APPELLATE JURISDICTION (*a*)

Special Appeal No. 331 *of* 1866.

RÁMASÁMY KON and others..... *Special Appellants.*

BHÁVANI AYYAR..... *Special Respondent.*

Special Appeal No. 333 *of* 1866.

RÁMASÁMY KON and others.....*Special Appellants.*

SINTHEWAIYAN *alias* CHINNA ..... } *Special Respondent.*
BHÁVANI AYYAR..... }

In suits upon two hypothecation bonds executed by different defendants, the plaintiffs, in the first suit sued for recovery from the defendants personally, and in the second suit for recovery from the defendants and also from the property hypothecated, and in each case obtained a decree. The lower Appellate Court reversed both decrees on the ground that the bonds were vitiated by a fraudulent alteration of them in a material part, viz, the date fixed for payment.

Held that the documents might be used as evidence of the debt between the parties and also of the creation of a charge upon the property hypothecated.

It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place.

1866. *December* 13. *S.A. Nos.* 331 *and* 333 *of* 1866.

THESE were special appeals from the decisions of F. S. Child, the Civil Judge of Tinnevelly, in Regular Appeals Nos. 129 of 1865 and 78 of 1866, reversing the decrees of the Court of the Principal Sadr Amin of Tinnevelly in Original Suits Nos. 100 of 1864 and 97 of 1865.

Subbarayalu Chetti for *Parthasarathi Ayyangar*, for the special appellants, the plaintiffs, in both suits.

Rangachariyar for *Srinivasachariyar* for the special respondent, the defendant, in Special Appeal No. 331 of 1866.

In person the special respondent, the 3rd defendant in Special Appeal No. 333 of 1866.

The facts are sufficiently set forth in the following

(*a*) Present : Bittleston, Ag. C. J., and Ellis, J.

1866. *December* 13. *S. A. Nos.* 331 *and* 333 *of* 1866.

JUDGMENT :—These were two suits by the same plaintiffs, brought in the Court of the Principal Sadr Amin of Tinnevelly upon two hypothecation bonds executed by different defendants.

In the first suit (100 of 1864) the plaintiffs sued for recovery of Rupees 1,217-5-2, and the decree of the Principal Sadr Amin, dated 13th March 1865, was for payment of the amount by defendant to plaintiffs. In the second suit (97 of 1865) the plaintiffs sued for recovery from the defendants personally, and also from the property hypothecated, of the balance of Rupees 1,253-11-10 principal and interest, and the decree of the Principal Sadr Amin, dated 18th December 1865, was for payment by 1st and 2nd defendants, *personally and from property mortgaged.* On Appeal (Suits 129 of 1865 and 78 of 1866) the Civil Judge on the same day (27th March 1866) reversed both decrees and dismissed the suits.

The ground on which he did so was the same in both cases, viz., that the bonds were vitiated by a fraudulent alteration of them in a material part, viz., the date fixed for payment, whereby the bonds became payable in 1037 (1861-2) instead of 1030 (1854-5), the apparent object of the alteration being to get rid of the effect of the Limitation Act.

There is this difference between the two cases, that, in the first suit (100 of 1864) no notice was taken of the alteration in the Court of First Instance. The defendant merely denied the debt and alleged that the hypothecation bond was not a genuine instrument ; but upon appeal the Civil Judge, himself examining the document carefully, discovered the alteration ; and finding that reference was made in the bond to another bond of the same date and that that bond was the subject of another suit also in appeal before him, sent for the record in Appeal Suit 78 of 1866 and compared together the two bonds, in both of which the same alteration appeared.

In the second suit (97 of 1865) the 3rd defendant pleaded that the suit was barred by the limitation law ;

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that the time specified in the bond for the discharge of the debt had been altered by the plaintiffs, and that the loan had been repaid by the 1st defendant in 1856. Evidence was therefore adduced in that suit by the plaintiffs to show that the alteration in the document was made at the request of the defendant's father when the document was executed; and this evidence was believed by the Principal Sadr Amin, but disbelieved by the Civil Judge.

The Civil Judge has doubtless proceeded in disposing of these cases upon the rule of English law, established as to deeds by *Pigot's case*, 11 Rep. 26, as to bills of exchange and promissory notes by *Master* v. *Miller*, 1 Smith's L. C 776, and as to other agreements by subsequent decisions collected in the notes to *Master* v. *Miller*; but the rule, assuming it to be applicable to a case in the Mofussil between Hindus, does not go beyond this, that the alteration of the instrument renders it invalid as the foundation of a suit by the party who has altered it, or in whose custody it was when altered. It does not render it void for all purposes; and the altered document may be used as proof of some right or title created by or resulting from its having been executed (Per Ld. Abinger in *Davidson* v. *Cooper*, 11 M. and W. 800.)

In these cases we think that the documents may be used as evidence of the debt between the parties and also of the creation of a charge upon the property hypothecated; and, so using them, it appears that the 1st suit (100 of 1864) being simply for payment of the debt, is barred by the Limitation Act, as we must take it that the date fixed for payment was not 1862, as alleged by the plaintiff, but seven years earlier, viz., 1855, and three years is the period of limitation.

It was said that the plaintiffs in that suit had not the opportunity of giving any explanation of the alteration, because it was not pointed out by the defendant in the Court of First Instance; but, in the first place, the plaintiffs producing the instrument cannot be supposed ignorant of the alteration, and it lies upon the parties who seek to enforce an altered instrument, to show the circumstances under which the alteration took place; and secondly, the

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same plaintiffs in the second suit did offer such evidence respecting a similar alteration of the other bond executed of the same day ; and the Civil Judge has disbelieved that evidence.

The second suit (97 of 1865) was brought not only for recovery of principal and interest from the defendants personally, but also from the immoveable property hypothecated, and as we think that the execution of the instrument created a charge upon the property which the subsequent alteration of it does not destory, the suit, so far as it seeks to enforce that charge and to render the property available for the discharge of the debt, is not barred by the Limitation Act, the period of limitation in such case being 12 years. The proper decree to be made in this suit is, that unless the defendants within 3 months pay the amount sued for with interest, the property hypothecated be sold and the sale proceeds or so much thereof as will satisfy the plaintiffs' claim be paid to the plaintiffs, and the balance, if any, be paid to the 1st and 3rd defendants. To that extent therefore the decree of the Civil Judge will be modified.

It is clear to us that there has been fraudulent conduct on both sides and we think that each party should bear their own costs throughout.