

In the High Court of Judicature  
at Bombay.

O. O. C. J.  
—

Suit No 869 of 1907.

Rustonji Cawasji Kharadi } Plaintiffs  
and another . . . }

vs.

Ruttonji Sorabji Subedar } Defendants.  
and others . . . }

28<sup>th</sup> January 1908.

Coram: Russell J.

Judgment. - The question  
that has been raised <sup>is of minor nature</sup> ~~in this case.~~  
~~is to my mind of the greatest possible~~  
importance. <sup>in the law</sup> The question put shortly  
is: when was the sum of Rs. 1300 paid  
to this witness. The importance of the  
point is that the Defendant's case is

that

(2.)

that ~~the~~<sup>a</sup> sum of Rs. 1300 was paid to them by the Plaintiff after the promissory note of the 15<sup>th</sup> April and not a sum of Rs. 3000 on the 15<sup>th</sup> April as the note says. It appears from the Bank Book of the Plaintiff that a sum of Rs. 1300 was withdrawn by him from the Savings Bank on the 3<sup>rd</sup> May. The Defendants say that Rs. 1300 was paid by the 1<sup>st</sup> Plaintiff to the 1<sup>st</sup> Defendant on the 4<sup>th</sup> May.

The Plaintiff's case is that Rs. 1300 withdrawn from the Savings Bank was paid to this witness on the 3<sup>rd</sup> May and the Plaintiff also said that Defendant 1 was present when that sum of Rs. 1300 was paid to this witness. That accounts for the Defendants' story as to this payment of Rs. 1300

in

in May to them. The Plaintiff vouched  
 for the present witness supporting  
 his story and it appears that  
 the present witness saw the Plaintiff  
 proposed proof in which the Plaintiff  
 gave his account of this transaction  
 which I presume seemed to be <sup>the same</sup> as  
 that which he gave in his evidence,  
 and the witness confirmed that.

Now the witness, when he  
 gets into the witness box is so  
 far from supporting the story of  
 the Plaintiff that this promissory  
 note was executed on the 3<sup>d</sup> of  
 May says he did not write it  
 until the 25<sup>th</sup> or 27<sup>th</sup> of May and  
 that he left <sup>Brandy for</sup> Madras on the 29<sup>th</sup>  
 of April, and he says that he put  
 the

(4.) <sup>3<sup>rd</sup> July</sup>  
the date on this promissory note at  
the suggestion of the Plaintiff

Upon that statement the  
Advocate General after having ex-  
amined him in chief has asked  
leave to treat him as what is called  
an hostile witness and leave to  
cross-examine him under Section  
154. That is a <sup>matter in the</sup> discretion of the

Court and I do not hesitate to  
say it is a matter which has  
~~given me the greatest possible~~  
given me the greatest possible

assistance, but looking at the  
principle stated in Amir Ali,  
Note to Section 154, where it ~~treats~~<sup>he</sup>  
refers to the question of the testimony  
of

of the witness coming as a surprise upon the person who called him, and having regard to the passage quoted at page 764 of the 4<sup>th</sup>

Edition from the judgment of Lord Denman in Wright v. Beckett,

1 M. & P., 414, where Lord Denman

says: - "It is impossible to con-

ceive a more frightful iniquity

than the triumph of falsehood and

treachery in a witness who pledges himself to depose to the truth

when brought into Court, and

in the meantime is persuaded

to swear, when he appears, to a

completely inconsistent story"

I must I think grant the same which is.

Having regard to the extreme

(6.)

importance to my mind of this incident in this most difficult case, - and to my mind the extreme importance is to ascertain whether the Plaintiff's story as to this Rs. 1300 or the Defendant's story as to the same is correct; I should in my opinion be judiciously exercising my discretion, if I allowed the Advocate General to put leading questions to the witness under Section 154, and I must accordingly allow him to do so.

The law is such a thing that I must  
make to get all the evidence I possibly  
can to elucidate it.

A. D. Souza,  
Shorthand Writer, High Court,  
Bombay.  
3.-2.-08.

High Court, Bombay.  
O. O. C. J.

Suit No 869 of 1907.

Rustonji Cawasji } ... Plffs.  
Kharadia & another

vs.

Ruttonji Sorabji } ... Defs.  
Subedar & others.

Oral Judgment  
delivered by Russell  
on the 28<sup>th</sup> January

1908.

App. 1. R. 4.2.08