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**(1918) 05 AHC CK 0012**  
**In the Allahabad High Court**

Gopi Lal and Others

APPELLANT

Vs

Lakhpat Rai and Others

RESPONDENT

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**Date of Decision :** 22-05-1918

**Acts Referred:**

Evidence Act, 1872 — Section 126

**Citation :** (1919) ILR (All) 125 : 48 Ind. Cas. 605

**Hon'ble Judges :** Walsh, J;Piggott, J

**Bench :** Division Bench

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**Judgement**

Piggott and Walsh, JJ.—It is necessary for us to dispose of a question which has arisen u/s 126 of the Evidence Act. The proceedings before us are a suit or petition brought by the applicant or petitioner to revoke certain Letters Patent granted to the respondent firm consisting, amongst others, of a member named Lakhpat Rai, and the question which arises for decision is the formation and the process of the working of a certain stove owned and used by the respondent firm for the manufacture of banslochan. In the course of the proceedings on behalf of the petitioner a vakil of the name of A.K. Banerji was tendered in evidence on behalf of the petitioner to prove the formation and the process of the working of this particular stove which was then in the possession of the aforesaid Lakhpat Rai. In the year 1895, the Municipal authorities took proceedings against the said Lakhpat Rai, or the firm of which he was then a member, for a nuisance by smell in the preparation of banslochan. The witness was employed by the firm to represent them as defendants in answer to that charge and in his capacity as a vakil he, at their invitation, visited their premises in order to make himself acquainted with the stove which it was alleged created the nuisance. A question was raised by a member of the court as to whether any question could be asked from this witness as to the information conveyed to him by his clients with regard to the subject-matter in respect of which he was representing them. The decision of that question turns upon the language of Section 126: "No vakil shall at any time be permitted, unless with his client's express consent," (in this case the witness has got no consent from Lakhpat Rai) "to disclose any

communication made to him in the course and for the purpose of his employment as such vakil by or on behalf of his client." Mr. Banerji told us that any knowledge which he had acquired as to the formation and the process of the working of; the stove in question was acquired by him only in the course of, and for the purpose of his employment as such vakil. The only question therefore, which remains is as to whether any communication within the meaning of the section was made to him by his client. The exact fact which he proposed to prove was not disclosed and the nature of the communication was not given. We thought it undesirable to hear the evidence without first deciding whether it could under any circumstances be admissible. We think that as a matter of law it is immaterial whether the communication was verbal, that is to say, by word of mouth, or by demonstration. To our mind if the communication were of such a nature that the client had, for the purpose of enabling his vakil to defend the charge of nuisance, described the formation and the process of the working of the stove in his own language, it would be impossible to contend that such conversation would not be excluded by the rule of professional privilege laid down in Section 126. We think it follows that if the client, instead of giving the vakil a verbal description of the process itself, told him to go himself to see it, or pointed it out to him, that would equally be a communication within the meaning of the section.

2. This view is borne out really by proviso (2) of the section. In England there has been some discussion in the decided cases as to whether the rule of professional privilege applies to facts brought to the knowledge of a professional gentleman by his senses, i.e., facts observed by him; and it was decided at any rate in one well-known case that where a matter is in court and by his senses the counsel becomes aware that an entry in a book has been, fabricated or altered after its production in evidence before the court, this is a matter which is brought to his senses by observation independently altogether of his client and is a matter which he is bound to disclose. But the Code says that any fact observed by the vakil in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment is not protected. That clearly indicates that facts observed may be just as much communication as other communication in the ordinary way by word of mouth. The rule is a statutory rule and ought to be strictly applied for at least two reasons. In is in the interest of the proper and honourable conduct of an honourable profession. If communications coming either directly or indirectly to the knowledge of the vakil or lawyer in the course of and for the purpose of his employment are not protected, it is easy to conceive cases in which the vakil might become acquainted with circumstances, for example, of crime which it would be the ordinary duty of a citizen to communicate to the proper authorities, and he would render himself liable for prosecution under the Penal Code for not disclosing such information to the proper authorities. It is clear that professional gentlemen who do their duty ought not to be placed in a position of that kind. Secondly, it is of importance to the public that they should be protected in the

right which the law gives them to defend themselves against proceedings of all kinds with absolute freedom, untrammelled by the embarrassment of the possible consequences of failure to disclose the full facts within their knowledge to the expert assistance on which they rely for the conduct of their cases. It would be impossible for the ordinary man to consult a lawyer with anything; like confidence, for example, about some machinery or system in his own premises about which he is litigating with a rival in trade, if, when the public authorities threatened him with a case for nuisance he had to call a lawyer to assist him in answering that charge without knowing whether or not the lawyer might not the next day turn round and present his opponent in the civil suit with all the information which the lawyer had obtained from his otherwise unauthorized visit to his client's premises.

3. One word I should like to add. It was suggested to Dr. Sen that he should open his case by giving some indication of the broad lines on which he would proceed to tender evidence, I attach great importance to that duty. I am afraid, judging from the cases which come in appeal before this Court, it is not always as strictly regarded in the courts of Subordinate Judges as it ought to be, so that the legal gentleman who represents the plaintiff or petitioner fails to give sufficient indication of the lines on which he proposes to present his evidence in court. Counsel are here to assist the court, and in a delicate matter of this kind (as far as we can see the respondents to this application had no intimation or warning that this question was going to be raised) a party in our opinion has a right to be warned that a professional gentleman previously employed by him is going to be put in the box to disclose a communication made to him in the course and for the purpose of his employment, in order that he may have a full opportunity, not in the hurry and suddenness of surprise, but with care and deliberation, to decide whether he shall exercise the undoubted option he possesses in his own interest the interest of the court or in the interest of public time, to waive his objection.

4. In addition to this, as my brother has remarked in the course of the argument, there are a number of authorities on the Indian law as codified. It is better where a delicate question of this kind as going to be raised, that warning should be given so that an opportunity is provided for seeing whether the question is quite as clear as may be supposed by the legal gentleman intending to produce the evidence.

5. This is a suit for revocation of a patent. It was agreed that the evidence taken in the previous suit which we have just disposed of should be admissible in this suit. Upon the bread issue of fact, namely, that the patent is bad in law, either because it has been anticipated, or because it is not a proper subject-matter for a patent, we have made up our minds against the plaintiff for reasons which are contained in the judgment in First Appeal No. 178 of 1917 (1) delivered to day and which may be found there by the applicant if he cares to read them. We do not think, having listened to Dr. Sen's argument and to the testimony of the

witnesses Gopi Lal and Kunji Lal, given orally before us, that they have succeeded in shaking the conclusions arrived at by us in the other suit. No serious question has been raised about our jurisdiction to entertain this suit, and we must simply dismiss it with costs upon the ground that the claim has not been proved. We were invited to read certain learned authors on the subject of the ancient process of manufacture of banslochan. We declined to do so. So far as they were matters of opinion on admitted facts here was no necessity for us to read them; so far as they were tendered for the purpose of proving any controverted fact in the suit we were unable to discover any section of the Evidence Act which entitled us to read them. We therefore hold them to be inadmissible. The suit is dismissed with costs.