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himself to appeal or to take objection by a written memorandum. The terms of s. 561 are clear in this respect.

The case must, however, be remanded to the lower Appellate Court to determine what was the subject of the sale in 1876, the entire estate or only mouzah Koailberh; next whether the defendant on confirmation of his title as auction-purchaser obtained possession of the property purchased by him.

Costs to abide the result.

J. V. W. *Appeal allowed and case remanded.*

Before Mr. Justice Wilson and Mr. Justice Beverley.

MOHESH CHUNDER CHATTERJEE (PLAINTIFF) *v.* KAMINI KUMARI DABIA AND OTHERS (DEFENDANTS.)*

1885. *August 16.*

Document, Alteration of—Document not requiring attestation—Mortgage bond—Material alteration—Interpolation of name of witness, Effect of.

The interpolation of the name of a witness in a document which need not be attested is not a material alteration that would render the document void. *Suffell* v. *Bank of England* (1), explained; *Sitaram Krishna* v. *Dayi Davaji* (2) dissented from.

THIS suit was brought against a widow and heiress for money due from her husband on a mortgage bond. The Munsiff found the execution proved, and, upon a contention taken on behalf of the defendant that the bond was inoperative, inasmuch as after its execution the names of two witnesses had been surreptitiously introduced into it, held that the defence was responsible for the alteration and decreed the claim. On appeal, the Subordinate Judge agreed with the Court of first instance on the subject of execution; but found it was the plaintiff who had made the interpolation, and, relying on *Sitaram Krishna* v. *Dayi Devaji* (2), held that such interpolation amounted to a material alteration of the document and dismissed the suit.

The plaintiff appealed to the High Court

Mr. *Pugh*, and Baboo *Trailakhay Nath Mitter*, for the appellant;

* Appeal from Appellate Decree No. 877 of 1884, against the decree of Baboo Krishna Mohun Mukerjee, Third Subordinate Judge of Hooghly, dated the 18th of April 1884, reversing the decree of Baboo Jogendra Nath Rai, First Munsiff of Hooghly, dated the 13th of June 1883.

(1) 9 Q. B. D., 555. (2) I. L. R., 7 Bom., 418.

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MOHESH CHUNDER CHATTERJEE v. KAMINI KUMARI DABIA.

Baboo *Hem Chunder Banerjee*, for the respondents.

The Court (WILSON and BEVERLEY, JJ.) delivered the following judgment:—

This was a suit brought against the defendant as heiress of her deceased husband to recover money due upon a mortgage bond executed by the deceased in favour of the plaintiff. In both Courts it has been found that the bond was duly executed. But it is clear that the bond has been altered since the execution by the addition of the names of two persons who did not in fact witness the execution to the list of attesting witnesses. The Munsiff found that the alteration had been made by the defendant. The Subordinate Judge has reversed that finding. He says: "After anxious consideration I cannot but come to the conclusion that the interpolation was made by the plaintiff." This finding cannot be assailed before us. He has further held that the alteration is a material one which invalidates the bond as against the plaintiff and has accordingly dismissed the suit.

The question we have to consider is whether, in the case of a mortgage bond which does not require attestation, the alteration of the bond by the plaintiff, by the addition of two names to those of the attesting witnesses, invalidates the bond.

It has long been established that in this country, as in England, a material alteration of a written contract, by one party to it without the consent of the other, invalidates the contract. It was so held in *Kally Coomar Roy* v. *Gunga Narain Dutt Roy* (1) and in other cases. The Contract Act contains no provision on the subject, but since the Contract Act it has been held that the law is the same as before—*Gogun Chunder Ghose* v. *Dhuronidhur Mundul* (2). The Negotiable Instruments Act, XXVI of 1881, s. 87, lays down the rule very broadly as to all documents falling under that Act. It says: "Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of such alteration, and does not consent thereto, unless it was made to carry out the common intention of the original parties."

We have, therefore, to say whether the alteration made in the present case is a material alteration.

(1) 10 W. R., 250. (2) I. L. R., 7 Calc., 616.

What alterations are material is a question which has frequently been considered by English Courts. The latest and most authoritative decision is that of the Court of Appeal in *Suffell* v. *Bank of England* (1) in which most of the earlier cases are referred to. It is clear that in the case of a written contract any alteration which changes the obligation of the contract, or alters the transaction embodied in it, is material, such as the addition of a contracting party, or the alteration of the date of payment of money, or the consideration for its payment. And the case just cited shows that in some documents, which are not only contracts but something more, an alteration may be material without its changing their effect as contracts, if it alters them materially in another respect.

But it has never been held in England that an alteration which does not either directly or indirectly affect the nature or operation of the contract embodied in the document, or the identity or validity or effect of the document embodying it, but goes only to the proof of the execution of the document, is a material alteration. In *Suffell* v. *Bank of England* (1) the alteration was an alteration of the number of one Bank of England note, so as to simulate another note for the same amount. That was held to be an alteration of an essential part of the note. The ground of all the judgments was that a Bank of England note is not only a contract but also a part of the currency of the country; and that, though the number on each note may not affect its terms as a contract, the number is an essential part of the note regarded as currency, a part having a variety of important uses and without which it could not pass into circulation. The actual decision in that case, therefore, does not affect the present case. And there are several observations of the Judges which seem to us unfavourable to the view that such an alteration as that now in question should be regarded as material. After citing a proposition laid down in the judgment then under appeal that "the alteration which vitiates an instrument must be a material alteration, *i.e.*, must be one which alters or attempts to alter the character of the instrument itself, which affects or may affect the contract which the instrument contains, or is evidence of," Jessel, M. R. says: "I am by no

(1) 9 Q. B. D., 555.

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means satisfied that what is so stated is incorrect, as regards an ordinary commercial instrument which contains nothing but a contract. As I said before, it is difficult to see how in such a case an alteration could be material if the alteration did not affect the contract (1);" though the learned Judge guarded himself against finally deciding the point. Brett, J., also says (at p. 567): "I incline to think, but it is not necessary to determine this now, that where an instrument contains only a contract, or can only be used as evidence of a contract, no alteration of such an instrument, which does not alter or affect the contract, can be a material alteration." Cotton, C.J. (at p. 572, after citing the words of Grose, J., in *Master* v. *Miller* (2) that "any alteration in a material part of any instrument or agreement avoids it because it thereby ceases to be the same instrument," (proceeds: "Of course it is not every small alteration in an instrument which will prevent it being the same. It must be a material alteration, so that the party defending himself may be able to say that it is not the same instrument as that which he executed or to which he put his hand." That seems a very different thing from an alteration which enables the defendant to say only: This is in every particular the instrument to which I put my hand; but I did not do so in the presence of the persons who are now represented as saying that they saw me do so.

We should be going beyond anything that has ever been decided by any English Court if we were to hold the addition of a name to those of the attesting witnesses of a document not requiring attestation a material alteration. And we think we should be going beyond anything to which the reasoning of the English Judges properly leads.

On the other hand we have been referred to the case of *Sitaram Krishna* v. *Dayi Devaji* (3). In that case a Bench of the Bombay High Court had before it the same question with which we have now to deal, and held the alteration to be material, saying: "We think an alteration in a document stating a falsehood, either expressly or by implication, by way of

(1) 9 Q. B. D., 565.

(2) 4 T. R., 320.; 1 Sm. L. C., 8th Ed., 867.

(3) I. L. R., 7 Bom., 418.

increasing the apparent evidence of its genuineness is also a material alteration—*Suffell* v. *Bank of England*." In that case neither party appeared, so that the Court had not the advantage which we have had of hearing the question fully argued. We are unable to agree in the proposition laid down or in thinking that *Suffell* v. *Bank of England* supports it.

The decree of the lower Appellate Court will therefore be set aside, and that of the Munsiff affirmed with costs in all the Courts.

K. M. C. *Appeal decreed.*

Before Mr. Justice Mitter and Mr. Justice Macpherson.

KASHY NATH ROY CHOWDHRY (PLAINTIFF) *v.* SURBANAND SHAHA AND OTHERS (DEFENDANTS.)*

1885. *September* 2.

Attachment—Execution of decree.—Sale at instance of one attaching decree-holder during pendency of other attachments—Priority of attaching creditors—Rival decree-holders—Civil Procedure Code, (Act VIII of 1859), ss. 240, 242 and 270 and (Act XIV of 1882) ss. 284 and 295.

When a property is sold in execution of a decree it cannot be sold again at the instance of another decree-holder, who may have attached it before the attachment effected by the decree-holder under whose decree it is actually sold, and when a judicial sale takes place all previous attachments effected upon the property sold fall to the ground.

THE plaintiff in this case sought for a declaration of his right to, and confirmation of, his possession in a 10-gunda share of taluk Mohadeb Munshi, and also for an order for the registration of his name in respect thereof. The facts of the case were as follows:—The disputed share in the taluk was formerly the property of one Sita Nath Roy Chowdhry (defendant No. 1) against whom two persons named Shama Churn Bundopadhya and Hurrish Chunder Kurmokar had respectively obtained money decrees. Hurrish Chunder attached the property in dispute on the 12th June 1875, and, whilst under that attachment, it was sold on the 9th July 1875, at the instance of Shama Churn in execution of

*Appeal from Appellate Decree No. 1516 of 1884, against the decree of Baboo Kedar Nath Mozoomdar, Additional Subordinate Judge of Faridpur, dated the 4th July 1884, reversing the decree of Baboo Chandra Kumar Das, Munsiff of Madaripore, dated the 20th of May 1882.