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treating a remission of land revenue as a "grant" and, even if that were possible, of assessing what it was a grant of.

For all these reasons I think that the conclusions reached by the learned Civil Judge were right and that this appeal must be dismissed.

BY THE COURT:—The appeal is dismissed with costs.

PRIVY COUNCIL

NATHU LAL AND OTHERS (APPELLANTS) *v.* GOMTI KUAR AND OTHERS (RESPONDENTS)

*J. C.** 1940 *May*, 27

[On appeal from the High Court at Allahabad]

Deed—Alteration after execution—Effect of alteration—"Material alteration".

The rule which prevails in English Courts as to the effect of an alteration in a deed after execution is applicable in India.

"If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance however is not *ab initio* or so as to nullify any conveyancing effect which the deed has already had; but only operates as from the time of such alteration and so as to prevent the person who has made or authorised the alteration and those claiming under him, from putting the deed in suit to enforce, against any party bound thereby who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or made.

"A material alteration is one which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

"The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The avoidance of the deed is not retrospective and does not revest or re-convey any estate or interest in property which passed under it. And the deed may be put in evidence to prove that such estate or interest so passed or for any other

*Present: Lord THANKERTON, Lord RUSSELL of KILLOWEN, Sir GEORGE RANKIN, Lord Justice GODDARD and MR. M. R. JAYAKAR.

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purpose than to maintain an action to enforce some agreement therein contained."*

Dictum of GARTH, C. J., in *Gogun Chunder Ghose* v. *Dhuronidhur Mundul* (1), approved. *Mussamut Khoob Conwur* v. *Baboo Moodnarain Singh* (2), *Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy* (3), *Sevvaji Vijaya Raghunadha* v. *Chinna Nayana Chetti* (4), *Suffell* v. *Bank of England* (5), *Pigot's case* (6), *Master* v. *Miller* (7), *Subrahmania Ayyan* v. *Krishna Ayyan* (8), *Mangal Sen* v. *Shankar Sahai* (9), *Namdev Jayram* v. *Swadeshi Vyapari Mandali* (10), and *Govindasami* v. *Kuppusami* (11), referred to.

Held, on the facts (1) that the alteration of the deed in suit by making a hole in the English date was immaterial as the corresponding date in the Indian calendar was left untouched and a tear in another part of the deed had not rendered that part undiscernible. (2) The deeds, read together, constituted a mortgage by conditional sale.

Narasingerji Jyanagerji v. *Parthasaradhi Rayanam* (12), referred to.

Appeal (No. 111 of 1936) from a decree of the High Court (March 8, 1933) which reversed a decree of the Additional District Judge of Moradabad (January, 12, 1931), which had confirmed a decree of the Munsif of Chandausi (June 4, 1929).

The material facts are stated in the judgment of the Judicial Committee.

1940. April, 15. *Pugh, K. C.*, and *J. M. Pringle*, for the appellants: Though there are a certain number of decisions in the High Courts in which the English doctrine that a material alteration in a deed after execution makes the deed void has been applied, there is only one decision on the point by the Privy Council, *Mussamut Khoob Conwur* v. *Baboo Moodnarain Singh* (2). The rule is not an absolute rule and

*Halsbury's Laws of England (2nd ed.) Vol. X, para. 287.

(1) (1881) I.L.R. 7 Cal. 616(619).
(2) (1861) 9 M.I.A., 1.
(3) (1864) 10 M.I.A. 123.
(4) (1864) 10 M.I.A. 151.
(5) (1882) 9 Q.B.D. 555(559, 561).
(6) 11 Rep. 26; 11 Co. 27.
(7) (1791) 4 T.R. 320; 100 E.R. 1042.
(8) (1899) I.L.R. 23 Mad. 137.
(9) (1903) I.L.R. 25 All., 580.
(10) A.I.R. 1926 Bom. 491.
(11) (1889) I.L.R. 12 Mad. 239.
(12) (1924) I.L.R. 47 Mad. 729.

cannot be strictly applied in India: *Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy* (1) and *Sevvaji Vijaya Raghunadha* v. *Chinna Nayana Chetti* (2). The rule is founded on *Pigot's* case (3). Reference was made to *Master* v. *Miller* (4), *West* v. *Steward* (5), *Davidson* v. *Cooper* (6).

The documents may be looked at to ascertain the rights of the parties: *Subrahmania Ayyan* v. *Krishna Ayyan* (7), and *Mangal Sen* v. *Shankar Sahai* (8).

The alteration here is not a material one. The vernacular date, which is not altered, is the real date of the document. The alteration of the English date does not affect the document. The alteration, if there be one, is one which merely gives effect to the document. It does not alter the rights of the parties. The rule does not affect the legal position which arises as a matter of conveyancing from a completed transaction. The two deeds must be read together. So read they created the relationship of mortgagor and mortgagee. The interest passed.

J. M. Pringle followed: An alteration after the interest has passed is not within the rule; *Ram Kinkar Banerji* v. *Satya Charan Srimani* (9).

J. M. Parikh, for the respondents: Even on the assumption that the rule is applicable to India, the deed here is void for the alteration of the date is a material alteration: *Gogun Chunder Ghose* v. *Dhuronidhur Mundul* (10), *Govindasami* v. *Kuppusami* (11), *Namdev Jayram* v. *Swadeshi Vyapari Mandali* (12), *Master* v. *Miller* (4), *Suffell* v. *Bank of England* (13). The amendment of the plaint amounts to a substitution of a claim on one document for a claim on another and should not

(1) (1864) 10 M.I.A. 123(149).
(2) (1864) 10 M.I.A. 151(161, 163).
(3) 11 Rep. 26; 11 Co. 27.
(4) (1791) 4 T.R. 320; 100 E.R. 1042.
(5) (1845) 14 M. & W. 47(53).
(6) (1843) 11 M. & W. 778.
(7) (1899) I.L.R. 23 Mad. 137(143).
(8) (1903) I.L.R. 25 All. 580(591).
(9) I.L.R. [1939] 1 Cal. 283.
(10) (1881) LL.R. 7 Cal. 616(619).
(11) (1889) I.L.R. 12 Mad. 239.
(12) A.I.R. 1926 Bom. 491.
(13) (1882) 9 Q.B.D. 555.

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have been allowed. The sale deed and the alleged agreement do not constitute a mortgage by conditional sale; each of them is a separate transaction. *Narasingerji Jyanagerji* v. *Parthasaradhi Rayanam* (1) was referred to.

The appellants were not called on to reply.

1940. May, 27. The judgment of the Judicial Committee was delivered by Mr. M. R. JAYAKAR.

The suit out of which this appeal arises was brought on 8th September, 1928, by the appellants (plaintiffs 3—5) and respondents 29 and 30 (plaintiffs 1 and 2) against respondents 1—28 (defendants 1—28). claiming redemption of certain properties on the allegation that the deed of sale of the said properties dated the 25th March, 1844, executed by one Gulab Singh (the representative in interest of the plaintiffs) in favour of Het Ram and Tula Ram (the representatives in interest of the defendants) and an alleged agreement to transfer the said properties bearing the same date and executed by Het Ram and Tula Ram in favour of Gulab Singh formed one transaction and constituted a mortgage by conditional sale of the properties comprised in the sale deed.

In the plaint, plaintiffs mentioned 26th March, 1844, as the date of the mortgage completed by the execution of the two documents and they filed with the plaint a certified copy of the said sale deed (which is marked exhibit I) bearing date 26th March, 1844, and the original agreement to transfer of the same date (which is marked exhibit B). The defendants, who represent the original mortgagees and their alienees, filed separate written statements, in which they denied the right of the plaintiffs to redeem on various grounds.

On 15th April, 1929, the Munsif, before whom the suit was filed, framed ten issues, of which only the following is now material:—

"Did Gulab Singh execute a sale deed in favour of Tula Ram and Het Ram on 26th March, 1844, and did the latter on the

(1) (1924) I.L.R. 47 Mad. 729.

same date execute an agreement to release the property in favour of the former, as alleged on behalf of the plaintiffs? If so, by these documents did the parties intend to create a mortgage by conditional sale?"

On the same date, the defendants 3 and 4 filed in court the original sale deed, which is marked exhibit A and bore the date 25th March, 1844. As this date did not correspond with the date in the certified copy filed with the plaint, the plaintiffs applied on 23rd April, 1929, for permission to amend the plaint by altering the date 26th March to 25th March. The ground on which this amendment was sought was that 26th March was written on account of a clerical error but the correct date was the 25th. This application was opposed by the defendants on various grounds. The Munsif, however, allowed the amendment of the plaint by his order dated the 29th April, 1929. The issue was thereupon amended by the addition of the words "now in view of the amendment of the plaint 25th March, 1844", after the words "26th March, 1844", occurring in the issue as originally framed. As the issues involved in this case depend upon the wording of the two documents, it will be useful to set out their material portion:

EXHIBIT A.—SALE DEED

I, Gulab Singh, . . . do make a valid and solemn declaration as follows:—

Five biswas of zamindari property (specified in the deed) . . . are by right of inheritance in my proprietary possession and enjoyment. Up to the time of this sale, which is correct valid and free from the rights of others . . . the property was in my proprietary possession and enjoyment. Now I have sold the above biswas with all the rights and appurtenances . . . for Rs.2,550 of Kaldar coins . . . to Het Ram and Tula . . . . The sale is valid, legal, correct and enforceable. It is free from pernicious and false conditions. I have received the entire amount mentioned above from the said vendees and have appropriated the same and made over the said property sold to them. Exchange of consideration has taken place between the parties. The vendees have ceased to have any claim in respect

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of the sale consideration and I, the vendor, have ceased to have any claim in respect of the said biswas sold. If in future anyone comes forward as a partner and co-sharer of the said property sold, I shall be liable to set up a defence in respect thereof. Hence, I, in a sound state of body and mind, have executed these few presents by way of a sale deed, so that it may serve as evidence and be of use whenever needed.

Dated—25th March, 1844. (Sd.) Gulab Singh.

EXHIBIT B.—AGREEMENT TO RELEASE

Thakur Gulab Singh . . . has sold (paper torn) the said qasba to these executants for Rs.2,550 of the Kaldar coins and the mutation of names will be effected in the Nizamat office, district Moradabad. Hence we have covenanted and given in writing that whenever Thakur Gulab Singh, vendor of the said village, or his collateral heirs pay the amount of the sale deed in a lump sum after expiry of the period of twenty-five years, i.e., with effect from 1251 Fasli to 1275 Fasli, these executants or our heirs shall willingly get the names of Gulab Singh or his heirs recorded in and our names and those of our heirs expunged from the papers of the Nizamat court, district Moradabad. We or our heirs shall put forth no excuses. If, perchance, we or our heirs put forth any excuse in accepting the amount of the sale deed in respect of the said village, Gulab Singh or his heirs shall be authorised to deposit the amount of the sale deed in the Hon'ble High Court, get their names recorded and our names or those of our heirs expunged. We or our heirs shall have no objection. After expiry of the period of twenty-five years, Thakur Gulab Singh or his heirs shall be authorised to pay the amount of the sale deed whenever they may like it and get the property sold released from us or our heirs and representatives. We or our heirs shall have no objection. If we do so, it shall not be entertained in the Nizamat court of the High Court. Hence we have executed these few presents by way of a conditional agreement, so that it may serve as evidence and be of use whenever needed.

Written on 26th March, 1844, corresponding to Chait Sudi 6th, 1251 Fasli.

Signature of Het Ram aforesaid.
Signature of Tula Ram aforesaid.

It may be mentioned that the agreement to release, when it was filed with the plaint, had two holes, one just above and partly eliminating the date 26th occurring at the end of the document and the other after the

words, "has sold" occurring in the first line. On 18th May, 1929, when arguments were being heard, respondent 15 made an application alleging that the holes were made subsequent to the filing of the said document in court. The Munsif enquired into the allegation and held that it was utterly baseless. On considering the effect of the torn parts of the document, he was of opinion that they were of no consequence and that the document was genuine. As the document purported to be more than 30 years old and was produced from proper custody, he admitted it, exercising the discretion vested in him under section 90 of the Indian Evidence Act to presume that the signatures and attestations were genuine.

On the main issue the Munsif held that Gulab Singh executed the sale deed (exhibit A) in favour of Het Ram and Tula Ram on 25th March, 1844, and, on the same date, Het Ram and Tula Ram executed the deed of agreement (exhibit B) in favour of Gulab Singh and that by these two documents the parties intended to create a mortgage by conditional sale. Accordingly, he ordered redemption of the property on payment of Rs.2,550 to defendants 3—6, 8—18, 21—26 within six months. The property to be redeemed was specified in the decree.

The defendants appealed to the court of the Additional District Judge of Moradabad on 17th July, 1929. Their appeal was heard on 12th January, 1931, and the Judge delivered judgment confirming the findings of the Munsif. He agreed with the Munsif that the holes were made before the filing of the suit and that when the plaintiffs were about to file the suit and found that the date mentioned in the copy of the sale deed was 26th March, 1844, and the agreement bore the date 25th March, 1844, they thought that it would be absurd that the agreement preceded the sale, so they or their advisers made a hole, so that the agreement might not read as of 25th March, 1844, and it might be possible to

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read it as of 26th March, 1844. He also found that the agent of the mortgagee Tula Ram managed to procure an inaccurate copy of the sale deed and handed it over to the plaintiff's ancestors, that, consequently, the plaintiffs or their predecessors could not be held responsible for the copy not being correct and that fact did not in any way affect the genuineness of the agreement. On carefully considering the place and other details relating to the said hole, he came to the conclusion that the date in the agreement was 25th March, 1844, and that the hole was made to eliminate the figure "5" and the Urdu letter "*pay*" so that the date might be read as the 26th.

It may be noted here that the vernacular date in the said agreement, viz., "Chait Sudi 6, 1251 Fasli" was not tampered with and remained intact and it was possible, on a reference to the calendar, to find its equivalent Christian date, namely 25th March, 1844. On the question whether the Munsif had properly exercised his discretion to admit the document without proof under section 90 of the Indian Evidence Act, he agreed with the Munsif and on a comparison of the signatures on the document of the executants and the attesting witnesses with their signatures on other documents he held that they tallied. As regards the hole in the earlier part of the document occurring after the words, "has sold" he held that though the paper of the document was torn at the place, the word "*shartia*" (meaning conditionally) could be seen in spite of the torn portion and this word clearly indicated that Het Ram and Tula Ram admitted that the sale was a conditional one and consequently the contract was one of mortgage and not of sale. A decree was passed accordingly.

Against the said judgment and decree the defendants appealed to the High Court of Allahabad on 3rd February, 1931. The appeal was heard as a second appeal by a Bench composed of IQBAL AHMAD and KISCH, JJ. The learned Judges confirmed the findings of the lower

court that the transaction was a mortgage by conditional sale evidenced by the two documents, exhibits A and B. They also held that, in the second appeal, the genuineness of the agreement exhibit B concurrently found by the two lower courts could not be challenged. But the learned Judges were of opinion that having regard to the circumstances of suspicion to which they referred in their judgment, the trial court had not exercised a proper discretion in raising the presumption of genuineness of the said agreement and admitting it in evidence without calling upon the plaintiffs to prove it. But they thought that that conclusion was not sufficient to dispose of the appeal as it would not be proper to overrule the discretion of the trial court and reject the document without sending the case back for re-trial and giving the plaintiffs an opportunity of supporting the presumption. This they thought unnecessary, as, in their opinion, the hole near the date was a material alteration made in the document by the plaintiffs, which rendered the document void, so that it could not be used for the enforcement of the right to redeem the property in question. In the result, they allowed the appeal and dismissed the suit with costs. A decree was accordingly drawn up on 8th March, 1933.

Against this judgment and decree, plaintiffs 3—5 have appealed to His Majesty in Council. The principal question for determination is whether the holes, assuming they were made by the plaintiffs as the lower courts have found, were material alterations rendering the document void for any purpose whatever. As all the courts below have concurrently held that the document in question is genuine, the finding was not challenged before their Lordships.

The rule relating to the effect of material alterations in a deed made after its execution by or with the consent of any party thereto, as it prevails in English Courts, can be briefly summarised as follows:

"If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or

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with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance however is not *ab initio* or so as to nullify any conveyancing effect which the deed has already had; but only operates as from the time of such alteration and so as to prevent the person who has made or authorised the alteration and those claiming under him from putting the deed in suit to enforce, against any party bound thereby who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or made.

"A material alteration is one which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

"The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The avoidance of the deed is not retrospective and does not revest or re-convey any estate or interest in property which passed under it. And the deed may be put in evidence to prove that such estate or interest so passed or for any other purpose than to maintain an action to enforce some agreement therein contained."*

It was urged before their Lordships that there was no decision of this Board authoritatively laying down whether the said rule was applicable to Indian cases and, if so, with any and what modifications. Attention was invited to three decisions of this Board, one in 1861 and the other two in 1864. In the first of these cases, *Mussamut Khoob Conwur* v. *Baboo Moodnarain Singh* (1), the rule was applied in a modified form. The question arose in a suit in the nature of an ejectment to recover possession of certain properties and to set aside a *sunnud* or deed under which they were held, on the allegation that the deed had been altered after execution and its purpose entirely changed by the insertion of words of limitation creating hereditary

*Halsbury's Laws of England; 2nd Edn. Vol. 10; p. 227, para. 287.

(1) (1861) 9 M.I.A. 1.

rights. Lord Justice KNIGHT BRUCE, delivering the judgment of the Board, treated the alteration as if it affected merely the proof of the document, rendering it more suspicious and doubtful but held that the party responsible for the alteration could satisfactorily explain the existing state of the document by "corroborative proof, independently of the instrument, strong enough to rebut the presumption which arises against an apparent and presumable falsifier of evidence." In the second case, *Ranee Surnomoyee* v. *Maharajah Sutteeschunder Roy* (1), an ancient tenure of land, which was proved *aliunde* to have existed, was sought to be supported by a forged document. The Judicial Committee again treated the forgery merely as affecting the proof of the document and observed that where forged documents are produced to support a case, that fact naturally creates suspicion, but if the Appellate Court has to deal with a just case, though foolishly and wickedly attempted to be supported by false evidence, such circumstances will not prejudice the judgment on the merits, when the case is supported by independent evidence. A similar view was taken in the third case, *Sevvaji Vijaya Raghunadha* v. *Chinna Nayana Chetti* (2).

It is clear from these decisions of the Board that the rule of law as stated above was not noticed therein; but that might be due to various reasons. It might be that the rule had not been fully evolved or settled beyond dispute at the date of these decisions. The question now arises whether there is anything, either in the evolution or policy of this rule, making it inapplicable to Indian conditions. There is no doubt that the rule has been gradually evolved as a result of English decisions. It is unnecessary to go into details, beyond referring to the observations of Sir GEORGE JESSEL, M. R., in the case of *Suffell* v. *Bank of England* (3). In that case, the learned Judge had occasion to examine the policy and

(1) (1864) 10 M.I.A. 123. (2) (1864) 10 M.I.A. 151.
(3) (1882) 9 Q.B.D. 555(559).

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foundation of the rule, with a view to determine whether there was anything in its principle or origin requiring its restriction to deeds under seal only or whether there was good reason to extend its scope to all documents in writing (like, for instance, Bank of England Notes). Examining the foundations and development of the rule, the Master of the Rolls said that he took the general law on the subject to be then settled beyond dispute. He observed: "The leading case, and which from the time of James I has always been so treated, is *Pigot's* case (1) and whatever may be said of the first resolution in *Pigot's* case, no doubt has ever been raised as to the second resolution, which is this, 'that when any deed is altered in a point material by the plaintiff himself, or by any stranger without the privity of the obligee, be it by interlineation, addition, rasing, or by drawing of a pen through a line or through the midst of any material word, the deed thereby becomes void.' So that even if a single word which is material is erased, it destroys the instrument. It was next decided that such rule of law which applies to deeds applied to documents not under seal. The case which decided this was the well known case of *Master* v. *Miller* (2), decided in the year 1791. There Lord KENYON, who was Lord Chief Justice of the Queen's Bench, held that the rule which applied to instruments under seal applied to documents not under seal, 'because', he said, 'no man shall be permitted to take the chance of committing a fraud without running any risk of losing by the event when it is detected'."

Referring to the policy of the rule, Sir GEORGE JESSEL observed (at p. 561):

"A man shall not take the chance of committing a fraud and when that fraud is detected, recover on the instrument as it was originally made. In such a case the law intervenes, and says that the deed thus altered no longer continues the same deed and that no person can maintain an action upon

(1. (1614) 11 Rep. 26.

(2) (1791) 4 T.R. 320; 1 Sm. L.C. (8th Ed.) p. 857.

it. In reading that and the other cases cited, I observe that it is nowhere said that the deed is void merely because it is the case of a deed, but because it is not the same deed. The deed is nothing more than an instrument or agreement under seal; and the principle of those cases is that any alteration in a material part of any instrument or agreement avoids it, because it thereby ceases to be the same instrument. And this principle is founded on great good sense, because it tends to prevent the party in whose favour it is made from attempting to make any alteration in it. This principle, too, appears to me as applicable to one kind of instrument as to another."

Is there anything in the principle or origin of this rule which makes it inapplicable to conditions prevailing in India? Their Lordships have no difficulty in answering the question in the negative. The rule is based on "great good sense". It is dictated by public policy and is independent of considerations of claim or race. It is consistent with the principles of equity and good conscience which have generally prevailed in India, unless they conflicted with Hindu or Mahommedan law. In their Lordships' opinion, there is no such conflict and there is no reason why the rule should not be made applicable to India.

Their Lordships are not therefore surprised to find that the rule has in fact been adopted in Indian decisions which are numerous. It is enough to refer to a few, one from each of the important provinces: *Subrahmania Ayyan* v. *Krishna Ayyan* (1), *Mangal Sen* v. *Shankar Sahai* (2), *Gogun Chunder Ghose* v. *Dhuronidhur Mundul* (3), *Namdev Jayram* v. *Swadeshi Vyapari Mandali* (4).

Their Lordships are in complete accord with the views of Sir RICHARD GARTH, C. J., where that eminent Judge, dealing with the argument that this rule belonged to the law of England and should not be made applicable to India, observed that he saw no reason why it should not and saw every reason why it should (7 Cal. 616 at 619).

(1) (1899) I.L.R. 23 Mad. 137. (2) (1903) I.L.R. 25 All. 580.
(3) (1881) I.L.R. 7 Cal. 616(619). (4) A.I.R. 1926 Bom. 491.

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Applying this rule to the circumstances of this appeal, their Lordships find that the relevant alterations are the following:—(1) A hole above the date of the agreement, 26th March, 1844, occurring at the bottom of exhibit B. About this alteration, the finding is that the letter "*pay*" and the figure "5" were taken away by making the hole, with the result that the date, as altered by the hole, could be read as the 26th. (2) A hole after the words "has sold" in the early part of the document. About this, the finding is that though the paper of the document has been torn at the place, the word "*shartia*" (meaning conditionally) is sufficiently discernible.

If these alterations were material within the meaning of the rule stated above, there is no doubt that they would have the effect of making the agreement void and the plaintiffs would be unable to rely upon its contents for the purpose of enforcing any obligation, covenant or promise contained in it. The result would be that the covenant by the purchasers, Het Ram and Tula Ram, to release the property in the event of the vendor or his collaterals paying or depositing in a lump sum the amount mentioned in the sale deed after 25 years, would be unenforceable. The legal position would be as follows: The document A, the sale deed, and document B, the agreement to release, being part of the same transaction, would create, as soon as they were executed in 1844, the relationship of mortgagor and mortgagee. This effect, which is the result of the execution of the two documents, would not be nullified by a subsequent alteration of one of them. Such alteration will not cause an avoidance of the altered document *ab initio* so as to nullify its conveyancing effect. It will operate only from the time when the alteration was made, which, according to the finding of the lower courts, was at some date previous to the filing of the suit in 1928. In consequence of this, a suit for redemption of the property under the said mortgage would lie, but the period of 25 years mentioned in exhibit B

would not be available to the mortgagor. The result will be that the period of 60 years, which would apply to a suit for the redemption of the mortgage of 1844, according to the law operative at that date, will have long elapsed before the date of the present suit and it would be barred by limitation.

To save this consequence, it is necessary for the plaintiffs to rely upon the 25 years' period, at the end of which time would begin to run under the terms of the covenant mentioned in exhibit B. This the plaintiff can only do if the alterations are not material.

The question therefore arises, are the alterations mentioned above material alterations so as to invalidate exhibit B? A material alteration has been defined in the rule as one which varies the rights, liabilities or legal position of the parties ascertained by the deed, etc. Do these two alterations fall within that category? Their Lordships are clearly of opinion that they do not. The first alteration relating to the date is of no legal consequence for the reason that the corresponding date, Chait Sudi 6th, 1251 Fasli, was left intact. It was therefore possible, by reference to the Indian Calendar, to find out the equivalent Christian date and their Lordships have been assured that, on such reference, the 25th March, 1844, would be found to be the corresponding date. So far, therefore, as this alteration is concerned, it did not cause, in the slightest degree, any variation in the rights and obligations of the parties. The 25th March might as well have been left out without any legal consequence on the effect of the document. As for the second alteration, it is equally immaterial. The finding of the trial and the first appellate court is (which has not been controverted before their Lordships), that in spite of the torn paper, as observed by the District Judge who apparently knew the language, the word "*shartia*" is clearly discernible and that word would mean "conditionally" and nothing else. It was not in the plaintiffs' interest to obliterate this word and

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there is also the additional circumstance that in the translation of this document set out in the High Court judgment, the last two lines mention in clear words that the parties had executed the document "by way of a conditional agreement, so that it may serve as evidence and be of use whenever needed." This part of the document has not been tampered with. It is therefore clear that this alteration is not material in the sense of altering the rights or liabilities of the parties or the legal effect of the document.

On this point their Lordships find themselves in greater agreement with the view of the Additional District Judge than with that of the High Court. In many of the rulings mentioned in the High Court judgment the alteration was material, because it caused a variation of the rights, liabilities or legal position of the parties, as ascertained in the deed in its original state. In some of them, the legal effect of that document, as previously expressed, was varied. For instance, in the case of *Govindasami* v. *Kuppusami* (1) the date was altered from 11th September to 25th September. This certainly concerned the period of limitation. This case is also distinguishable on another ground. For, as pointed out in the judgment, the suit in that case was not based on any antecedent transaction for which the instrument was given as security. In the case of *Namdev Jayram* v. *Swadeshi Vyapari Mandali* (2) the date May, 1922, was substituted for October, 1920. This had the effect of extending the period of limitation and that affected the rights and liabilities of the parties under the contract. Their Lordships do not understand the Bombay case, as the High Court appears to have done, as laying down that an alteration in date is always material, irrespective of its effect upon the rights, liabilities or legal position of the parties. Similarly, the High Court was in error in relying upon the forging of the seal and signature of the Qazi on the

(1) (1889) I.L.R. 12 Mad. 239. (2) A.I.R. 1926 Bom. 491.

copy of the sale deed, exhibit I. This alteration has nothing to do with exhibit B, which alone had been in the possession of the plaintiffs. Exhibit I had come into the hands of the plaintiffs from the karinda of the mortgagees under whom the defendants claimed. Under no circumstances could this alteration have any effect in rendering void a totally different document, namely exhibit B. The High Court appears to have been equally in error in holding that the trial Judge did not exercise a proper discretion in raising the presumption of the genuineness of exhibit B and admitting it in evidence without calling on the plaintiffs to prove it. It is difficult to understand the exact significance of this opinion when it is remembered that the High Court agreed with the finding of the two courts below that this document was genuine and refused to disturb this finding in second appeal. The Additional District Judge agreed with the Munsif and relied on his own comparison of the signatures appearing on the agreement with other signatures of persons who purported to have signed or attested the agreement. This certainly he was entitled to do. He apparently knew the language well and, as he says in his judgment, had carefully compared the signatures and found that they tallied. Under these circumstances, if the trial court exercised its discretion under section 90 and the appellate court saw no reason to interfere with it, the High Court should have found it difficult to overrule the discretion and reject the document.

The only remaining point is whether the finding of all the three Courts below, that the documents read together constitute a mortgage by conditional sale was erroneous. This point, however, was not stressed before their Lordships and it is, besides, in accord with the view expressed by the Board in *Narasingerji Jyanagerji* v. *Parthasaradhi Rayanam* (1).

(1) (1924) I.L.R. 47 Mad. 729.

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The result is that the appeal will be allowed, the decree of the High Court set aside and that of the trial court restored, decreeing the plaintiffs' suit with costs throughout. Respondents 1—28 will pay the plaintiffs' costs of this appeal.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellants: *Hardcastle. Sanders & Co.*

Solicitors for the respondents: *Stanley Johnson & Allen.*