

(1877) 06 CAL CK 0007

Calcutta High Court

Case No: None

Ede

APPELLANT

Vs

Kanto Nath Shaw

RESPONDENT

Date of Decision: June 18, 1877

Acts Referred:

- Contract Act, 1872 - Section 37
- Penal Code, 1860 (IPC) - Section 464

Citation: (1878) ILR (Cal) 221

Hon'ble Judges: Kennedy, J

Bench: Single Bench

Judgement

Kennedy, J.

(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 or offer to perform, their respective promises, or the performance 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 s before performance, unless a contrary intention appears from the contract.]