

(1940) 11 MAD CK 0017
In the Madras High Court

Gourochandro Dyano Sumanto

APPELLANT

Vs

Krushnacharana Padhi

RESPONDENT

Date of Decision : 11-11-1940

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 87

Citation : AIR 1941 Mad 383

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The question raised in this appeal is whether the holder of a promissory note is affected by a material alteration in the

instrument when the alteration has been made by a stranger and there has been no fraud or laches on the part of the holder. On 15th October

1928, the appellant executed a promissory note in favour of the adoptive father of the respondent who is a minor. The father died in 1929, being

survived by his wife in addition to the respondent, who continued to live with his adoptive mother who is his legal guardian. On 12th October 1931

the appellant paid Rs. 10 on account of the debt due on the instrument and the fact of payment was endorsed on the instrument. On 22nd October

1934 the respondent, through his mother, filed a suit to enforce payment of the amount then due. It was pleaded by the appellant that there were

two material alterations in the note and it is now accepted by the respondent that the plea was justified. The alterations consisted in the changing of

the date of the promissory note from 15th October 1928 to 25th October 1928; and the date of the endorsement from 12th October 1931 to

22nd October 1931. The appellant's case was that these alterations, were made by the natural father of the respondent. The District Munsif of

Aska, who tried the suit, found that the note had been materially altered, but in his opinion the evidence did not disclose who was responsible for

the alterations, although it appeared to him likely that they had been made by the respondent's natural father. As it had not been shown that the

natural father was responsible the District Munsif decreed the suit with costs.

2. The respondent appealed to the District Court of Ganjam. The District Judge found as a fact that the natural father had made the alterations and

held that as the result the respondent was not entitled to sue upon it. Accordingly he allowed the appeal and dismissed the suit. The respondent

then appealed to this Court, and his appeal was heard by Abdur Rahman J. who restored the decree of the District Munsif. The learned Judge

considered that there was no evidence on the record on which it could be held that the natural father had made the alterations. In his opinion the

District Judge had merely surmised this and the evidence did not warrant the surmise. The learned Judge considered that, as the respondent was in

no way responsible for the alterations, he was not prejudiced by them and therefore was entitled to maintain the suit. The learned Judge gave,

however, a certificate under Clause 15 of the Letters Patent, which has permitted of this further appeal.

3. It has not been suggested at any stage of the proceedings that the respondent or his guardian was responsible for the alterations in the

promissory note nor has it been suggested that there has been negligence. Therefore it must be assumed that the promissory note was taken out of

the custody of the guardian without her consent and without any failure of duty on her part. Whether the alterations were in fact made by the

natural father of the respondent matters not. Even if the alterations had been made by him in the mistaken belief that he was helping his natural son

that would not in the circumstances of this case deprive the respondent of his right to sue. Section 87, Negotiable Instruments Act, provides that

any material alteration of a negotiable instrument renders it void as against anyone who is a party to the instrument at the time of the making of the

alteration and does not consent to it, unless the alteration was made in order to carry out the common intention of the original parties. It cannot be

said that the appellant, the maker of the promissory note, consented to these alterations, but the section must be read in the light of authority and

there is authority which says that in circumstances such as we have here an innocent holder of the instrument is not damnified by a material

alteration. At common law a person who has custody of a negotiable instrument is bound to take care to preserve it from alteration. If it is altered

by a stranger as the result of the holder's negligence in allowing it to leave his custody, he must bear the consequences. In *Davidson v. Cooper*

(1844) 13 M. & W. 343, Lord Denman said:

The strictness of the rule on this subject, as laid down in *Pigot's case*, can only be explained on the principle that a party who has the custody of an

instrument made or his benefit, is bound to preserve it in its original state. It is highly important for preserving the purity of legal instruments that this

principle should be borne in mind, and the rule adhered to. The party who may suffer has no right to complain, since there cannot be any alteration

except through fraud, or laches on his part.

4. In that case, the Court did not, however, consider what would be the effect of a material alteration in an instrument made as the result of some

accident or as the result of the malicious action of a stranger who happened to gain possession of it in spite of the exercise of all reasonable care on

the part of the holder. The question of the effect of a material alteration as the result of accident was considered by the Privy Council in *Hong*

Kong & Shanghai Banking Corporation v. Lo Lee Shi ("28) 15 AIR 1928 P.C. 116, which was an appeal from the Supreme Court of Hong

Kong. The Bills of Exchange Ordinance, 1883, of Hong Kong followed the terms of the Bills of Exchange Act 1882, to which Section 87,

Negotiable Instruments Act, corresponds. The wording of the Indian Act does not follow exactly the wording of the English Act, but so far as this

case is concerned the difference in the language has no bearing. In the Hong Kong case the respondent received from her husband two bank notes

for 500 dollars each, issued by the Hong Kong and Shanghai Banking Corporation. She placed them in the pocket of a garment and having

forgotten where she had placed them she washed, dried, starched and ironed the garment. The result was that one of the bank notes was so

defaced that the number could not be read and the bank refused to pay it. The question was whether the bank was right in its refusal. It was held

by the Supreme Court that the Bank was bound to pay the note in the

circumstances and this decision was upheld by the Judicial Committee. After reciting the terms of Section 64 of the Bills of Exchange Ordinance of Hong Kong, Lord Buckmaster, who delivered the judgment of the Board, observed:

Both the history of the law which this section enuuciates and the terms of the section itself, show that it relates only to alterations effected by the will of the person by whom or under whose directions they are made, and that it does not apply to a, change due to pure accident. The alteration contemplated is one to which all parties might assent. It is not reasonable to assume parties assenting to a part of the document being effaced by the operations of a mouse, by the hot end of a cigarette, or by any of the other means by which accidental disfigurement can be effected. Again, the provision which excepts from the category of persons against whom the bill is avoided, a party who has himself made authorized, or assented, to the alteration cannot reasonably apply to the ravages of a rat, a white ant, or any other animal pest. The fact that the change is accidental in itself negatives the possibility of the assent.

5. If a material alteration which is the result of an accident does not bring the instrument within the mischief of the section, surely the same must apply where a material alteration has been made by a meddlesome or maliciously minded stranger without the consent of the holder of the instrument and without any fraud or negligence on his part. To hold otherwise would mean the doing of grave injustice to an innocent party and this could never have been the intention of the Legislature in inserting Section 87 in the Negotiable Instruments Act. For these reasons we dismiss the appeal with costs.