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winding up. It is, therefore, not necessary to assume that article 112 applies to suits not brought by the company itself. As observed in *Balvantráv* v. *Purshotam*[1] "Limitation Acts are in abridgment of the common law right to sue, which is unlimited as to time, and those acts being thus restrictive should receive a strict construction."

I, therefore, exclude the present suit, which being brought only in the name and behalf of the company does not fall within the words of article 112 strictly construed. I hold the article 120 applicable; and award the claim for the amount claimed with interest at 12 per cent. from 31st March, 1886, till to-day and for costs and 6 per cent. on judgment.

Judgment for plaintiffs.

Attorneys for the plaintiffs:—Messrs. *Tobin and Roughton.*

(1) 9 Bom. H. C. Rep., 99, at p. 111.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1886. *January* 18 *and June* 30.

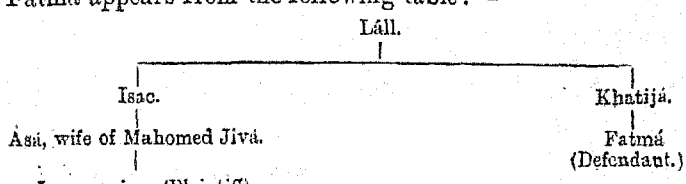
ISAC MAHOMED, A MINOR, BY HIS GUARDIAN, MAHOMED JIVÁ, AND ANOTHER, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'I FATMA', WIFE OF ABDUL RAHIMAN MAHOMED, (ORIGINAL DEFENDANT), RESPONDENT.*

Material alteration of a document after execution by consent of all the parties.

A material alteration made after execution does not vitiate a deed, if it be made with the consent of all the parties.

THIS was a second appeal from the decision of S. B. Thakur, Acting Assistant Judge at Broach, confirming the decree of Ráv Sáheb Chandulál Mathurádás, Second Class Subordinate Judge of Broach.

The relationship of the minor plaintiff Isac and the defendant Fatmá appears from the following table:—



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In August, 1874, Khatijá being ill and unlikely to live, a dispute arose in the family with reference to the property belonging to her. Khatijá was desirous of giving part of it to the minor plaintiff's mother, Ásá. Fatmá objected to this. Ásá, on the other hand, wished to have it all. The dispute was referred to arbitration. The arbitrators decided on 2nd September, 1874, that the whole of the property should remain in the possession of Fatmá, and that a sum of Rs. 317 should be paid by Fatmá to A'sá. Both Ásá and Khatijá were dissatisfied with the award. Thereupon Khatijá executed a deed of sale, by which she purported to sell the field in dispute for Rs. 999 to "Mahomed Jivá as guardian of his minor son, Isac, and to Ardesar Nasarvánji." In this deed the last part of the name Jivá and the words "and to Ardesar Nasarvánji" appeared to have been written in the place of some other words which were very carefully expunged. At the foot of the document there was an interpolated line to the following effect:—"The above-mentioned property has been purchased by Mahomed Jivá as guardian of his minor son, Isac, and by Ardesar Nasarvánji."

Ardesar Nasarvánji was the creditor of Mahomed Jivá and a man of some property. It clearly appeared upon the face of the document that Ardesar's name had been inserted subsequently to the execution of the deed. It was said to have been inserted, because it was known that Fatmá intended to claim the land upon the strength of the award; and as Mahomed Jivá had no money, that Ardesar consented to contest the claim on condition that his name was entered in the deed as a co-purchaser. It was inserted accordingly by expunging some words which immediately followed Mahomed Jivá's name, and by the interpolated line at the end of the document. The deed of sale was registered in this amended form on 5th September, 1874.

Upon this deed of sale the present suit was brought in 1874 by Mahomed Jivá as guardian of his minor son, Isac, and by Ardesar Nasarvánji to recover possession of the field in dispute.

The Court of first instance found that the alteration in the deed was made subsequently to its execution, but with the knowledge and consent of Khatijá herself, and that Ardesar's name had been

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inserted in the deed with a view to secure his assistance and co-operation in the apprehended litigation between the minor Isac and Fatmá. The Subordinate Judge, however, dismissed the suit on the ground that the deed was not a *bonâ-fide* transaction, nor for valuable consideration.

This decision was confirmed, on appeal, by the Assistant Judge, solely on the ground that the deed of sale was vitiated by the insertion of Ardesar's name after execution. He did not record distinct findings as to whether the alteration was made with the knowledge and consent of Khatijá, and whether she received any consideration for the deed.

The plaintiffs now preferred a second appeal to the High Court.

Branson (with him *Mánekshá Jahánghirshá* and *Shántárám Náráyan*) for appellants :—The lower Court was in error in applying the law as laid down by Taylor on Evidence, sec. 1617. That rule applies only to cases where a material alteration is made after execution, and without the privity of the party to be affected by it. But in the present case both the Subordinate Judges who dealt with the case found that the alteration was made at the instance of Khatijá herself. *Zouch* v. *Claye* (1) is in point. There, as here, the name of a new obligor was added subsequently to the execution of the deed, but with the consent of all the parties concerned. And it was held that the deed was not vitiated by the alteration—*Master* v. *Miller* (2). In the present case the lower Appellate Court does not clearly find whether Ardesar's name was inserted with the knowledge and consent of Khatijá. The case ought, therefore, to go back for a distinct finding on this point.

Gokuldás Kahándás for respondent:—The lower Court finds that there was no necessity, real or apparent, for Khatijá to sell the property in dispute. It also finds that the deed is a fabrication, and has even expressed its willingness to grant a sanction to prosecute Ardesar for using a forged document. The inference is, therefore, irresistible, that, in the opinion of the lower Court,

(1) 2 Lev., 35. (2) 1 Smith's L. C., p. 899.

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Khatijá was no party to the alteration. It is idle to contend that the finding on this point is not clear or distinct. The lower Court was, therefore, right in applying the rule laid down by Taylor, sec. 1617.

BIRDWOOD, J.:—The plaintiffs sued to recover possession of a field under a deed of sale said to have been executed by Khatijá, the mother of the defendant Fatmá and sister of Isac Lál, the grandfather of the minor plaintiff, Isac, who is represented on the record by his father, Mahomed Jivá, whose name also appears in the deed of sale as one of the vendees, as guardian of Isac. The other vendee is the plaintiff, Ardesar, whose name was not included in the deed at the time of its execution.

The deed itself shows on the face of it an alteration. It is not clear what words it originally contained in the place where Ardesar's name now appears; but Ardesar's name has been found by the lower Appellate Court to have been written after the deed was executed, and it is on this ground that the Assistant Judge found that the deed was invalid, although he also seems to have had some doubt whether the deed was not, in its entirety, a forgery; for he says: "There was no real or apparent necessity for Khatijá to sell her house and land, and the deed appears to me to have been forged by Mahomed Jivá or his wife, and that when it was found that Fatmá would not admit quietly its execution, and that they would have to go to law, which they in their circumstances could not afford, he went to her old creditor, Ardesar, and must have induced him to assist him in the matter, thus leading in the end to the alterations and additions above mentioned."

If we could regard this as a distinct finding of fact, there would be an end of the case. But we cannot so regard it, as the Assistant Judge goes on to say: "It may be urged in favour of Ardesar that Khatijá admitted before the sub-registrar (as shown by the registrar's entries on exhibit 4) that she had passed the above deed, and that she had received the consideration money; but Khatijá was then too old and unwell to notice the additions and alterations, and even Ardesar admits that she was illiterate." From this passage it would appear that the Assistant Judge was

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by no means satisfied that the deed was not, in the first instance, executed by Khatijá. He seems to have doubted, however, whether Khatijá was aware of the insertion of Ardesar's name and of the addition of two lines at the end of the deed, and above the signatures, at the time when she admitted execution of the deed before the sub-registrar. The deed was undoubtedly registered in its altered state. The Assistant Judge considered that he would be justified in sanctioning the prosecution of Ardesar for fraudulently using a forged document, in the event of the defendant wishing to prosecute him.

We cannot, however, hold that the Assistant Judge has arrived at a sufficiently clear decision as to the circumstances under which Ardesar's name was introduced into the deed to warrant our accepting the opinion expressed by him as conclusive. The plaintiffs were certainly entitled to a more definite finding on the facts. It was the plaintiff Ardesar's case that it was Khatijá's intention to introduce his name as a vendee into the deed before it was executed, and that, as a matter of fact, his supposed name was introduced, but not his name "Ardesar". He was called "Edal Lowri" in the document, as at first drawn up, and says that this name was erased and his correct name substituted, and that a note to that effect was made in the last line of the deed. Both the Subordinate Judges, who dealt with the case as Courts of first instance, were clearly of opinion that the alteration in the deed was made at the instance of Khatijá herself. Both were of opinion that Khatijá inserted Ardesar's name in the deed, in order that the minor Isac might have the assistance and co-operation of a wealthy man in the apprehended litigation between the minor and Fatmá. The ground on which the Subordinate Judge, whose decision was confirmed by the Assistant Judge, rejected the claim was that Khatijá had passed the deed of sale without receiving any consideration whatever for it, and that it was neither a *bonâ fide* nor a valid document. Neither that Subordinate Judge nor the Subordinate Judge who first heard the case in 1877, before it was remanded by this Court in 1881, was of opinion that the deed was a forgery. It was, therefore, especially incumbent on the Assistant Judge to

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record distinct findings on the questions discussed by the Courts of first instance.

It is not sufficient for the disposal of the appeal now before us to be in possession of the finding of the lower Appellate Court that Ardesar's name was inserted in the deed after execution. If it was inserted with the consent of Khatijá,—with such free consent as is essential to the validity of a contract,—before the document was registered, the rule laid down in the English cases and quoted by the Assistant Judge, as summarized in section 1617 of Taylor on Evidence, would not show that the deed was vitiated by the alteration. The English cases have been followed in India. See *Ramasamy Kon* v. *Bhaváni Ayyar* and *Rámasamy Kon* v. *Sinthewaiyan*(1); *Tikamdás Javahirdás* v. *Ganga* (2); *Anandji Visrám* v. *The Nariad Spinning and Weaving Company, Limited* (3); *Oodeychand Boodáji* v. *Bháskar Jagannáth* (4); and *Sitárám Krishná* v. *Dáji Deváji* (5). But it has nowhere been held, so far as we are aware, that even a material alteration, made with the consent of the parties, where no question arises of an evasion of the stamp laws, would vitiate a deed. In Comyn's Digest, art. "*Fait*" F. 1, p. 281, 11 Co., 27 (*i. e.*, *Pigot's case*) is given as authority for the proposition that an alteration by the obligor himself in a material place does not avoid a deed. That proposition would seem to follow from the rules (*a*) and (*c*) in *Pigot's* case. In *Zouch* v. *Claye* (6) it was held that an alteration—which was a material one, *viz.*, the addition of the name of a new obligor—would not make a deed void if made by consent of all the parties. The cases as to alterations made with the consent of the parties, cited in the commentary on the leading case of *Master* v. *Miller* (7), may also be referred to. And the rule, as laid down by Taylor, which the Assistant Judge has relied on, applies only to cases where the material alteration, made after execution, is made "without the privity of the party to be affected by it." Neither the question whether, as a matter of fact, Khatijá gave her free consent to the insertion of Ardesar's name in the deed, as held by the Court of first instance, or the question

(1) 3 Mad. H. C. Rep., 247.
(2) 11 Bom. H. C. Rep., 203.
(3) I. L. R., 1 Bom., 320.
(4) I.L.R., 6 Bom., 371.
(5) I.L.R., 7 Bom., 418.
(6) 2 Lev., 35.
(7) 1 Smith's L. C., pp. 899—907, 8th ed.

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whether the plaintiffs or either of them paid the consideration set forth in the deed or a part of it, has been definitely decided by the lower Appellate Court. We must, therefore, refer these two questions now for its decision, and request the Assistant Judge to certify his findings thereon within two months. These issues should be decided on the evidence already on the record.

Issues sent down accordingly.

The lower Appellate Court found, first, that Khatijá gave her full consent to the insertion of Ardesar's name in the deed; and, secondly, that the plaintiffs did not pay the consideration, as set forth in the deed, or any part of it.

On the return of these findings, the case again came on for hearing before West and Birdwood, JJ., on the 30th June, 1886.

Shántárám Náráyan and *Mánekshá Jehángirshá* for appellants.

Gokuldás Kahándás for respondent.

The Court confirmed the decree with costs.

Decree confirmed.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* SAKHA'RA'M BHA'U.*

1886. *February* 25.

Criminal Procedure Code (Act X of 1882), Secs. 35, 235—Indian Penal Code (Acts XLV of 1860 and VIII of 1882), Secs. 71, 380, 457—Simultaneous convictions for several offences—Sentence.

The accused was convicted at one trial by a Magistrate of the First Class of the offences of house-breaking by night with intent to commit theft, punishable under section 457, and of theft in a dwelling-house, punishable under section 380 of the Indian Penal Code (XLV of 1860),—the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under section 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment, under section 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First Class Magistrate who tried the case. The Sessions Judge,

* Criminal Reference, No. 177 of 1885.