

1890  
JUNE 25.  
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APPEL-  
LATE  
CIVIL.  
—  
15 B. 32.

With regard to Bhikaji's debt, the only dispute in second appeal relates to certain payments (amounting to Rs. 175), made by Bhikaji on behalf of Krishna to one Bapuji Soman. The District Judge has found, as a fact, that it is not proved why Krishnaji borrowed the money from Bapuji Soman. But in so finding he seems to have mixed up the question whether Bhikaji was bound to ascertain the state of the family or the nature of Bapuji's debt. Under these circumstances, I concur—though with some hesitation—in the order of remand as regards the second issue, and in permitting the parties to adduce fresh evidence, though they had full opportunity of producing evidence in the Court of first instance.

*Decree reversed and case remanded.*

15 B. 44.

[44] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

VENKATESH PRABHU (*Original Plaintiff*), Appellant v. BABA  
SUBRAYA AND OTHERS (*Original Defendants*), Respondents.\*  
[30th June, 1890.]

*Bond—Contract—Document—Material alteration—Addition of a witness's signature subsequent to execution of the bond—Practice.*

The fact that the signature of an attesting witness has been affixed to a bond after execution is not a material alteration, and does not make the bond void.

[Appl., 40 P.L.R., 1901; Appr., 38 C. 75=12 C.L.J. 277=14 C.W.N. 1076=11 Cr.L.J. 505=7 Ind. Cas. 629.]

SECOND appeal from a decision of G. McCorkell, District Judge of Kanara.

Suit to recover Rs. 2,000 on a bond.

The defendants admitted execution of the bond, but denied that they had received consideration, save to the extent of Rs. 500. The lower Courts held the bond to be void, on the ground that the signature of an attesting witness had been affixed after execution, and they rejected the plaintiff's claim.

The plaintiff preferred a second appeal to the High Court.

*Branson (Narayan Ganesh Chandavarkar, with him)*, for the appellant:—The subsequent addition of a witness's signature does not render the document void. It is not a material alteration—*Mohesh Chunder v. Kamini Kumari Dabia* (1). The District Judge ought to have decreed payment of Rs. 500 which the defendants admitted.

*Shamrav Vithal*, for the respondents:—The addition of the witness after execution of the bond rendered it void—*Sitaram v. Daji* (2). The plaintiff, therefore, cannot recover anything on the bond.

JUDGMENT.

SARGENT, C. J.—The defendant admits that Rs. 500 were actually paid; and, however reprehensible the plaintiff's conduct may be in suing

\* Second Appeal-No. 327 of 1889.

(1) 12 C. 313.

(2) 7 B. 418.

for the entire Rs. 2,000, it affords no ground, as the District Judge held, for not giving him a decree for the Rs. 500.

It has, however, been urged, upon the authority of *Sitaram v. Daji* (1), that the circumstance of the signature of Ramchandra as [46] an attesting witness having been affixed after execution, is sufficient to make the instrument void. We think, however, that that decision goes further than the English authorities justify, or than it would be expedient to hold in this country. In *Suffell v. Bank of England* (2), which is relied on in the judgment in the above case, it was doubtless decided that an alteration may be material, although it does not affect the contract; and in that case it was held that as the number on Bank of England notes was an essential part of the notes regarded as currency, the change in those numbers should be regarded as material. But we agree with the Calcutta Division Court in *Mohesh Chunder v. Kamini Kumari Dabia* (3), that "to hold the addition of a name to those of the attesting witnesses of a document not requiring attestation a material alteration, would be going beyond anything to which the reasoning of the English Judges properly leads." We must, therefore, reverse the decree of the Court below and pass a decree for the plaintiff for Rs. 500 without interest, as it appears that the Rs. 500 was offered to the plaintiff by the defendant in 1884 and refused. Parties to pay their own costs throughout.

Decree reversed.

15 B. 45.

#### CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Candy.

QUEEN EMPRESS v. RAMCHANDRA MATADIN.\* [3rd July, 1890.]

*Abkari (Bombay) Act (V of 1878), ss. 45 and 53—Servants of a holder of a license not punishable.*

Under s. 45 (c) of the Bombay Abkari Act (V of 1878) the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license.

Though under s. 53 (4) of the Bombay Abkari Act (V of 1878) the holder of a license under the Act is responsible, as well as the person there described as "the actual offender," for any offence committed [46] by any person in his employ or acting on his behalf under ss. 43, 44, 45, or 46 as if he had himself committed the offence, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence; yet s. 45 does not make "the actual offender," if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act.

[F., 15 M.C.C.R. 136 (Cr.); R., 2 Bom. L.R. 663 (664); R. Rat. Unr. Cr. Cas. 542 (543).]

THE accused was a servant of a licensed vendor of country liquor. He held a *nokarnama*, which was merely a permit to sell liquor granted

\* Criminal Reference No. 37 of 1890.

(1) 7 B. 418.

(2) L. R. 9 Q. B. D. 555.

(3) 12 C. 313 (316).

(4) Section 53 of Bombay Act V of 1878 provides:—The holder of a license, permit or pass under this Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under ss. 43, 44, 45, or 46 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.