

1883.

NAHANIBAI
v.
NATHU
BHAU.

side of the account there were no entries, and though claims or payments might have been made, it does not appear that any had been made. There was thus no account to state in the real sense of the term. There was nothing for the debtor to give up in consideration of the balance struck being taken as final, because there was, and could be, no item to his credit. To admit such a transaction as here occurred to be a statement of account, which might be made after any lapse of time, would be to provide the easiest possible way, not only for barring limitation, but for defeating the Limitation Act.

After the acknowledgment in 1875 the account was again balanced in 1878, and the acknowledgment of a sum due was repeated. But as the previous acknowledgment had not revived the right to sue, neither could this second one.

We, therefore, discharge the rule with costs.

Rule discharged.

APPELLATE CIVIL.

1883
July 19.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

SITARAM KRISHNA, PLAINTIFF, v. DAJI DEVAJI, DEFENDANT.

Bond—Addition of false attestation—Material alteration of a document.

In an action on an attested instrument not required by law to be attested, the obligee, while the instrument was in his possession and custody, got another attesting signature added to it by a man who had not, in fact, witnessed the execution of it by the obligor.

Held that although the alteration did not vary the contract, it was material in the sense of stating a falsehood, either expressly or by implication, by way of increasing the apparent evidence of its genuineness, and that the obligee could not sue upon it.

THIS was a reference, under section 617 of the Code of Civil Procedure, to Ráv Sáheb Sakharam M. Chitale, Subordinate Judge of Mahad.

The plaintiff sued to recover from the defendant Rs. 48 due on a bond dated 5th of February, 1879. The defendant did not appear in person or by pleader. In course of the conduct of the suit it appeared that one Ganesh Krishna at the request of the plaintiff had attested the bond sued upon, but was really not

present at its execution. This was inquired into, and it was held proved by the Subordinate Judge that that was the case, and that the attestation was made without the consent of the defendant. The Subordinate Judge considered that the act of the attesting witness was a criminal offence done at the instigation of the plaintiff, who could not succeed on the instrument so materially altered. He, therefore, rejected the plaintiff's claim; but feeling a doubt on the matter, referred to the High Court for orders.

There was no appearance for either party in the High Court.

WEST, J.—In this case a document not requiring attestation by law was attested. After it had been delivered to the obligee, he seems to have got another attesting signature added to it by a man who had not, in fact, witnessed the execution of it by the obligor. The alteration was, at any rate, made while the obligee, had the bond, and he was primarily liable for its preservation untampered with. With reference to *Aldous v. Cornwell*(¹), however, and cases of that class the question arises, whether the addition was immaterial, and being immaterial had no effect in vitiating the security. Any change in a document varying the liability under it in any way is a material alteration:—see *Gogun Chunder Ghose v. Dhuronidhur Mundal*(²) and *Master v. Millar*(³) and cases referred to in the commentary in Smith's Leading Cases; but we think an alteration in a document stating a falsehood, either expressly or by implication, by way of increasing the apparent evidence of its genuineness is also a material alteration—*Suffell v. Bank of England*(⁴). Otherwise a promisor's initials might be converted into his full signature. The alterations would not be employed by the parties unless they thought them important; and as testimony is received of a witness' signature when he cannot be called, the plaintiff, who gets such a signature annexed by one who did not see the execution, wrongfully obtains a means of deceiving a Court, should the claim be resisted.

For these reasons we agree with the Subordinate Judge that the plaintiff here could not sue on the bond or promissory note materially altered while in his keeping by the addition of a false attesting signature.

1883

SITARAM
KRISHNAv.
DAJI
DEVAJI.

(1) L. R., 3 Q. B., 573.

(3) Sm. L. Cases, Vol. I, 871 (1876).

(2) L. R., 7 Cal., 616.

(4) L. R., 9 Q. B. D., 555.