

Evidence Act S. 32(5)

Taylor on Treatise on Evidence has pointed out in para 648 at p. 414 that the declarations by the deceased relatives deposed to by interested claimants rarely deserve much weight because these declarations are made by the relations for the first time after the contest of claim has arisen. In accepting this kind of evidence, the court runs the risk of being deceived by deliberate falsehood. The author further goes on to state thus :

"Little reliance can be placed on accuracy of his testimony, for men, without deliberately intending to falsify facts, are extremely prone to believe what they wish, what they believe with what they have heard and to ascribe to memory what is merely the result of imagination."

205. Similar view was expressed in **Lovat Peerage case 1885 10 AC 763 HL** which is an example of how hearsay evidence can sometimes be fraught with serious consequences. In this case, it was emphasised that the time, occasion and manner of acquiring knowledge of pedigree to prove the statement of a deceased relation is crucial to the test of veracity and an imaginary story related by the witness may ultimately turn out to be a mere gossip. It was pointed out by Lord Watson at p. 783 of the report that in taking the depositions of old witnesses, the court must take into consideration that there may have been an erroneous impression in the minds of those who proved the claimant's case.

206. **Wigmore on Evidence** in Vol. V at pp. 296 and 297 has expressed more or less the same views and observes as follows :

"Accordingly the only sound rule for the use of individual declarations is that the declarant himself must be shown to be unavailable."

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The circumstantial indication of trustworthiness has been found in the probability that the 'natural effusions' (to use Lord Eldon's often-quoted phrase) of those who talk bias or passion exists are fairly trustworthy, and should be given weight by Judges and juries, as they are in the ordinary affairs of life."

207. It has also been pointed out by the author that the declarations which have been made before any controversy arises must be given greater weight. This aspect has also been emphasised in one of the Privy Council cases referred to above.

referred in [1983 PLRonline 0004](#)