

MUTTURAMEN CHETTY v. ALLEGAN CANGANY.

1898.

November 16. .

D. C., Kandy, 11,954.

Promissory note—Marginal figures—Difference between marginal figure and amount mentioned in body of note.

The marginal figures in a promissory note or bill of exchange are not an essential part of it.

If there is any difference between the amount expressed in the marginal note and the amount expressed in the bill, the latter amount is to be deemed the amount for which the bill was made.

PLAINTIFF, the endorsee of a promissory note, sued the maker thereof for the recovery of a sum of Rs. 293·75 alleged to be due to him thereon. The defendant admitted the making of the note, but said that it was granted for a sum of Rs. 193·75 ; that that amount was entered by him on the top of a printed form which was handed by him to the payee with authority to him to fill in the blanks. He also said that the figure 1 in the amount entered by him on the top of the note had been unlawfully altered into 2, and that such entry being a material part of the note, the alteration rendered the note void and freed him from liability to be sued thereon.

For the plaintiff it was contended that the alteration was not a material one, and that the note was not avoided thereby, and that the onus did not lie on him to explain the same.

The District Judge held that the alteration was a material alteration, even if that portion of the note be held only to constitute a direction as to how the body of the note, which defendant admitted to have signed otherwise in blank, should be filled up, and that the burthen of proof was on the plaintiff to show that the alteration was made under such circumstances as not to vitiate the instrument.

The plaintiff's action being dismissed with costs, he appealed.

Dcrnhorst, for appellant.

There was no appearance of counsel for respondent.

16th November, 1898. BONSER, C.J.—

In this case the appellant is the endorsee of a promissory note ; the respondent is the maker of the note. At the heading of the note there is, in Tamil characters and in the Arabic numerals, the

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amount Rs. 293·75. In the body of the note in English letters the amount is stated to be Rs. 293·75.

BONSEE, C.J.

The defence is that the Tamil letters signifying 293·75 were altered fraudulently by some person or other after the note was signed by the defendant. The defendant says that he handed this promissory note to the payee signed in blank ; that is to say, no part of the body of it was filled in with particulars of the date or the payee or the amount. The note was in a printed form containing spaces for the particulars which I have just mentioned. He says that when he signed it and handed it to the payee, he wrote at the head of the note in Tamil characters 193·75, and that the Tamil character " 1 " was fraudulently altered to " 2." The stamp upon the note is a stamp that would cover a note for Rs. 293·75, and is larger in value than is necessary for a note for Rs. 193·75. It was argued that this alteration is a material alteration, and therefore avoided the note. In my opinion this alteration, if it was in fact made, was not a material alteration.

This case is, in my opinion, covered by the case of *Garrard v. Lewis*, (10 Q. B. D. 30). In his judgment in that case Lord Justice Bowen goes into the history of bills of exchange and notes, and he shows that at no time in the history of such documents have marginal figures been regarded as an essential part of a bill or note, but that they were intended merely as a sort of summary or index of the contents of the bill which was under written. It is undoubted law that, if there is any difference between the amount expressed in the marginal note and the amount expressed in the bill, the latter amount is to be deemed to be the amount for which the bill was made.

Therefore, I am of opinion that the defence to this action fails, and that the decree must be reserved and judgment entered for the plaintiff for the amount claimed.

In this case no question arises as to whether the alleged alteration is apparent or not, so I say nothing about it.

LAWRIE, J.—

I agree.

I am not satisfied that the promissory note was altered after it was issued. Indeed, I am not satisfied that it was altered at any time ; but, assuming it was altered, the alteration is not of a material part of the note.

The maker of the note says he signed a printed form, on which the space for an amount of the note was not filled up, and that on another part of the note he wrote the words " 193·75 " as a

memorandum of the amount for which he gave authority to the payee to fill it in.

The decision in *Garrard v. Lewis* is exactly in point. There the alteration of a similiar memorandum was held not to be a material alteration within the 64th section of the Bills of Exchange Act.

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LAWRIE, J.

