

of the parties was not to make an impossible contract, for that is what the contract is, if the date had not been corrected. How is it possible on the 1st January, 1896, to contract to do a thing twelve months after the 1st day of January, 1886. Therefore the date, as it was before the alteration, was an impossible date. It might be entirely different if the time for performance had been subsequent to the 1st day of January, 1896, starting to run from the 1st of January, 1886; but that is not this case. This case is one of correcting an accidental mistake so as to make the contract that which it was intended to be according to the original intention of the parties. No one is injured, and no one is benefitted, though that is not altogether the test of the materiality of an alteration (*Boulton v. Langmuir*, supra, at page 627) but it is a help in ascertaining what the real contract between the parties actually is. The rule relating to the alteration of deeds, as laid down in *F. got's case*, 11 Rep. 266, and *Master v. Miller*, 1 Sm. L.C. 796 decides that this rule is applicable to promissory notes. Subsequent cases have applied the rule indiscriminately to all written instruments whether under seal or not (*Davidson v. Cooper*, 11 M. & W. 778; 31 M. & W. 343), and it is a most wholesome rule and in keeping with good conscience and equity, that when a contract is so altered as to make it just what the contractor intended it should be, that he should not be discharged from the very contract he actually did make, by reason of such alteration. LUSH, J., (in *Aldous v. Cornwell*, L.R. 3 Q.B., a case most fitting to the present one) said: "It seems to us repugnant to justice and common sense to hold that the maker of a promissory note is discharged from his obligation to pay it because the holder has put in writing on the note what the law would have supplied if the words had not been written." See also *Fitch v. Kelly*, 44 U.C.R. 578; *Merchants' Bank v. Stirling*, 1 Russ. & Geld. (N.S.) 439.

It is contended that an alteration can only be effected through the aid of the courts; that the instrument could only be reformed on an application to the proper court. That remedy, of course, was open to the plaintiff, and it appears that some courts in the United States insist on this course from prudent motives, deeming it an element of risk which might lead to grave results to permit corrections to be made or omissions supplied by interested parties. But there are numberless authorities the other way, both in the United States and in England, proceeding on the view that, if the alteration is in furtherance of the intention of the parties, then the assent of the party to be charged is implied and the alteration even though it is in a material respect will not vitiate the instrument. (*Chitty on Bills* 184. *London etc. Bank v. Roberts*, 22 W.R. 402.) "So it has been held that the alteration of the date of a note, made by the promisee, without the knowledge or consent of the promisor, merely to correct a mistake and make the note such as both parties intended that it should be, does not invalidate the instrument;" *Am. & Eng. Encl. of Law*, 2nd ed., vol. 2, p 211. The judgment will therefore be for the plaintiff.