is no part of the document as executed by the executant, but merely one means of proof of the document, and, as such, is not a material part of the document as executed within the principle of the rule under consideration. Attestation was not in this case necessary to the validity of the document as it was executed before the Transfer of Property Act came into force. I express no opinion as to what would be the effect of the addition of an attesting witness's name in cases where attestation was necessary to the validity of the document.

I would reverse the decree of the Lower Appellate Court and remand the appeal for disposal upon the other questions raised.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

GRAY (PLAINTIFF), PETITIONER IN C.R.P. No. 303 AND RESPONDENT IN No. 408,

v.

FIDDIAN (DEFENDANT), RESPONDENT IN No. 303 AND PETITIONER IN No. 408.*

1891. October 5, 6.

Master and servant—Liability of master for servant's act—Offer of money by defendant to avoid litigation.

The servant of the defendant, who was staying in the plaintiff's hotel, broke a filter, the property of the plaintiff. In a suit by the plaintiff for damages it appeared that the servant, when he broke the filter, was not acting within the scope of his employment, nor on the defendant's business, or for his benefit. The defendant offered to the plaintiff as compensation Rs. 30 (which was refused), but without acknowledging any liability:

Held, (1) that the defendant was not liable for the act of his servant;

(2) that the plaintiff was not entitled to a decree for Rs. 30.

PETITIONS under Provincial Small Cause Courts Act IX of 1887, section 25, praying the High Court to revise the decree of W. E. T. Clarke, Subordinate Judge of Nilgiris, Ootacamund, in original suit No. 366 of 1889, small cause side.

The facts of this case appear sufficiently for the purposes of this report from the following judgment of the High Court.

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* Civil Revision Petitions Nos. 303 and 408 of 1890.

GRAY v. FIDDIAN.

The Subordinate Judge passed a decree for Rs. 30 without costs.

Plaintiff preferred civil revision petition No. 303 of 1890 and the defendant preferred civil revision petition No. 408 of 1890.

Mr. *W. Grant* for plaintiff.

Mr. *Gover* for defendant.

JUDGMENT.—In Civil Revision Petition No. 303 of 1890 :—In this case the plaintiff, an hotel proprietor, sued to recover from defendant the value of a filter broken by defendant's servant while defendant was resident in the hotel. The Subordinate Judge found that defendant's servant was not acting under any express or implied authority from his master when he broke the filter, and hence that defendant was not liable for the act of his servant. Inasmuch, however, as defendant had offered Rs. 30 to plaintiff as compensation for the loss of the filter and to avoid litigation, the Subordinate Judge decreed that amount against defendant without costs. Both plaintiff and defendant have applied to the Court to revise this decree.

The learned Counsel for the plaintiff has correctly stated the rule of law that a master is liable for the acts of his servant, provided they were within the scope of the employment, and also if they are intentionally done in the interest and for the benefit of the master. In the case before us there is no evidence that the servant, when he broke the filter, was doing anything for the benefit of his master or upon his master's business, and the question therefore is whether he was acting within the scope of his employment. The Subordinate Judge, after hearing the evidence, has decided that he was not so acting, and the contention before us is that the Judge was in error upon this point. We think that in revision we are bound to accept the finding of the Judge upon this question. The question of scope of authority was a question of fact, as to which the evidence was conflicting. In England such a question would have been left to the Jury, and the Judge would have been bound by the finding, the evidence being conflicting—*Stevens* v. *Woodward*(1). In revision, therefore, we must accept the finding, unless it is open to some legal objection. We cannot hold, as a matter of law, that for any act done by defendant's servant, the master should be held responsible, though the

(1) 6 Q.B.D., 318.

act was wholly outside the scope of the servant's employment, and in no way an incident of it. We must, therefore, dismiss the plaintiff's petition with costs. GRAY v. FIDDIAN

In Civil Revision Petition No. 408 of 1890 :—Upon the queston raised by the defendant, we are clearly of opinion that the Subordinate Judge could not decree to plaintiff a sum of money which defendant had merely offered as a matter of grace and without acknowledgment of liability (but merely to avoid litigation) and which offer the plaintiff had refused to accept. We must allow the petition, and reverse the decree of the Subordinate Judge and dismiss the suit with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Parker and Mr. Justice Shephard.

QUEEN-EMPRESS

v.

BASAVA.* 1891. Nov. 5, 17.

Penal Code, s. 372—Disposal of a minor—Dedication of a girl in a temple.

The accused dedicated his minor daughter as a Basivi by a form of marriage with an idol. It appeared that a Basivi is incapable of contracting a lawful marriage, and ordinarily practises promiscuous intercourse with men, and that her sons succeed to her father's property;

Held, the accused had committed an offence under Penal Code, s. 372.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. T. Knox, Sessions Judge of Bellary.

In this case the Magistrate convicted the accused, a Madiga, of an offence under Penal Code, s. 372. The minor in respect of whom the offence was held to have been committed was the daughter of the accused, and the "disposal" charged consisted of the dedication of the girl as a Basivi by the performance of a marriage ceremonial between her and an idol.

In his letter of reference the Sessions Judge expressed an opinion that the conviction was wrong. The Sessions Judge pointed out that the record was silent as to the effect of the

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*Criminal Revision Case No. 475 of 1891.