

(1907) 08 BOM CK 0006
In the Bombay High Court
Case No : O.C.J. Suit No. 92 of 1905

R.D. Sethna

APPELLANT

Vs

Mirza Mahomed Shirazi (No. 2)

RESPONDENT

Date of Decision : 12-08-1907

Acts Referred:

Citation : (1907) 9 BOMLR 1042

Hon'ble Judges : Beaman, J

Bench : Single Bench

Judgement

Beaman, J.—The question being whether the plaintiff in a former suit had certain knowledge it is proposed to affect him with it by certain parts of the proceedings of that case and to that course no objection is taken. But when pursuant thereto it is proposed to put it in conclusion his counsel's address to the Court or so much of it as would show or might show the requisite knowledge, it is objected to, as I understand on two grounds. (1) That what counsel says in those circumstances is not in any sense an admission of his client's; that what counsel knows his client need not necessarily know. (2) That there is no proof that counsel did say what the presiding judge noted that he did. The judge is not bound to note counsel's address and it is no part of the record. I do not think either ground of objection can be sustained. For the limited purpose to which the evidence is led I do not think it can be seriously argued that counsel's knowledge is not his client's knowledge. And as to the proof, that is supplied by the Judge's notes, which appear to have been printed in the paper book of appeal without any objection and again in the Privy Council book. Doubtless were there any real contention as to the correctness of the notes, it would be open to the other side to prove that they were not correct. But as the matter stands they appear to me to be good enough evidence that when counsel for the plaintiff was addressing the Judge he did say what the Judge has noted. It seemed to me so clear that the evidence objected to was well enough for the purpose for which it was offered that I was surprised at the Hon'ble and learned Advocate General requesting the Court to give its reasons for admitting it. But as I have before

said I am always willing indeed anxious as a matter of common courtesy to explain my reasons for taking a view opposed to that which counsel have strongly pressed and evidently think to be the right view.

2. After giving this ruling, the Advocate General without in any way disputing it very obligingly drew my attention to an early case of 1825 cited in Taylor on Evidence para 784. Colledge v. Horn (1825) 3 Bing. 119 After fully considering the case and Taylor's observations on it, I think that while the case itself is of somewhat doubtful authority it may well be distinguished. Rather with reference to Taylor's commentaries than the case itself I should say that when counsel's statement is centred upon certain facts being amongst the leading facts in the case and when from those facts the requisite knowledge is almost necessarily inferable, it could hardly be said that a statement of those facts, after evidence has been led upon and cross-examination directed to them, could be prescribed as counsel's invention on the spur of the moment or as a flight of imagination.