

Ede Vs. Kanto Nath Shaw

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Court : Kolkata

Decided On : Jun-18-1877

Reported in : (1878)ILR3Cal221

Judge : Kennedy, J.

Appellant : Ede

Respondent : Kanto Nath Shaw

Judgement :

Kennedy, J.

1. (after finding on the evidence in favour of the plaintiff) continued: The next question is with respect to the alleged alteration. As to that I fully believe the plaintiff's account of what occurred, and discredit the defendant's. However that may be, I do not think that the words amounted to an alteration or addition within the rule of English law. I think the alteration must be either something which appears to be attested by the signature or something which, as in Davidson v. Cooper 13 M. & W. 343 alters the character of the instrument. I was not referred to authorities on what constitutes an alteration, but on the principles upon which Pigot's case has been extended to contracts not under seal, I think it must be so. Endorsements, marginal observations, &c., &c., clearly do not come within that principle, and I think that this does not. Possibly, this would not be said to be a forgery within Section 464 of the Penal Code, Clause 2; and on comparison with

Master v. Miller 4 T.R. 320 I think that nothing which would not come within that section would be sufficient, at least if the element of fraud was proved. It is prima facie a mere statement of a fact which does not appear to be a part of the contract, or covered by the signature. Chunder Kant Mookerji v. Kartick Charan Chaile 5 B.L.R. 103 so far is the only authority I remember having any bearing on this point of the case, and showing what would be taken to be included.

2. Even, however, if it were so, I think that the 'swift and simple' provisions of the Indian Legislature has swept away Pigot's case by Section 37 of the Contract Act (reads).¹

3. So far as I could discover, and on Davidson v. Cooper 11 M. & W. 778 there is little doubt left, as there was there a verdict, on the plea of non-assumpsit, that the doctrine is not part of the law of evidence, but of substantive law; if it were, however, matter of evidence, the Evidence Act would have equally destroyed it.

1. [Section 37: The parties to a contract must either perform,

Obligation of parties to or offer to perform, their respective promises, unless such per-

contracts. formance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representative of the promisors in case of the death of such promisors

before performance, unless a contrary intention appears from the contract.]

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