his getting back into his natural family : see *Ravibhadra* v. *Rupshankar* (*a*).

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We think the rights acquired by the plaintiff in consequence of his adoption, are subject to the rights created in his adoptive mother's favour by the stipulation to which in a great measure that adoption itself was due, and must, therefore, confirm the decree of the lower court with costs.

Decree confirmed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 457 *of* 1873.

July 6.

TIKAMDA'S JAVA'HIRDA'S .....*Appellant.*

GANGA' KOM MATHURA'DA'S .....*Respondent.*

Immaterial alteration in a document—Interest at a penal rate.

Where a subsequent addition to a document, though unauthorised by the executant, serves only to state explicitly what is already implied in the document, and what the law would infer from it, such addition is immaterial, and does not vitiate the instrument. Interest at a penal rate should not be awarded if there be no demand for it, or for a sum by way of compensation for special damage, on the part of the plaintiff.

THIS was a special appeal from the decision of C. F. Shaw, District Judge of Belgaum, affirming the decree of Dayárám Mayárám, First Class Subordinate Judge at the same place.

Gangá instituted this suit against Tikamdás Javáhirdás to obtain a declaration that she was entitled to a certain sum of money left by her late husband, Mathurádás, with the defendant for the maintenance of the plaintiff. She alleged in the plaint that Rs. 1,000 had been deposited with Tikamdás under a written agreement (Exhibit No. 3), dated the 29th January 1866, to the effect that Tikamdás was to pay Gangá every month Rs. 5 from interest due on the deposit, and Rs. 1 from the principal, until she reached the age of 18 years, when

(*a*) 2 Borr. 650.

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the balance of the deposit should be paid to her. The plaintiff also sought to recover the amount due to her for some previous months, but not paid by the defendant. Tikamdás, among other objections, pleaded that the postscript to the agreement had been forged subsequently to the date of its execution by him. The Subordinate Judge framed an issue on the point, and found it in favour of the plaintiff, for the following reasons :—

"My finding on the second issue is that the postscript and the clause below the signature of the defendant do not appear to be new additions. They are proved to have been written at the time the agreement was executed * * * *. The writing of the postscript tallies entirely with the deceased Nudini's undisputed handwriting, and the Guzerathi writing below the defendant's signature also tallies with that of the defendant. The terms of the agreement are strong enough, and I see that the addition of the postscript does not in any way alter the terms of the agreement. The postscript simply states that the defendant is not to hand over the money deposited with him to the plaintiff's husband's order without the plaintiff's concurrence, and the Guzerathi writing below the defendant's signature is to the same purport. As regards the evidence given by witness No. 70, it is clear that his demeanour, while under examination, was such as to throw suspicion on his evidence. Witness No. 63, who appears to be a respectable man, says that he found the agreement when he attested it, in the same state as it is now."

The Subordinate Judge decreed in favour of the plaintiff's claim, and the District Judge, in confirming that decree, remarked regarding the alleged alteration, "the Court is doubtful of the *tázákalam*." Assuming it is a forgery, it in no way invalidates the bond No. 3, which in other respects is admitted. * * * The Court finds Exhibit No. 3 is genuine in fact."

The special appeal was argued before WEST and LARPENT, JJ., on the 6th July 1874.

Dhirajlál Mathurádás for the appellant:—The Lower Court was wrong in not deciding whether the "tázákalam" added to the agreement, Exhibit No. 3, was a forgery, and in holding that the alteration in question, though made without the authority of the appellant, did not invalidate the agreement. As the document was in the possession of the respondent, she ought to have been called upon in the first instance to explain that the alteration had been made before its execution by the appellant: *Petamber Manikjee* v. *Moteechund Manikjee* (*a*). [WEST, J.:—The law on the subject of alterations has been considerably modified since the date of the Privy Council decision, as will appear from *Aldous* v. *Cornwell* (*b*) and *Rámásámy Kon* v. *Bhaváni Ayyar* (*c*)]. The interest awarded by the Lower Court, two per cent. per mensem, is exorbitant.

Vishnú Ghanashám, contra:—The concurrent finding of the two courts below regarding the genuineness of Exhibit No. 3 is conclusive on the point. The Judge below was justified in granting the high rate of interest, as he thought that the appellant had behaved very badly in keeping the respondent out of her money.

WEST, J.:—The judgment of the District Court is objected to, on the ground that the Judge was bound to find explicitly whether the addition to the document sued on, in its original shape, had been made before its execution or not. He has found, however, that the "Exhibit No. 3 is genuine in fact," and as the only dispute was with respect to the addition, we may take this as a decision that the document was executed in the form in which it was sued on. This was the finding of the Subordinate Judge, and the District Judge, though not without doubt and hesitation, plainly intends to adopt it.

But the other point in the judgment of the District Court, that though the addition, or *tázákalam*, should be unauthorized by the executant, still it would not invalidate the docu-

(*a*) 5 Calc. W. R. 53 P.C. (*b*) L. R. 3 Q. B. 573.
(*c*) 3 Mad. H. C. R. 247.

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ment, though it has been strenuously argued against, seems to have been properly decided. That addition serves only to state explicitly what was already clearly implied in the document, and what the law would infer from it. In such a case, as ruled in *Aldous* v. *Cornwell*, the alteration, as it is immaterial, does not vitiate the instrument. In the case just cited, the authorities, mentioned in the one at 3 Madras H. C. R. 247, are discussed, and the rigour of the older views of the law on this subject somewhat further mitigated.

The award of interest at a penal rate by the District Court, without any demand for it, or for any sum by way of compensation for special damage, on the part of the plaintiff, was not, we think, in accordance with the law. We must reduce the award to 6 per cent. per annum instead of 24 per cent. Their costs in this Court to be borne by the parties respectively.

[APPELLATE CIVIL JURISDICTION.]

July 15.

Miscellaneous Appeal No. 6 of 1872.

MIR AJMUDDIN, heir of FA'TMA' BEGAM, deceased ..... *Appellant.*

MATHURA'DA'S GOVARDHANDA'S, GUL'ABDA'S, and ISHVARDA'S JAGJIVANDA'S. } *Respondents.*

Execution—Attachment of decree—Limitation Act XIV. of 1859, *Sec.* 20—*Mutual relations of decree in original suit, regular and special appeals, and of execution thereon—Application for execution based on the original decree, but reciting those in regular and special appeals.*

A notice or order to a judgment-debtor, *A*, not to pay the amount decreed to his judgment-creditor, *B*, will not in any case serve to keep the decree alive in favour of *C*, a judgment-creditor of *B*, at whose instance the notice or order is issued, much less in favour of other judgment-creditors of *B*, with whom *A* had nothing to do. The period during which a decree remains under attachment should not be deducted from the time within which proceedings must be taken for the execution of the decree : *Chandi Prasád Nandi* v. *Raghunáth Dhar* (*a*) dissented from.

(*a*) 3 Beng. L. R. Appx. 52.