RAJA OF VENKATAGIRI v. AYYAPAREDDI.

TYABJI, J.

The question still remains to be considered whether the Revenue Courts had jurisdiction to try the suit so far as it relates to the recovery of *mesne* profits for *fasli* years 1317 and 1318. What is described as *mesne* profits in the plaint is nothing else than the rent due under the *muchilikas* which are now on the record before us. The section which gives to the Revenue Courts jurisdiction to order the recovery of arrears of rent by the landlord is section 77—see Schedule, Part A, item 8. The word 'rent' in the section must be understood in the sense in which it is defined in section 3 (11). It must therefore refer only to what is lawfully payable to a landlord for the use or occupation of the land in the estate for the purpose of agriculture. The land in this case, as already stated, has been used, not for agriculture, but for pasturage. Section 77 therefore does not give the Revenue Courts jurisdiction to decree the recovery of arrears of rent claimed in the plaint.

For these reasons I agree with the order proposed by my learned brother.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., the Chief Justice and Mr. Justice Oldfield.

1913. August 20, 21 and 27.

LAKSHMAMMAL (PLAINTIFF), APPELLANT,

v.

NARASIMHARAGHAVA AIYANGAR AND TWO OTHERS (DEFENDANTS), RESPONDENTS. *

Deed—Material alteration of—Destruction of right of suit—Negotiable Instruments Act (XXVI of 1881), sec. 87.

An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its original form is a material alteration and as such destroys the right of action on the document.

Altering a negotiable instrument by causing the words "or order" to disappear and making it non-negotiable is a material alteration, under ordinary

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* Original Side Appeal No. 52 of 1912.

law and also under section 87 of the Negotiable Instruments Act (XXVI of 1861). The facts that the payee eventually filed the suit in another Court different from the one intended at the time of the alteration and that it was not necessary for him to rely on the altered state of document to enable him to succeed therein do not make the alteration any the less material.

Gour Chandra Das v. *Prasanna Kumar Chandra* (1906) I.L.R., 33 Calc., 812, followed.

Decroix, Verley et Cie. v. *Meyer & Co.* (1890) 25 Q.B.D., 343, distinguished.

APPEAL from the judgment of WALLIS, J., in Civil Suit No. 184 of 1910 in the exercise of the ordinary original civil jurisdiction of this High Court.

The following is one of the two mutilated documents sued upon :—

EXHIBIT A.

Pro-note executed on the 5th day of August 1900, by Andapura Narasimha Ayyangar, residing in Kempananjamamba Agraharam, Mysore, to Lakshmamma wife—(torn)—Sowcar Ranga—(torn)—residing in the ditto Agraharam. The sum which I have this day received from you in cash, is Government Rupees nine thousand which—(torn)—on the next day after the expiry of seven years from this day forward—(torn) I shall add interest at the rate of seven Rupees per year and pay off the interest alone of each and every year on the pro-note kalavadhi of each year. To this effect is the pro-note executed and it is correct.

A. Narasimha Ayyangar.
Written with (his) own hand.

The following is a portion of the judgment of WALLIS, J. in the original Court :—

"This is a suit brought by the plaintiff upon two documents "which were executed in Mysore by the father of the defendants "who was at one time an Advocate and afterwards a District "Munsif in Mysore in favor of the plaintiff, who with her hus- "band is also an inhabitant of Mysore, and the suit has been "brought here merely owing to the accident that the defendants "are at present, residing in Madras for the purpose of prosecu- "ting their studies. In the plaint these documents are de- "scribed as bonds, but in the documents themselves they are "described as promissory notes. It now turns out that these "documents have been torn in several places and have been "pieced together again, but in such a way that the parts where

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"the name of the payee and the words "or order" would "ordinarily appear are missing with the result that they can be "described as bonds as they have been described in the plaint.

"Now it also turns out from an inspection of these documents that according to the Stamp Law of Mysore which is "regulation 2 of 1900 and which admittedly is identical in terms "with our own Stamp Law, these documents, being made payable more than a year after execution, under article 13 (C) of "the first schedule require to be stamped in the same way as "bonds; and have not been so stamped with the result that "under section 35, if promissory notes, they could neither be "received in evidence, nor acted upon in Mysore and they would "therefore be entirely invalid in Mysore, which, in the ordinary "course of things, would be the place where they could be sued "upon, because the executant and his family were Mysorians, "resident in Mysore.

"Now the first question which arises on that state of things "is whether there has been a material alteration in these documents since their execution. I am driven to the conclusion "that there has been material alteration in these documents— "an alteration made with the obvious purpose of enabling these "documents which could not be sued upon, to be sued upon "where it was expected that they would have to be sued upon, "namely in Mysore.

"Having come to that conclusion, there really is an end of "the case, because the result inevitably follows that this suit "must be dismissed. In my opinion the suit clearly fails on the "ground of material alteration of the suit notes and therefore "must be dismissed with costs."

The other facts appear from the judgment of WHITE, C.J.

S. Srinivasa Ayyangar and *K. Bashyam Ayyangar* for the appellant.

R. Sadagopachariar and *C. Narasimhachariar* for the respondents.

WHITE, C.J.

WHITE, C.J.—This is an appeal from a decree given by Mr. Justice WALLIS dismissing the plaintiff's suit on the ground that the two documents on which he relied had been materially altered and that for that reason the defendants were not liable thereon. The suit was brought on two instruments executed in Mysore by the father of the defendants, the father being a

resident in Mysore, in favour of the plaintiff who with her husband was also an inhabitant of Mysore. When the documents were put in evidence it was found that they had been torn and mutilated. The learned Judge declined to believe the story put forward by the plaintiff to account for the mutilation of the documents. I agree with the learned Judge that this story could not be accepted. The effect of the mutilation was to cause the words "or order" to disappear from the two documents. There is very little direct evidence on this point, but the learned Judge holds in effect that the missing words were "or order" or words to that effect and I take the same view. This was not in fact seriously contested by the plaintiff and Mr. S. Srinivasa Ayyangar's argument proceeded on the assumption that the words "or order" were contained in the two documents as they were originally executed. Mr. JUSTICE WALLIS held that the alterations were made with the obvious purpose of enabling these documents, which could not be sued upon, to be sued upon where it was expected that they would have to be sued upon, namely in Mysore. There was some discussion as to whether the documents in their original form were bonds or promissory notes. In the plaint they are described as bonds; but in the documents themselves they are described as promissory notes. As promissory notes they are insufficiently stamped; and whether or not in this state of things they could be sued on in their original form in Madras, it seems clear that the insufficiency of stamp would have been a fatal obstacle to their being sued on in Mysore.

I should be prepared to take the same view as the learned Judge and to hold that the alterations were made in order that these documents could be sued upon in Mysore. If this is so, it seems to me to be absolutely clear that the alterations were material alterations since they were made for the purpose of enabling the plaintiff to sue in a Court in which if the alterations had not been made, she would not have been able to sue. They appear to me to be none the less material alterations because, the defendants at the time the suit was instituted being, as events turned out, residents in Madras for educational purposes, the plaintiff was able to institute her suit in this Court. In the view that alterations were made with the object of enabling the plaintiff to institute her suit in this Court, I am of opinion that

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the alterations are material and that the defendants are not liable on the documents.

In connection with this part of the case Mr. Srinivasa Ayyangar relied on a decision of this Court in *Mahomed Rowthan* v. *Mahomed Husin Rowthan* (1), in which it was held that there was no provision of law which required a promissory note executed out of British India to be stamped before it was sued on or used when the holder of the note had not done any of the acts referred to in sections 5 and 18 of the Stamp Act, and in consequence, the obligation to stamp had not arisen. Mr. Srinivasa Ayyangar's argument was that in as much as the defendant could be sued on the original documents in this Court without being met by the stamp objection the alteration made in the document for the purpose of enabling the plaintiff to sue in this Court was unnecessary, was made under a misapprehension, and that therefore the alteration of the documents was immaterial since a suit could have been brought in this Court either under the documents as they originally stood or in their altered form. It seems to me that alterations made in these circumstances clearly come within the "mischief" of the rule of law with reference to the alteration of instruments.

The cases are discussed in the notes to *Master* v. *Miller*(2). I do not propose to refer to those cases because I find what appears to me to be an accurate exposition of the law in *Gour Chandra Das* v. *Prasanna Kumar Chandra*(3). "Any change in an instrument, which causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal identity or character of the instrument either in its terms or the relation of the parties to it, is a material change, or technically, an alteration, and such a change will invalidate the instrument against all parties not consenting to the change. This is a wholesome rule founded on sound policy and may be defended on two grounds, namely, *first*, that no man shall be permitted, on grounds of public policy, to take the chance of committing a fraud without running any risk of loss by the event when it is detected, and, *secondly*, that by the alteration, the identity of the instrument is destroyed, and to hold one of

(1) (1899) I.L.R. 22 Mad., 337. (2) (1791) 1 Sm.L.C., 767 ; s.c., 2 R.R., 399.
(3) (1906) I.L.R., 33 Calc., 812 at pp. 816 and 817.

the parties liable under such circumstances would be to make for him a contract, to which he never agreed. [See *Lee* v. *Butler*(1).] The question, to what extent the identity of an instrument must be changed in order that its legal effect will be altered so as to bring the case within the terms of material alteration vitiating the instrument, must depend upon the nature of the alteration in each particular case. The test is not necessarily, however, whether the pecuniary liability of one of the parties has been increased by the change; it is of no consequence, whether the alteration would be beneficial or detrimental to the party sought to be charged on the contract. The important question is whether the integrity and identity of the contract have been changed. It is to prevent and punish such tampering as changes the identity of the contract that the law does not permit the plaintiff to fall back upon the contract as it was originally, or in the language of SWAYNE, J. (and) "in pursuance of a stern but wise policy, the law annuls instrument as to the party sought to be wronged."

The decision upon which Mr. Srinivasa Ayyangar relied as an authority for his proposition that on the findings of the fact, to which I have referred, the alteration of the documents in this case was immaterial was the judgment of the Court of Appeal in *Decroix, Verley et Cie.*, v. *Meyer & Co.*(2). That case, it seems to me, has really no bearing on the question we are now considering. In that case a bill of exchange being drawn by one L. D. Flips payable "to order L. D. Flips," the drawyees struck through the word "order" and accepted the bill "in favour of L. D. Flips only, payable at the Alliance Bank, London." In an action upon the bill by endorsees for value against the acceptors it was held that the acceptance did not vary the effect of the bill as drawn, and that it was therefore a general acceptance of a negotiable bill, and the action was maintainable. The ground of decision in that case was that, although the drawees intended to restrict the negotiability of the bill and struck out the word "order" for that purpose, their acceptance was in law a general acceptance and the suit by the endorsees as against them as acceptors was maintainable. Notwithstanding what the acceptors did in that case the bill continued to be a

(1) (1897) 167 Mass., 426; s.c., 57 Am. St. Rep., 466. (2) (1890) 25 Q.B.D., 343.

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negotiable instrument by virtue of section 8, sub-section 4, of the Bills of Exchange Act of 1882. As BOWEN, L.J., put it in his judgment on page 350, "The bill itself was originally drawn payable to order. The word 'order' was, it is true, struck through; but the effect of the 4th sub-section of the 8th section of the Bills of Exchange Act is to put it in again." In Bills of Exchange cases, where the question of material alteration has arisen, there is no case so far as I know in which it has been suggested that an alteration which gave a man a right of action which he would not otherwise have is not a material alteration.

Mr. Srinivasa Ayyangar did not argue that if the plaintiff could not have sued in this Court on the original documents, the alteration was not material. I am of opinion that, assuming he could have sued in this Court on the original documents, the alterations made in the circumstances in which in this case they were made were material alterations. This being my view, I do not think it necessary to discuss the question whether the plaintiff could have sued in this Court on the documents as they stood in the form in which they were drawn in the first instance. I do not see how Mr. Srinivasa Ayyangar could well rely on any case with reference to what is a material alteration within the meaning of section 87 of the Indian Negotiable Instruments Act since on the findings of fact in this case the object of the alterations was to convert the two documents which were originally negotiable instruments into non-negotiable instruments.

But even if it is open to him to rely on any decision in connection with this branch of the law of bills of exchange, he has certainly not called our attention to any case, as it seems to me, which supports his proposition.

I am of opinion that the alterations made in these two documents in the circumstances in which they were made would be material alterations for the purposes of section 87 of the Negotiable Instruments Act, if we had to consider the question in connection with that enactment, and that they are material alterations within the general rule of law to which I have referred. I am therefore of opinion that Mr. Justice WALLIS was right and I would dismiss this appeal with costs.

OLDFIELD, J.

OLDFIELD, J.—I concur.