy,* 7 IA 8(PC)]. It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirements of the law, or by the compact of parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instrument, or to contradict or alter them [*See*, Ss.91 & 92]. This is a matter of both principle and policy: of principle because such instruments are in their nature and origin entitled to a much higher degree of credit than parol evidence; of policy because it would be attended with great mischief, if those instruments upon which men's rights depended were liable to be impeached by loose collateral evidence. Where the terms of an agreement are reduced in writing, the document itself, being constituted by the parties as the expositor of their intentions, is the only instrument of evidence in respect of that agreement which the law will recognize so long as it exists, for the purpose of evidence. [*Stark,* Evidence, 648]. The Book, as the title suggests, deals with proof of such documents produced before the Court as evidence.

A document must, generally, be proved by primary evidence [S.64], which means the production of the document itself for the inspection of the Court [S.62]; but in certain cases, *e.g,* when the document is in the possession of the other party or someone else, and is not produced after notice, or where the document is lost or destroyed, or is not easily producible or provable under some law by a certified copy, the existence, conditions or contents of the documents may be proved by secondary evidence [Ss.65 & 66]. A distinction is drawn under the Indian Evidence Act between proof of the contents of a document and proof of its execution or authorship. The mode of proof of execution may depend upon whether the document in question is required by law to be attested or not required by law to be attested. For proof of signature or hand-writing, any mode of proof which does not offend against the "best evidence rule" may be adopted [*cf,* S.67]. The Court may compare the disputed signature, writing or finger print of a person with an admitted or proved signature, writing or finger print, and for this purpose may direct him to give a specimen of his signature, handwriting or finger print [S.73]. A document, if required by law to be attested, at least one attesting witness must be called to prove its execution [S.68]. The rule may however be relaxed in certain circumstances mentioned in different provisions of the Act and as provided thereunder [*Cf,* Ss.68, 69]. If the attesting witness turns hostile, execution of the document may be proved by other evidence [S.71]. However, if a party to an attested document admits it execution, such admission is sufficient proof of its execution by him and the document need not be proved at all [*Cf.*, S.70].

Under the provisions of Evidence Act, a distinction has been made between private and public documents. All documents forming the acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive of any part of India or of the commonwealth, or of a foreign country, and public records kept in any State of private records, are public documents [S.74]. All other documents are private [S.75]. The contents of public documents may be proved by production of certified copies [S.77]. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor. [S.76]. A special mode of proof is provided for certain public documents, *e.g.,* Acts, orders and notifications of the Central Government or of any State Government or any department of any State Government, *etc.*[S.78]. Some other documents are proved merely by the presumption of genuineness, which the Act attaches to them. It being obligatory for the Court to raise such presumption, it is also known as 'obligatory presumption'. For documents in regard to which there is an obligatory presumption *See*, Sections 79, 80, 81, 82, 83, 84, 85, 89. There are certain other documents in regard to which the Act gives discretion to the Court to raise presumption as to their genuineness, existence or execution. Such presumption may be said to be 'permissive presumption'. For such documents in regard to which permissible presumption may be raised *see,* Sections 86, 87, 88 and 90.

The Book not only deals with the proof of documents but, brings together in a compact form a wide selection of materials necessary for a proper understanding of the subject. All other matters ancillary to the subject-matter of the Book and, issues that may crop up while dealing with matters regarding proof of documents in civil or criminal cases have been taken note of. As noticed earlier, the law of evidence is contained mainly in Act 1 of 1872, but there are other Acts also which contain provisions relating to evidence *e.g,* Indian Succession Act, Transfer of Property Act, the Registration Act, the Bankers Book Evidence Act, *etc.*. These Acts are called cognate or Special Acts. While discussing relevant provisions under cognate Acts, the Book does much more than just give key sections of statutes and straightforward description of the provisions thereunder. It provides a detailed examination of provision under such cognate Acts and their impact on the general rules of evidence and thereby facilitates a proper understanding and appraisal of law. An exclusive chapter is devoted to mode of proof of documents under cognate Acts or special statutes and affidavits as evidence. Amendments introduced by the Information Technology Act, 2000 as part of Cyber Laws to provide legal

recognition for transactions carried out by means of electronic communication, commonly referred to as 'electronic commerce' have been noticed and considered. Independent chapters have been included dealing with proof of agreements and contracts, documents requiring proof of good faith, proof of Sale Deed, Gift Deed, Lease, Mortgages, Exchange and Actionable Claims *etc.* under the Transfer of Property Act, as also, proof of Promissory Note, Bill of Exchange and Cheque under the Negotiable Instruments Act and, proof of will under the Indian Succession Act and proof of will by Mohammedans. Like wise notice has been taken of unregistered and unstamped documents, documents under Criminal Procedure Code, 1973 and documents under Limitation Act, 1963 and each dealt with under separate chapters. Separate chapters have also been included to deal with topics like exclusion of oral by documentary evidence, relevancy of earlier judgments - Admissibility and proof, *etc.* While entertaining no pretension to be a treatise on the subject, the Book may claim to have dealt with all matters concerning the subject it deals with.

The subject matter has been accordingly divided into exhaustive heading and sub-headings in 22 chapters covering all the facets of the law on the subject. Each Chapter includes key sections of the Evidence Act and/or other cognate/relevant statutes, extracts from judicial decisions and, notes giving an informed commentary and a rich variety of further references. Long chapters are further sub-divided into sections each dealing with a distinct topic ancillary to the subject matter of the Chapter. The format of each section consists of division into texts, cases and materials and notes to facilitate a proper understanding of the various topics of the subject matter. The text lays down the general principles and statutory conditions underlying each set of cases and materials. A Chapter Map has been given in the beginning of such chapters apart from synopsis to facilitate quick reference.

The Book is designed to assist the members of the Bench and the Bar to get at the relevant provisions of law and in picking out a needed case in solving an intricate problem of law, from the mass of decisions on the subject. There has been an exponential growth of case-law on the subject over the years posing a problem, which every author of a law-book has to face, in deciding as to what cases to put in and what cases to leave out. It may, no doubt, be safer to act on the assumption that too many is better than too few. But the limitation of space and cost do not admit of giving a free rein to the above assumption, and a curtailment of some cases adopting a selective approach becomes inevitable. By now Supreme Court has interpreted almost every provision and expounded every aspect of the law of evidence. Therefore, more pronounced reference has been made to all those decisions of Supreme Court containing an authoritative exposition of law on the subject. In fact, a good number of cases, which have been left out are those, which were found to be mere repetition of some principles already enunciated by the Supreme Court, or by the one court or the other. Therefore, despite such curtailment, there can be no doubt that the collection of all important cases and materials contained in this volume will be of great assistance to the users and will surely be appreciated by them.

To add to the utility, apart from table of contents at a glance, the book contains a comprehensive index, which will help as a guide to the statutory provisions and in its turn to the required case law. The Book also contains a table of case law cited in the text, which is useful for purpose of reference.

Written in a simple and lucid language, the Book, it is hoped, is going to be of great help to legal profession.

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