June 30, 1910

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton.

PONNAPPA CHETTY *v.* AYASAMY CHETTY *et al.*

D. C., Kandy, 19,731.

Promissory note—Alteration of the place of making—Is it "material"?

Plaintiff sued defendant, who was a resident of Colombo, on two promissory notes, A and B, which were made at Colombo. Note A was payable at Colombo, and note B was payable at Kandy. Plaintiff before institution of action altered the word "Colombo" into "Kandy", so as to make it appear that the notes were made at Kandy.

Held, that note A was, and that note B was not, materially altered.

Any alteration is material which would alter the business effect of the instrument if used for a business purpose.

THE facts are briefly stated in the headnote.

Van Langenberg, for the plaintiff, appellant.—The alteration in note B is not material, as the action could have been brought at Kandy, even without the alteration.

De Zoysa, for the first defendant, respondent.—If not for the alteration, the plaintiff can bring the action either at Colombo or at Kandy; after the alteration, plaintiff can bring the action only at Kandy; the alteration is clearly one which alters the business effect of the note; it is therefore a material alteration. See *Suffell v. Bank of England.*[1]

Cur. adv. vult.

June 30, 1910. HUTCHINSON C.J.—

The plaintiff sues as the endorsee of two promissory notes made by the defendants. One of the defences was that, subsequent to the making of the notes, the word "Colombo" on each of them was cancelled and the word "Kandy" put in, and the initials of the defendants were forged over the alteration, without the knowledge and authority of the defendants, and therefore no action can be maintained on the notes. The notes are on printed forms, and the word "Colombo," signifying the place where they were made, is printed at the head, alongside the date, and has been crossed out in ink and Kandy substituted for it, with the initials of the makers.

[1] *(1882) 9 Q. B. D. 555.*

One of the notes, marked A, was payable at the office of the National Bank of India in Colombo; the other, marked B, at the office of the same bank in Kandy. Both the defendants lived in Colombo. If, therefore, the notes were made in Colombo, the holder of note A could only have sued on it in Colombo, but the holder of the note B could have sued on it either in Colombo, where the defendants resided, or in Kandy, where the cause of action arose.

The issues framed with reference to this defence were: (1) Were the notes made in Colombo, and not in Kandy? (2) Was the insertion of the word "Kandy" in each of the notes unauthorized by the defendants?

The District Judge found on both of the above issues in favour of the defendants. He also found that note A had not been duly presented for payment, and he dismissed the action. His findings of fact are not disputed, so that we are only concerned now with note B, which was duly presented for payment; and the question argued before us was whether the alteration made in it was "material" within the meaning of that word in section 64 (2) of the Bills of Exchange Act.

None of the decisions on the meaning of the word is exactly in point. In *Suffell v. Bank of England*,[1] Brett L.J. said that any alteration is material which would alter the business effect of the instrument if used for any business purpose. I think that the alteration of note A was material, because it enabled the plaintiff to sue on that note in Kandy. But I cannot see how the alteration of note B could in any way alter its business effect. Either in its original form, or as altered, the defendants could be sued on it either in Colombo or in Kandy. I hold that the alteration of note B was not material.

There was a further issue as to note B: "(4) Was the amount of note B paid by defendants to the payee and the note discharged"? The original payee was Caruppen Chetty, and the first defendant deposed that when Caruppen was ill and going away to India, the first defendant paid him the full amount of note B, but got no receipt. There is no corroboration of that evidence. The Judge has not recorded any finding on this issue. I do not think that, without the consent of the parties, we who have not seen the witness ought to decide the issue, and the case must go back for its decision. The costs of this appeal should be costs in the cause.

MIDDLETON J.—

The plaintiff sued as endorsee of two promissory notes, each for Rs. 250, made in favour of one Caruppen Chetty, who endorsed them to the plaintiff. Both notes purported to be made in Colombo,

[1] *(1882) 9 Q. B. D. 555.*

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but each had been altered so as to make it appear it had been made in Kandy. Note marked A was payable at the office of the National Bank of India in Colombo, and note B at the office of the same bank in Kandy. Unless both notes could have been sued on together in Kandy, the District Court there would not have had jurisdiction to decide a claim on either separately. The District Judge held that the plaintiff had altered the word " Colombo " into " Kandy " on both notes; that such alteration was a material one, and that note A had not been presented for payment at the bank where it was made payable, and dismissed the plaintiff's action. As regards A the appeal was not pressed, but as regards B it was argued that the alteration was not a material one; that there was no finding of the learned Judge as regards its payment; and that the plaintiff was entitled to have the question of the defendants' liability on the debt B decided. B could have been sued on in Kandy even without the alteration objected to, but A could not.

It seems to me, therefore, that there was a material alteration of A, but not such an alteration of B as would alter its business effect and so be material, per Brett L.J. in *Suffel v. Bank of England.*[1]

So far as the note A is concerned, I see no reason to interfere with the judgment; but as regards B, I agree that the case should go back for the determination of the fourth issue. The costs of the appeal to be costs in the cause.

Case sent back.

[1] *(1882) 9 Q. B. D. 555.*