

PREPARATION OF THE SCOTTISH LAW COMMISSION'S NINTH PROGRAM OF LAW REFORM
CONSULTATION ON POSSIBLE LAW REFORM PROJECTS

Suggesting topics or areas that might be important for inclusion in the Scottish Law Commission ninth programme of law reform required an in-depth perusal of the current laws of Scotland, hence the delay in providing feedback.

Our findings reveal an anomaly in the law of evidence that we find inefficient, unfair and outdated and thus ripe for reform i.e. the law of evidence relating to corroboration. The present Scottish law on evidence requiring corroboration states thus, "*By the law of Scotland the testimony of one witness, however credible is not full proof of any ground of action or defence, either in a civil or criminal cause.*" Accordingly, if the only evidence in support of a case is the uncorroborated testimony of one witness, it is the duty of the court to direct the jury that the proof is not sufficient in point of law.

Some of the statutory provisions in Scotland that require more than one witness include;

- a) Registration of Births, Deaths & Marriages (Scotland) Act 1965 – signature of register of births by father of an illegitimate child to be done before mother and registrar.
- b) Subscription of Deeds Act, witnesses are required to subscription of deeds.
- c) Conveyance (Scotland) Act – two witnesses required to delivery or posting of a notice of a change of ownership.

From a comparative perspective, the law of England on the above matter states thus "*on the general rule that a single witness, unconfirmed, is sufficient, the following exceptions have been engrafted either by statute or by rule of practice, there being this, required by statute and is not forthcoming the case must be withdrawn from the jury whereas when it is merely required by the rule of practice, the case must be left to the jury*".

The 1965 Evidence Code of the State of California, stipulates that, "*where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact*".

The question of corroboration in civil cases is unknown or has long been abandoned in most other systems of jurisprudence save for some criminal matters where corroboration may still be important. For example, In the laws of Uganda, corroboration is a requirement both as a matter of law and practice for example in section 4(5) of the Trial on Indictment Act, Section 101 (3) of the Magistrates Courts Act, section 9 & 10 of the Oaths Act, Section 67 – 79 of the Children Act among others. It is also as a matter of judicial practice for example in sexual offences, confessions, dying declarations, matrimonial causes and many others.

This question was recently canvassed in the case of *Cleisham vs British Transport Commission*, 1964 S.C (H.L) 8 where Lord Devlin stated thus *it is unnecessary for the pursuer to do more than establish that in the light of the surrounding circumstances, her account is more probable than any other account that is given in*

evidence so as not to leave it a case of one man's word against another's. However, while admitting such uncorroborated evidence of one witness, courts must warn themselves of the dangers of the same, since perjury is common in courts today.

Our considered opinion is that there is a gap in the rules requiring corroboration in civil actions, especially those arising from personal injury. When a man can prove, by his own testimony accepted as true by the court that he/she has suffered injury through the fault of another, it is deemed unjust that he cannot succeed in an action against that other unless he can produce corroborating evidence in support of his own. In any case, the number of people that would be affected or worse still who have already been affected can never be known since lack of corroboration makes their would - be lawful claims untenable.

We therefore propose legislation to the effect that in any civil cause, court may treat the evidence of a singly credible witness as sufficient proof of any averment which requires to be established by evidence given by a single witness in person. However, in light of the different standards of proof between civil causes and criminal cases, we do not extend this, our recommendation, to criminal cases.