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other. It seems to them that the objection in this case goes only to the particular alienation by the sunnud, which stands upon a different footing. It appears to be unquestionably the law, that the illegitimate son of a person belonging to one of the twice-born classes, and the Rajah may be assumed to fall within that category, has a right of maintenance. Therefore, in assigning maintenance to Zalim Singh his father was acting in the performance of a legal obligation. He could not consult his legitimate son, because at that time there was no legitimate son born, and therefore looking to the purpose for which the grant made by the sunnud, whatever may be its extent, was made, their Lordships think that it would not fall within the prohibition, supposing, which they are far from deciding, that a father, having no legitimate son, is by the Mitakshara law incompetent to alienate ancestral estate to a stranger. Their Lordships therefore, without, as has been said before, determining anything as to the extent of the grant, are of opinion that upon the question whether the Rajah Bahadoor had power to make it, the concurrent decisions of the three Courts in India were correct; and on the whole case they are of opinion that the decree of the Judicial Commissioner is right, and ought to be affirmed; and they will humbly advise Her Majesty to affirm it, and to dismiss this appeal. There will be no costs, as the respondent has not appeared.

Appeal dismissed.

Agents for the appellant: Messrs. *Wathins* and *Lattey*.

ORIGINAL CIVIL.

Before Mr. Justice Kennedy.

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June 13 & 18.

EDE *v.* KANTO NATH SHAW.

Contract, alteration of, after Signature—Contract Act (IX of 1872), s. 37.

To a contract between the plaintiffs and the defendant, for the purchase by the defendant of a cargo of salt, the plaintiffs, after the contract had been signed by the defendant, added in the margin: "Ten days' demurrage will be allowed at Rs. 250 per diem." *Held*, that the addition of the words in the margin did not amount to an alteration within the rule of English law:

the alteration must be either something which appears to be attested by the signature or something which alters the character of the instrument.

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THIS was a suit for Rs. 5,463-14 as damages for breach of contract.

On the 23rd June, 1876, the following contract, which was a printed form filled in, was entered into between the plaintiffs and defendant:—

Contract between Ede and Hobson, merchants, Calcutta, and the undersigned.

"The merchants agree to sell, and the undersigned to buy, the goods undermentioned at the price specified below, and on the following terms:—The salt to be taken delivery of at the rate of 60 tons per custom house working day, commencing from the time that notice is given to the buyers that the ship is ready to begin to discharge. Price to be paid by the buyers against delivery of the salt at the rate of Rs. 58 per 100 maunds. Buyers to pay cash of weighing, amounting to Re. 1 per 100 maunds. Rs. 501 to be deposited by the buyers as security for the fulfilment of this agreement, which deposit will be forfeited in event of non-fulfilment thereof, and the seller will have the right to re-sell the salt and sue the buyers in a Court of law to recover any deficiency thereby arising, but any surplus shall belong to the sellers. About 1,750 tons salt ex *British Envoy*, or whatever quantity the ship may bring, June, sailing from Liverpool."

Ten days' demurrage to be allowed at the rate of Rs. 250 (Company's rupees) per diem.

(Signature of defendant.)

The defendant failing to take delivery of the salt, the present suit was brought for breach of contract. The only defence material to this report was that contained in the following paragraph of the defendant's written statement:

"Some time after the defendant had signed the said printed form, the plaintiffs requested him to sign or initial some conditions which the plaintiff had inserted on the said printed form; but the defendant declined to do so, on the ground, as he the defendant then expressly reminded the plaintiffs that the said alleged contract was a merely nominal one, and that he the defendant had nothing whatsoever to do with it; and the

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defendant submits that even if the said printed form had been originally valid and binding on the defendant, the alteration thereof by the plaintiffs after signature by the defendant and without his consent, would render the same void." The alleged alteration was the addition by the plaintiff, after the defendant signed the contract, of the words in the margin—"Ten days' demurrage to be allowed at the rate of Rs. 250 per diem."

Mr. *Trevelyan* for the plaintiffs contended that the rule laid down in *Master* v. *Miller* (1) does not apply where the alteration is satisfactorily explained: Smith's L. C., 7th ed., 913, Vol. I. Here the evidence gives a satisfactory account of the alteration. The reason of the rule is to prevent a person from benefiting by his own fraud, and where there is no want of *bonâ fides*, the rule does not apply; see *per* Buller, J., 335. Here, moreover, the alteration is not to take effect until after the time for the performance of the contract has expired; it is merely adding to the contract what the law would itself add, as the addition of the words "on demand" to a promissory note: *Aldous* v. *Cornwell* (2). This is an alteration the law would imply, and therefore immaterial. [KENNEDY, J.—It may be a question whether it is not a mere rule of evidence and provided for by the Evidence Act.]

Mr. *Bonnerjee* for the defendant contended that the alteration was a material one, and vitiated the contract; and referred to *Davidson* v. *Cooper* (3) and *Patterson* v. *Luckley* (4). The Evidence Act does not assist the plaintiffs. The alteration here is a part of the document itself [KENNEDY, J., referred to *Chandrakant Mookerjee* v. *Kartik Charan Chaile* (5).] The alteration being a portion of the document, and being a material alteration, avoids the whole contract.

Mr. *Trevelyan* in reply.—I have been unable to find any authority that this is a rule of evidence. Where a deed has

(1) 4 T. R., 320. (2) L R., 3 Q. B., 573.
(3) 11 M. & W., 795; S. C. on appeal, 13 M. & W., 343.
(4) L. R., 10 Exch., 330. (5) 5 B. L. R., 103.

been varied, the variation does not divest the estate, but only alters the evidence of title: *West* v. *Steward* (1). There is nothing in the contract to allow the defendant to unload salt after the contract time, so that the alteration is a new contract: it is quite outside the original contract: the original contract still stands, and the plaintiff can recover on it.

KENNEDY, J. (after finding on the evidence in favor of the plaintiff) continued:—The next question is with respect to the alleged alteration. As to that I fully believe the plaintiffs' account of what occurred, and discredit the defendant's. However that may be, I do not think that the words amounted to an alteration or addition within the rule of English law. I think the alteration must be either something which appears to be attested by the signature or something which, as in *Davidson* v. *Cooper* (2), alters the character of the instrument. I was not referred to authorities on what constitutes an alteration, but on the principles upon which *Pigot's case* has been extended to contracts not under seal, I think it must be so. Endorsements, marginal observations &c., &c., clearly do not come within that principle, and I think that this does not. Possibly, this would not be said to be a forgery within s. 464 of the Penal Code, cl. 2; and on comparison with *Master* v. *Miller* (3) I think that nothing which would not come within that section would be sufficient, at least if the element of fraud was proved. It is *primâ facie* a mere statement of a fact which does not appear to be a part of the contract, or covered by the signature. *Chunder Kant Mookerjee* v. *Kartick Charan Chaile* (4), so far is the only authority I remember having any bearing on this point of the case, and showing what would be taken to be included.

Even, however, if it were so, I think that the "swift and simple" provisions of the Indian legislature has swept away *Pigot's case* by s. 37 of the Contract Act (*reads*).

So far as I could discover, and on *Davidson* v. *Cooper* (5),

(1) 14 M. & W., 47.
(2) 13 M. & W., 343.
(3) 4 T. R., 320.
(4) 5 B. L. R., 103.
(5) 11 M. & W., 778.

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there is little doubt left, as there was there a verdict, on the plea of non-assumpsit, that the doctrine is not part of the law of evidence, but of substantive law; if it were, however, matter of evidence, the Evidence Act would have equally destroyed it.

Attorneys for the plaintiffs: Messrs. *Sen and Farr.*

Attorneys for the defendant: Messrs. *Remfry and Rogers.*

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

1877
Dec. 3.

GOSSAIN DASS CHUNDER (DEFENDANT) *v.* ISSUR CHUNDER NATH (PLAINTIFF).*

Title—Adverse Possession—Limitation.

Twelve years' continuous possession of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer.

Semble.—Such title may be transferred to a third person whilst it is in course of acquisition and before it has been perfected by possession.

Suits for possession distinguished from suits for declaration of a particular title.

Where a plaintiff seeks to recover possession of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also upon the ground of a twelve years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase.

IN this case the plaintiff sued to recover possession of a room and the use of a staircase in an undivided dwelling. He alleged that the house in question was the property of the defendant's maternal grandfather; that the defendant possessed half of the house, and that the other half was in the possession of Bhugobutty Dassia, the defendant's aunt; that the defendant sold his half share to the plaintiff's brother in the year 1850; that

* Appeal under cl. 15 of the Letters Patent, against the decree of R. C. Mitter, J., dated the 6th February, 1877, made in Special Appeal, No. 2030 of 1876, from the order of A. J. R. Bainbridge, Esq., Judge of East Burdwan, dated 29th July 1876, reversing the order of Baboo Promothonath Banerjee, Moonsiff of Kutwah, dated the 30th November 1875.