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 [45] 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.

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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

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* 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.

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by his master, but not a license issued under the Bombay Abkari Act (V of 1878). He was convicted by the Magistrate (First Class) of an offence under s. 45 (c) (1) of the Act and sentenced to pay a fine of Rs. 40.

The District Magistrate, feeling doubtful as to whether the conviction was sustainable under s. 45 of the Act, as the accused was not the holder of a license granted under the Act referred the case to the High Court under s. 438 of the Code of Criminal Procedure (Act X of 1882).

There was no appearance for the Crown or for the accused.

The judgment of the Court (BIRDWOOD and CANDY, JJ.) was as follows :—

JUDGMENT.

PER CURIAM.—The accused, who is a servant of a licensed vendor of country liquor in Khandesh, was convicted by the Magistrate, First Class, of an offence under s. 45 (c) of the Bombay Abkari Act, 1878, which provides a penalty for the holder of a license granted under the Act, who commits any act in breach of any of the conditions of his license not otherwise provided for in the Act. The Magistrate, First Class, was of opinion that, as the accused held a "*nokarnama*," which was signed by the Collector, he came within the provisions of the section. But the District Magistrate, who has referred the case to this Court under s. 438 of the Code of Criminal Procedure, reports that the *nokarnama* is not a license under the Act. The form of *nokarnama* which he has sent us is a permit to sell liquor granted by the holder of a license to the servant whom he employs in his shop. Though it is countersigned by the [47] Collector, it is not granted by him. Following, therefore, the rulings of this Court in the cases of *Imperatrix* v. *Gafur* Criminal Ruling of the 6th August, 1885), *Imperatrix* v. *Gopal Vishram Devkar* (Criminal Ruling of the 26th July, 1888), *Imperatrix* v. *Ramji Raghoji* (Criminal Ruling of the 15th November, 1888), and *Imperatrix* v. *Pandu* decided on the 19th September, 1889, and differing from the ruling in *Imperatrix* v. *Fattu and Botu* (Criminal Ruling decided on 21st February, 1889), we reverse the conviction and sentence passed upon the accused Ramcharan Matadin, and direct that the fine, if paid, be restored. In so doing, we notice that s. 53 of the Bombay Abkari Act (V of 1878) provides that "the holder of a license under the 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." But s. 45 of the Act, which alone it is necessary to refer to in connection with the present case, does not make "the actual offender," if he be, as in the present case, the servant of a licensee, punishable, unless he is himself the holder of a license. Section 53, in effect, provides that, except under certain circumstances, it shall not be a valid defence to a prosecution against the holder of a license for certain offences under the Act, to say that the accused person did not actually commit the offence complained of himself, but that his servant, or some one acting on his behalf, was the real offender. When the breach of

(1) Section 45 (c) provides as follows :—Whoever, being the holder of a license, permit or pass granted under this Act, commits any act in breach of any of the conditions of his license not otherwise provided for in this Act, shall be punished with fine which may extend to one hundred rupees.

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15 B. 45.

the master's license is committed by the servant, the master is punishable, and he alone, unless the servant also holds a license under the Act; for it cannot be inferred, from the description in s. 53 of the servant in such a case as the "actual offender," that he also is liable to a penalty under any of the sections specified in s. 53, unless his act strictly falls under those sections. It is clear that to a servant not being the holder of a license, s. 45 of the Act has no application, and, therefore, s. 53 has no application to the accused in the present case.

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15 B. 48.

[48] ORIGINAL CIVIL.

Before Mr. Justice Farran.

GOVERDHANDAS GOCULDAS TEJPAL (*Plaintiff*) *v.* THE BANK OF BENGAL (*Defendants*).* [14th and 15th July, 1890.]

Surety—Creditor and surety—Right of surety to benefit of securities held by creditor—Surety for a part of debt due by principal debtor to creditor—Payment by surety of that part—Right of surety to benefit of securities does not arise until whole of debt paid off—Contract Act (IX of 1872), s. 141.

In August, 1889, one Khimji Jairam was indebted to the Bank of Bengal (the defendants) in the sum of Rs. 3,15,000. The Bank pressed for security or payment, and on the 5th September, 1889, Khimji Jairam executed, in favour of the Bank, two mortgages of certain immoveable properties, the value of which was estimated to be Rs. 1,35,000. The mortgages, though stamped to secure this amount only, were drawn to recover the whole liability of Khimji Jairam to the Bank, and recited that he had become largely indebted to the Bank on certain bills, &c., and had agreed to give security in respect of such indebtedness as was thereafter expressed, and they contained covenants by Khimji Jairam to pay to the Bank all sums of money then due, or thereafter to become due, by him in respect of such bills, &c. Besides the said two mortgages, the Bank obtained other securities for a further sum of Rs. 55,000, making the total sum secured Rs. 1,90,000, and leaving a balance of Rs. 1,25,000 unsecured. Under these circumstances the Bank refused to renew certain bills of Khimji Jairam's which fell due on the 9th September, 1889, unless further security were given, and accordingly the plaintiff became surety for Khimji Jairam for the sum of Rs. 1,25,000. This sum he was subsequently obliged to pay, and he then brought this suit claiming to share in the proceeds of the mortgages held as security by the bank. He contended that these mortgages were given as security for the whole debt (*viz.*, Rs. 3,15,000); that of this debt he, as surety, had paid a part, *viz.*, Rs. 1,25,000 to the Bank; and that he was, therefore, to that extent entitled to stand in the place of the Bank and to receive a share of the proceeds of the said securities proportioned to the sum which he had paid.

Held, that the plaintiff was not entitled to the benefit of the securities held by the Bank until the whole of the debt due to the Bank by Khimji Jairam was paid.

A surety who has paid the debt which he has guaranteed, has a right to the securities held by the creditor, because as between the principal debtor and surety the principal is under an obligation to indemnify the surety. The equity between the creditor and the surety is that the creditor shall not do anything to deprive the surety of that right. But the creditor's right to hold his securities until his whole debt is paid is paramount to the surety's claim upon such securities, which only arises when the creditor's claim against such securities has been satisfied.

[R., 35 M. 728 = 11 Ind. Cas. 570 = 21 M.L.J. 600 = 10 M.L.T. 57 = (1911) 2 M.W.N. 285.]

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* Suit No. 708 of 1889.