
(1913) 08 MAD CK 0006
In the Madras High Court

Lakshmammal

APPELLANT

Vs

Narasimharaghava Aiyangar and Others

RESPONDENT

Date of Decision : 27-08-1913

Acts Referred:

Stamp Act, 1899 — Section 18, 5

Citation : (1915) ILR (Mad) 746 : 17 Ind. Cas. 281 : (1913) 25 MLJ 572

Hon'ble Judges : Arnold White, C.J.; Oldfield, J

Bench : Full Bench

Judgement

Arnold White, C.J.

1. This is an appeal from a decree given by Mr. Justice Wallis dismissing the plaintiff's suit on the ground that the two documents on which he relied

had been materially altered and that for that reason the defendants were not liable thereon. The suit was brought on two instruments executed in

Mysore by the father of the defendants the father being a resident in Mysore, in favour of the plaintiff who with her husband was also an inhabitant

of Mysore. When the documents were put in evidence it was found that they had been torn and mutilated. The learned Judge declined to believe

the story put forward by the plaintiff to account for the mutilation of the documents. I agree with the learned judge that this story could not be

accepted. The effect of the mutilation was to cause the words "" or order "" to disappear from the two documents. There is very little direct evidence

on this point, but the learned judge holds in effect that the missing words were "" or order "" or words to that effect and I take the same view. This

was not in fact seriously contested by the plaintiff, and Mr. S. Srinivasa Aiyangar's argument proceeded on the assumption that the words "" or

order "" were contained in the two documents, as they were originally executed. Mr. Justice Wallis held that the alterations were made with the

obvious purpose of enabling these documents, which could not be sued upon, to be sued upon where it was expected that they would have to be

sued upon, namely in Mysore. There was some discussion as to whether the documents in their original form were bonds or promissory notes. In

the plaint they are described as bonds; but in the documents themselves they are described as promissory notes. As promissory notes they are

insufficiently stamped; and whether or not in this state of things they could be sued upon in their original form in Madras, it seems clear that the

insufficiency of a stamp would have been a fatal obstacle to their being sued on in Mysore.

2. I should be prepared to take the same view as the learned judge and to hold that the alterations were made in order that these documents could

be sued upon in Mysore. If this is so, it seems to me absolutely clear that the alterations were material alterations, since they were made for the

purpose of enabling the plaintiff to sue in a Court in which, if the alterations had not been made, she would not have been able to sue. They appear

to me to be none the less material alterations because, the defendants at the time the suit was instituted being, as events turned out, residents in

Madras for educational purposes, the plaintiff was able to institute her suit in this Court. In this view that alterations were made with the object of

enabling the plaintiff to institute her suit in this Court, I am of opinion that the alterations are material and that the defendants are not liable on the

documents.

3. In connection with this part of the case Mr. Srinivasa Aiyangar relied on a decision of this Court in Mahomed Rowthan v. Mahomed Husain

Rowthan ILR (1899) M. 337 in which it was held that there was no provision of law which required a promissory note executed out of British

India to be stamped before it was sued on or sued in a Court where the holder of the note had not done any of the acts referred to in Sections 5

and 18 of the Stamp Act, and in consequence the obligation to stamp had not arisen. Mr. Srinivasa Aiyangar's argument was that in as much as

the defendants could be sued on the original documents in this Court without being met by the stamp objection the alteration made in the document

for the purpose of enabling the plaintiff to sue in this Court was unnecessary, was made under a misapprehension, and that therefore the alteration

of the documents was immaterial since a suit could have been brought in this Court either under the documents as they originally stood or in their

altered form.

4. It seems to me that alterations made in these circumstances clearly come within the "" mischief "" of the rule of law with reference to the alteration

of instruments.

5. The cases are discussed in the notes to the case *Master v. Miller*(1791) 1 Smiths L. C. 767. I do not propose to refer to those cases because I

find what appears to me to be an accurate position of the law in the case, *Gourchandra Das v. Prasanna Kumarchandra* ILR (1906) O. 812 ""Any

change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal

identity or character of the instrument either in its terms or the relation of the parties to it, is a material change, or technically, an alteration and such

a change will invalidate the instrument against all parties not consenting to the change. This is a wholesome rule founded on sound policy and may

be defended on two grounds, namely, first that no man shall be permitted on grounds of public policy, to take the chance of committing a fraud

without running any risk of loss by the event when it is detected, and, secondly that by the alteration, identity of the instrument is destroyed, and to

hold one of the parties liable under such circumstances would be to make for him a contract, to which he never agreed (See *Lee v. Butler*) The

question to what extent the identity of an instrument must be changed in order that its legal effect will be altered so as to bring the case within the

terms of a material alteration vitiating the instrument must depend upon the nature of the alteration in each particular case. The test is not necessarily

however, whether the pecuniary liability of one of the parties has been increased by the change; it is of no consequence, whether the alteration

would be beneficial or detrimental to the party sought to be charged on the contract. The important question is whether the integrity and identity of

the contract have been changed. It is to prevent and punish such tampering as changes the identity of the contract, that the Jaw does not permit the

plaintiff to fall back upon the contract as it was originally, "" or in the language of

Sucayne, J. "in pursuance of a stern but wise policy, the law annuls the instrument as to the party sought to be wronged.

6. The decision upon which Mr. Srinivasa Aiyangar relied as an authority for his proposition that on findings of fact, to which I have referred the

alteration of the document in this case was immaterial was the judgment of the Court of Appeal in the case of Decroix Verley et Cie v. Meyer &

Co.(1890) 25 Q.B. D. 343. That case, it seems to me has really no bearing on the question we are now considering. In that case a Bill of

exchange being drawn by one L. D. Flipo payable "to order Mr. L.D. Flipo" the drawers struck through the word "order" and accepted the bill "in

favour of L.D. Flipo only payable at the Alliance Bank, London". In an action upon the bill by indorsees for value against the acceptors it was held

that the acceptance did not vary the effect of the bill as drawn, and that it was therefore a general acceptance of negotiable bill, and the action was

maintain-able. The ground of decision in that case was that although the drawers intended to restrict the negotiability of the bill and struck out the

word "order" for that purpose, their acceptance was in law a general acceptance and the suit by the indorsees as against them as acceptors was

maintainable. Notwithstanding what the acceptors did in that case the bill continued to be a negotiable instrument by virtue of Section 8 Sub-

section 4 of the Bills of Exchange Act 1882 as Bowen L. J. put it in his judgment on page 350.

7. The bill itself was originally payable to order. The word "order" was, it is true, struck through; but the effect of the 4th sub-section of the 8th

section of the Bills of Exchange Act "is to put it in again"." In Bills of Exchange cases where the question of material alteration has arisen there is no

case so far as I know in which it has been suggested that an alteration which gave a man a right of action which he would not otherwise have, is not

a material alteration.

8. Mr. Srinivasa Iyengar did not argue that, if the plaintiff could not have sued in this Court on the original document the alteration was not material.

I am of opinion that, assuming he could have sued in this Court on the original documents, the alterations made in the circumstances in which in this

case they were made, were material alterations. This being my view, I do not think it necessary to discuss the question whether the plaintiff could

have sued in this Court on the documents as they stood in the form in which they were drawn in the first instance. I do not see how Mr. Srinivasa

Aiyangar could well rely on any case with reference to what is a material alteration within the meaning of Section 87 of the Indian Negotiable

Instruments Act since on the finding of fact in this case the object of the alteration was to convert the two documents which were originally

negotiable instruments in to nonnegotiable instruments. But even if it is open to him to rely on any decision in connection with this branch of the law

of bills of exchange, he certainly has not called my attention to any case, as it seems to me, which supports his proposition. I am of opinion that the

alterations made in these two documents in the circumstances in which they were made would be material alterations for the purposes of Section

87 of the Negotiable Instruments Act if we had to consider the question in connection with that enactment and they are material alterations within

the general rule of law to which I have referred. I am there-fore of opinion that Mr. Justice Wallis was right and I would dismiss this appeal with

costs.

Oldfield, J.

9. I concur.