It is, therefore, still pertinent first to distinguish a material and immaterial alteration; and, secondly, to observe how a post execution material alteration in a deed will affect a conveyance of property expressed to be assured by the deed, or the liabilities under a covenant contained in the deed.

Now on the first point, we may, perhaps say that a material alteration is one that causes the deed to speak a language different, in legal effect, from that which it originally spoke; (see Taylor on Evidence, sec. 1882). The late Sir James Stephen in his Digest of the Law of Evidence put it that "an alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any way whatsoever," while "an alteration which in no way affects the rights of the parties, or the legal effect of the instrument, is immaterial: (Stephen on Evidence, art. 89).

Secondly, it has for years been settled that when once an estate has been conveyed by a deed, the deed has done its work, and the subsequent alteration of the deed cannot operate to reconvey the estate; and the deed, even though cancelled, may be given in evidence to shew that the estate was conveyed by it while valid: (*Lord Ward* v. *Lumley*, 5 H. & N. 87, 656, and cases there cited). It should, however, be observed that it seems to follow from an old case in 1615 that there would be an exception where the estate lies in grant—*e.g.*, a watercourse—and so cannot exist without a deed, for in such case an alteration by a party claiming the estate will avoid the deed as to him, and the estate itself is gone: (*More* v. *Salter*, 3 Buls. 79). However that may be, it is firmly settled, on the principle that when an agreement is once embodied in a deed, such deed becomes itself the agreement, and not evidence merely, that if the deed becomes void by alteration, no action can be brought upon a covenant contained in it: (*Pigot's* case, 11 Rep. 27*a*; *Hall* v. *Chandless*, 4 Bing. 123; *Ellesmere Brewing Company* v. *Cooper*, *ubi sup.*). At the same time, though the deed may be void for the purpose of enforcing it, it may nevertheless be admissible to prove a collateral fact: (*Hutchins* v. *Scott*, 2 M. & W. 816). The possible hardship of the part of this rule that enunciates that every material alteration made by a stranger, even without the privity of any party, avoids a deed to the extent above explained, is readily apparent; and we could wish an opportunity would arise to have the question discussed and tested in the Appeal Court before modern judges. In the meantime it is interesting to observe that before Queen Victoria's reign commenced it had been held in the Court of Exchequer in Ireland that an alteration of this character so made did not avoid the deed, but that the court was at liberty to look at the deed as it was before it was altered: (*Swiney* v. *Barry*, 1 Jones Ex. 109). So apparently English and Irish law on the subject disagree in this detail: indeed, we believe we are right in thinking our law is herein unique.