

PART G.—DOCUMENTARY EVIDENCE

1. The main provisions of the Code with regard to the production of documents by the parties are as follows:—

(a) Production of documents and list along with plaint and written statement on final hearing:- According to Order VII, Rule 14, when the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented and deliver the document itself or a copy thereof to be filed with the plaint. If he relies on any other documents, whether in his possession or power or not as evidence in support of his case he shall enter such documents in a list to be annexed to the plaint. If the documents are not so produced or entered in the list, they cannot be proved at a later stage without the leave of the Court, unless they fall within the exception given in sub-rule (2) of Order VII, Rule 18.

(b) Order VIII, Rule 1 (as amended by the High Court), similarly requires the defendant to produce with his written statement any documents upon which his defence or claim to set-off is founded. The defendant must also annex to the written statement a list of all documents on which he intends to rely whether in his possession or power or not in support of his defence or claim to set off.

If the documents are not so produced or entered in the list, they cannot be proved at a later stage without the leave of the Court unless they fall within the exception given in sub-rule (4) of Order VIII, Rule 1.

(c) Order XIII, Rule 1, lays down that the parties shall produce at the first hearing of the suit documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been already filed, in Court and all documents which the Court has ordered to be produced. If the documents are not so produced at the first hearing, they cannot be produced at a later stage unless good cause is shown to the satisfaction of the Court.

2. **(i) List of documents & their Comparison with the list:-** [Whenever any documents are produced by the parties in the course of a suit, or other civil proceedings, whether with the plaint or written statement, or otherwise, at any stage, they must always be accompanied by a list in duplicate, in the form given below. Documents produced must be forthwith compared with the list, which if found correct, shall be signed by the Ahlmad of the Court, who shall deliver the copy, duly signed by him, to the person producing the documents. In column 4, the court shall note the manner in which each document was dealt with,

i.e. whether it was admitted in evidence or rejected and returned to the party concerned or impounded, as the case may be.]

{sub-rule (i) of rule 2 substituted vide C.S. No. 20/Rules.X.D.6 dated 20.9.1974}

List of documents produced by Plaintiff/Defendant under Order X111, Rule 1, Civil Procedure Code

IN THE COURT OF _____ AT _____ DISTRICT SUIT NO. _____ OF _____ Plaintiff.

Versus

_____ Defendant.

List of documents produced with the plaint (or at first hearing) on behalf of plaintiff or defendant

This list was filed by _____ this _____ day of 19 _____

1	2	3	4		5
			What become of the document		Remarks
Serial No.	Description and date, if any, of the document	What the document is intended to prove	If brought on the record, Exhibit mark put on the document	If rejected, date of return to the party and signature of party, or pleader to whom the document was returned	

Signature of party or pleader producing the list.

NOTE.—Judicial officers should instruct all petition-writers practising in their Courts to prepare lists in the above form for all documents intended to be produced in Court.

(ii). Preservation of documents:-Care should be taken to protect old and delicate documents from damage likely to be caused by frequent handling in courts. The common method of pasting the document on a piece of strong paper will be found useful in most cases but where there is writing on both the sides, the document may be preserved between two sheets of cellophane glued together at the edges so that the document can

be easily examined without being taken out of its protective covering. In case the parties agree a photographic copy may also be placed on the file and the document kept in a sealed cover. The party producing the document may be asked to supply the material necessary for its proper preservation.

3. **Calling upon parties to produce documents:-** The Court should formally call upon the parties at the first hearing at the time of framing issues to produce their documents and should make a note that it has done so. Forms have been prescribed by the High Court for the examination of the parties with reference to their documents and these should be invariably used. If the printed forms are not at any time available, the questions prescribed therein should be asked and the questions as well as the answers noted. If these instructions are strictly carried out, there will be no justification for the plea frequently put forward by ignorant litigants, with regard to the late production of a document that they had brought the document at the first hearing but were not called upon to produce it.
4. **Late production of documents:-** The above provisions as regards the production of the documents at the initial stage of a suit are intended to minimize the chances of fabrication of documentary evidence during the course of the suit as well as to give the earliest possible notice to each party of the documentary evidence relied upon by the opposite party. These provisions should, therefore, be strictly observed, and if any document is tendered at a later stage, the Court should consider carefully the nature of the document sought to be produced (e.g., whether there is any suspicion about its genuineness or not) and the reasons given for its non-production at the proper stage, before admitting it. The fact of a document being in possession of a servant or agent of a party on whose behalf it is tendered is not itself a sufficient reason for allowing the document to be produced after the time prescribed by Order XIII, Rule 1. The Court must always record its reasons for admission of the document in such cases, if it decides to admit it (Order XIII, Rule 2).
5. **Forged or Defective Documents:-** Should any document which has been partially erased or interlined or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings, a note should be made of the fact, and, should a well-founded suspicion of fraudulent alteration or forgery subsequently arise, the document should be impounded under Order XIII, Rule 8, and action taken under Sections 476, 478 and 479 of the Code of Criminal Procedure. Similarly, should any document be presented which appears to have been executed on unstamped or insufficiently stamped paper, action should be taken under sections 33 and 35 of the Indian Stamp Act, 1899. (See also Volume IV, Chapter 4, "Court-fees Stamps"). Where a document produced is written in pencil the court should ask for a true copy thereof written in ink.
6. **Production and admission of documents distinguished:-** Courts

should be careful to distinguish between mere production of documents and their admission in evidence' after being either 'admitted' by the opposite party or 'Proved' accordingly to law. When documents are 'produced' by the parties, they are only temporarily placed on the record subject to their being 'admitted in evidence' in due course. Only documents which are duly 'admitted in evidence' form a part of the record, while the rest must be returned to the parties producing them (Order XIII, Rule 7).

7. **Documents must be tendered in evidence:-** Every document which a party intends to use as evidence against his opponent must be formally tendered by him in evidence in the course of proving his case. If a document has been placed on the record, it can be referred to for the purpose. If it is not on the record, it must be called from and produced by, the person in whose custody it is.
8. **Procedure when documents admitted by the opposite party:-** If the opponent does not object to the document being admitted in evidence, an endorsement to that effect must be made by the Judge with his own hand; and, if the document is not such as is forbidden by the Legislature to be used as evidence, the Judge will admit it, cause it or so much of it as the parties may desire to be read.
9. **Procedure when document is not admitted by the opposite party:-** If, on the document being tendered, the opposite party objects to its being admitted in evidence two questions commonly arise, first, whether the document is authentic, or, in other words, is that which the party tendering it represents it to be; and second, whether, supposing it to be authentic, it is legally admissible in evidence as against the party who is sought to be affected by it. The latter question in general, is a matter of argument only; but the first must, as a rule, be supported by such testimony as the party can adduce.
10. **Legal objections as to admissibility:-** All legal objections as to the admissibility of a document should, as far as possible, be promptly disposed of, and the Court should carefully note the objection raised and the decision thereon.

The Court is also bound to consider, *suo motu*, whether any document sought to be proved is relevant and whether there is any legal objection to its admissibility. There are certain classes of documents which are wholly inadmissible in evidence for certain purposes, owing to defects such as want of registration. etc. (see *e.g.*, Section 49 of the Indian Registration Act). There are others in which the defect can be cured, *e.g.*, by payment of penalty in the case of certain unstamped or insufficiently stamped documents.

11. **Mode of proof:-** As regards the mode of proof the provisions of the Indian Evidence Act should be carefully borne in mind. The general rule is that document should be proved by primary evidence, *i.e.*, the document itself should be produced in original and proved. If secondary

evidence is permitted, the Court should see that the conditions under which such evidence can be let in, exist.

Old documents:- If an old document is sought to be proved under Section 90, the Court should satisfy itself by every reasonable means that it comes from proper custody.

When copies instead of original may be put in:- Under the Bankers' Books Evidence Act, 1891, certified copies can be produced, instead of the original entries in the books of Banks in certain circumstances. In view section 2 (8) of this Act the following certificate should appear at the foot of such copies:—

"Certified that the above is a true copy of an entry contained in one of the ordinary books of the bank and that it was made in the usual and ordinary course of business and that such book is still in the custody of the bank.

Dated.....

Signatures
Principal Accountant/ Manager,
.....Bank,
.....Station."

A similar privilege is extended under section 26 of the Co-operative Societies Act, 1912, to entries in books of Societies registered under that Act and the entries in the accounts prescribed under clause (a) of Section 3 (1) of the Punjab Regulation of Accounts Act, 1930.

12. **Proof of signature or attestation:-** There are certain points which the Courts should bear in mind, when the signature or attestation of a document is sought to be proved.

Before a witness is allowed to identify a document, he should ordinarily be made, by proper questioning, to state the grounds of his knowledge with regard to it. For instance, if he is about to speak to the act of signature, he should first be made to explain concisely the occurrences which led to his being present when the document was signed, and if he is about to recognise a signature on the strength of his knowledge of the supposed signer's handwriting he should first be made to state the mode in which this knowledge was acquired. This should be done by the party who seeks to prove the document. It is the duty of the Court, in the event of a witness professing ability to recognise or identify hand-writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

13. **Plans:-** In all cases in which a plan of the property is produced by either of the parties or is required from it by the Court and is not admitted by the opposite party, it must be properly proved by

- (a) Examination of the person who prepared it and by requiring him to certify it as correct and to sign it, or
- (b) by affidavits or examination of the parties and witnesses.

It is further open to the Court to issue a commission at the cost of the parties or either of them to any competent person to prepare a correct plan and to examine the person so appointed in order to explain and prove it.

14. **Endorsements on documents admitted in evidence:-** Every document 'admitted in evidence' must be endorsed and signed or initialed by the Judge in the manner required by Order XIII, Rule 4, and marked with an Exhibit number. Documents produced by the plaintiff may be conveniently marked as Ex. P.1, Ex. P.2, etc., while those produced by the defendant as Ex. D.1, D. 2, D. 3, etc. To ensure strict compliance with the provisions of Order XIII, Rule 4 (.....the importance of which has been emphasized by their Lordships of the Privy Council on more than one occasion--See e.g., Indian Law Report, 38. Allahabad 627 at page 663) each Civil Court has been supplied with a rubber stamp in the following form:—

SUIT No. _____ OF _____ 19 _____
 Title _____ Plaintiff _____ Versus _____ Defendant
 Produced by _____
 Nature of document _____
 Stamp duty paid Rs. _____ nP. is (is not) correct.
 Admitted as Exhibit No. _____
 On the _____ day of _____ 19 _____

The entries in the above form should be filled in at the time when the document is admitted in evidence under the signature of the Judge. This precaution is necessary to prevent any substitution or tampering with the document. Details as to the nature of the document and the stamp duty paid upon it are required to be entered in order that Courts may not neglect the duties imposed on them by Section 33 of the Indian Stamp Act, 1899. District Judges should see that all Courts subordinate to them are supplied with these stamps.

The above rule also applies to documents produced during the course of an enquiry made on remand by an appellate Court.

The endorsement and stamp will show that the document is proved. it is to be remembered that the word "proved" used in the context here means "that judicial evidence has been led about it, "and does not imply "proof" in an absolute sense.

15. **Endorsements on documents not admitted in evidence:-** Documents which are not admitted in evidence must similarly be endorsed before their return with the particulars specified in Order XIII, Rule 6, together with a statement of their being rejected and the endorsement must be signed or initialed by the Judge.
16. **Documents to be placed in strong cover:-** Documents which are

admitted in evidence should be placed in strong covers one cover being used for documents produced by the plaintiff and the other for those produced by the defendant.

17. **Consequences of not properly admitting documents:-** Owing to the neglect of the foregoing directions as regards endorsing and stamping of documents it is often impossible to say what papers on the file constitute the true record; copies of extracts from public or private records or accounts, referred to in the judgment as admitted in evidence, are often found to be not "proved" according to law, and sometimes altogether absent.
18. **Revision of record before writing judgment to see that only admitted documents are on the record. Duty of appellate Court to see that this has been done:-** It is the duty of the Court, before hearing arguments, finally to revise the record which is to form the basis of its judgment, and to see that it contains all that has been formally admitted in evidence and nothing else. Any papers still found with the file, which have not been admitted in evidence, should be returned to the parties.

Appellate Courts should examine the records of cases coming before them on appeal with a view to satisfying themselves that subordinate Courts have complied with the provisions of the law and instructions of the High Court on the subject, and should take serious notice of the matter when it appears that any Court has failed to do so.

19. **Extracts or copies of settlement record and Riwaj-i-Am to be placed on record:-** It frequently happens that although the *wajib-ul-arz or riwaj-i-atn* of a village or other revenue record is referred to by the parties and by the Court itself as affording most important evidence, there is no certified extract or copy with the record of the entries relied on. When there is a copy, it is often incomplete or so carelessly written as to be unintelligible. It becomes necessary to call for the originals thus causing damage to the records themselves, and delay and inconvenience to the parties to the suit. It is the duty of Appellate Courts to see that the Courts subordinate to them have proper extracts or copies of relevant entries in Settlement records made, verified and placed on the record.
20. **Production of public records of former Indian States:-** No application for the production of a Court record should be entertained unless it is supported by an affidavit and the Court is satisfied that the production of the original record is necessary (Order XIII, Rule 10). The same principle may well be applied to other public records also. In the case of revenue records, the procedure laid down in Chapter 9 of this Volume "Special Kanungo" should be followed.

It should be borne in mind that the mere production of a record does not make the documents therein admissible in evidence. The documents must be proved at the trial according to law.

Requisition for records of Courts in other States, including the former Indian States which have now merged with the States or integrated as states or territories of the Indian Union should be

submitted through the Registrar, Punjab High Court at Chandigarh.

Care should, however, be taken in not treating the applications for production of public records and documents too lightly. Such documents are liable to be lost or mutilated in the course of transmission and a good deal of time of the clerks is wasted in checking these records in order to see whether they are complete according to the index. Original records or documents should, therefore, not be sent for, unless the Court is fully satisfied that the production of a certified copy will not serve the purpose. Please see Rule 13, Chapter 5-A, of this Volume.

Attention is drawn to rule 5, Order XIII, Civil Procedure Code, under which it is open to the Court to require copy of an entry of a public record to be furnished by one or the other party to the case. In the absence of special reasons which should be recorded in writing, Court should not detain the original of a public document but should return it after a copy has been furnished.

21. **Return of documents:-** Documents admitted in evidence can be returned to the persons producing them, subject to the provisions of Order XIII, Rule 9 (as amended by the High Court by Notification No. 563-G., dated the 24th November, 1927). If an application is made for return of a document produced in evidence before the expiry of the period for filing an appeal or before the disposal of the appeal (if one is filed) care should be taken to require a certified copy to be placed on the record, and to take an undertaking for the production of the original, if required.

In pending cases, application for return of documents should be made to the Court where the case is pending.

In decided cases, the Officer-in-charge of the Record Room should return the documents without consulting the original Court only when the applicant delivers a certified copy to be substituted for the original and undertakes to produce the original if required to do so.

In all other cases, application shall be made to the original court or its successor. If the Court considers that the document may, under Order XIII, rule 9, be returned, it shall record an order accordingly.

The application should then be presented to the Officer-in-Charge of the Record Room who will pass an order for return of the document.