

## ALLAHABAD HIGH COURT

Lachmi Rai

Vs

Srideo Rai

(Bajpai, J.)

30.11.1938

### JUDGMENT

#### **Bajpai, J.**

1. The defendants are the appellants before us. The plaintiffs brought a suit for the recovery of a sum of money on the basis of a bend and of another sum of money on the basis of a sarkhat. The trial Court decreed the suit so far as the bend money was concerned but dismissed the suit so far as the sarkhat money was concerned. On appeal by the plaintiffs, the lower appellate Court decreed the suit for the recovery of the money due on the sarkhat as well.

2. The contention before us is that the suit for the recovery of the money on the basis of the sarkhat has been wrongly decreed by the lower Appellate Court. There is no controversy before us so far as the money due on the bend is concerned. It appears that the sarkhat, as originally drawn up, did not contain any reference as to the payment of interest. An alteration - and we may take it a material alteration - was made some time afterwards by the plaintiffs without reference to the defendants. It was contended in the Courts below that the material alteration made the negotiable instrument void against the defendants. Reliance was placed on several authorities and on the rule of English law that material alteration in a document after its execution without the consent of the other party renders a document void. This rule has been with certain safeguards enunciated in Section 87, Negotiable Instruments Act, where the document in question is a negotiable instrument and according to the provisions of that Section, if the alteration is made in order to carry out the common intention of original parties, the negotiable instrument does not become void. In the present case the Courts below have found that there was an agreement between the parties for payment of interest at the rate of Re. 1-8-0 per cent, per mensem and the alteration was made presumably on behalf of the creditors in order to carry out the common intention of the parties. The omission regarding the payment of interest was accidental as found by the Courts below.

3. It was also contended by the appellants that oral evidence as to the agreement to pay interest

was inadmissible in evidence. We may point out that Proviso (2) to Section 92, Evidence Act, makes any separate oral agreement as to any matter on which the (document is silent, capable of proof and there is no prohibition in that respect. Moreover Section 87, Negotiable Instruments Act, itself postulates the possibility of such I an agreement being proved by oral evidence. In this view of the case there is no force in this appeal and we dismiss it with costs.