

Illustration: the  
document. though  
only variation is



**ASSIGN  
BUSTER**

Illustration: A and B make a contract in writing, that shall sell A certain cotton, to be paid for on delivery. At the same time, they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Scope: Section 92 forbids the admission of evidence of an oral agreement for the purpose of contradicting, varying, adding to, or subtracting from, the terms of a written document as between the parties to such document or their representatives in interest. The rule of exclusion laid down in the section does not, however, apply to the case of a third party who is not a party to the document. On the contrary, S. 99 distinctly provides that persons who are not parties to a document may give evidence tending to show a contemporaneous agreement varying the terms of the document. Though only variation is specifically mentioned in S. 99, there can be no doubt that the third party's right to lead evidence not only to vary the terms of the document, but to contradict the said terms, or to add to or subtract from them. (*Hira Devi v.*

*Official Assignee, Bombay*, A. I. R. 1958 S. C. 448) Evidence as to matters in writing (S.

144): Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property as to which he is giving evidence, was not contained in a document, and the contents of any document, which, in the opinion of the Court, ought to be produced. The adverse party may object such evidence being given until such document is produced, or until such facts have been proved which entitle the party who

called the witness to give secondary evidence of it. Explanation: A witness may give oral evidence of statements made by other persons about the contents of documents, if such statements are in themselves relevant facts.

Illustration: The question is whether A assaulted B. Ñ deposes that he heard A say to D, “ B wrote a letter accusing me of theft, and I will be revenged on him.” This statement is relevant, as showing A’s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter. Scope: S, 144 lays down a rule for the purpose of carrying out the provisions of section 91, as to the exclusion of oral by documentary evidence.

Thus, any witness who is about to give evidence as to a contract, grant or other disposition of property, may be asked whether it was not in writing, and if he says that it was, he may be stopped, and the production of the document enforced or the right to give secondary evidence made out. This rule extends to any document which, in the opinion of the Court, ought to be produced. Care must, however, be taken not to apply it to cases in which oral evidence is given of statements are relevant. If, for instance, the question, is whether A had murdered B, a witness might prove that A had said “ S’s bond is iniquitous.

I will kill him sooner than pay it”, without the bond being produced, the reason obviously being that what the witness wants to prove is not the contents of the document, but A’s feeling about the contents of the document, as supplying a motive for his crime.