

APPELLATE CIVIL.*Before Varma and Saunders, JJ.*

TRIBUNAL CIVIL

v.

RAMCHANDRA DUBE.*

1934.

September,
10, 11.

Stamp Act, 1899 (Act II of 1899), section 35—promissory note improperly stamped, whether can be used for the purpose of supporting oral evidence—document handed to a witness for refreshing memory, whether becomes evidence in the case.

A document which is inadmissible for the purpose of proving a claim may be admissible for such collateral purposes as are foreign, and not subordinate, to the purpose for which the document was executed.

Therefore, an improperly stamped promissory note, which is inadmissible in evidence for proving the debt, cannot be used for the purpose of supporting the statements of plaintiff's witnesses who come to prove the debt.

Kumar Braja Mohan Singh v. Lachmi Narain Agarwala(1), followed.

Birchall v. Bullough(2) and *Fengl v. Fengl*(3), referred to.

The mere handing of a document to a witness for the purpose of refreshing his memory does not make the document a piece of evidence in the case.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Varma, J.

P. R. Das (with him *A. K. Roy*, *S. K. Roy* and *S. S. Rakshit*), for the appellant.

G. C. Mukharji, for the respondent.

* Appeal from appellate decree no. 1494 of 1930, from a decision of Babu Sadhu Charan Mahanti, Special Subordinate Judge of Singhbhum, dated the 14th August, 1930, reversing a decision of Babu Nidbeshwar Chandra Chandra, Munsif of Jamshedpur, dated the 14th August, 1930.

(1) (1920) 1 Pat L. T. 719.

(2) (1896) I Q. B. 325.

(3) (1914) Pr. Div. 274.

1934.
 TRIBHUVAN
 OJHA
 v.
 RAMCHANDRA
 DUBE

VARMA, J.—This case comes up in second appeal from a decision of the special Subordinate Judge of Singhbhum who dismissed the suit of the plaintiff by his judgment dated the 14th August, 1930. The plaintiff brought the suit for recovery of a sum of Rs. 2,001 with interest at 18 per cent. per annum which is said to have been advanced to the defendant on the 1st Kartik, 1333 Amlī. The defendant denied the whole transaction and did not admit the debt; and further alleged that the suit was brought out of malice. The handnote that was produced in support of the plaintiff's claim was not properly stamped, that is to say, the stamp that was affixed to the handnote was only one anna and not four annas as it should have been. The trial court did not admit this document in evidence, being of opinion that under section 35 of the Stamp Act it could not be taken in evidence. So far as that step is concerned, I am of opinion that he acted quite properly, inasmuch as once a document is admitted under section 36 of the Stamp Act, the admission cannot be questioned except as provided in section 61 of the Act. But without admitting this document into evidence, he took the writing of the defendant and compared the two handwritings. Even then he came to the conclusion that the oral evidence that was produced on behalf of the plaintiff was not satisfactory because evidently the oral evidence was so led as to bring the case within the purview of the decision in *Sheikh Akbar v. Sheikh Khan*⁽¹⁾. He decreed the suit and the defendant went on appeal before the lower appellate court and after a remand the case was finally disposed of by the order dated the 14th of August, 1930, which I have just now mentioned. The Subordinate Judge held that the handnote being insufficiently stamped was not admissible in evidence for any purpose whatsoever. He also held that he did not believe the evidence of the witnesses for the plaintiff regarding the passing of money and, therefore, he allowed the appeal and dismissed the suit of the plaintiff.

(1) (1881) I. L. R. 7 Cal. 256.

Mr. P. R. Das appearing on behalf of the plaintiff appellant urged chiefly that although the handnote was not admissible in evidence for the purpose of proving the loan it could be used for certain collateral purposes and in support of this part of his argument he relied mainly upon the case of *Kumar Braja Mohan Singh v. Lachmi Narain Agarwala*(1). He referred to the passage in the judgment of Mullick, J. at page 726 which runs as follows: "..... it has been held that, although a document is inadmissible for the purpose of proving a claim, it may be admissible for a collateral purpose, that is, a purpose foreign and not subordinate to the purpose for which the document was executed". Much stress was laid in the course of argument that although the document could not be used for the purpose of proving the debt, it could be used for the purpose of comparing the handwriting of the document for the purpose of supporting the witnesses who were examined on behalf of the plaintiff. But the passage relied upon itself contains the answer to this argument where Mullick, J. says as to what is meant by 'collateral purpose'. He uses the expression 'collateral purpose' as equivalent to 'foreign and not subordinate to the purpose for which the document was executed'. So if the document was inadmissible for the purpose of proving the debt in this case, it could not be used to support the statement of the plaintiff's witnesses who come to prove the debt. Mr. Das incidentally referred to a case of *Birchall v. Bullough*(2) where a document which was not properly stamped and was not admitted in evidence was used by the Counsel in cross-examining the debtor for the purpose of refreshing his memory and obtaining from him certain statements. Those statements supported the case for the plaintiff; and although that document was not taken in evidence because it could not be taken in evidence, the admissions made by the defendant were relied upon by the Judge for deciding the case

1934.

TRIBHUVAN
OJHA
v.
RAMCHANDRA
DUBE

VARMA, J.

(1) (1920) 1 Pat. L. T. 719.

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1934.
 TRIBHUVAN
 OJHA
 v.
 RAMCHANDRA
 DUBE
 VARMA, J.

in favour of the plaintiff. But that case cannot be said to be an authority for the proposition that a document which is inadmissible in evidence can be indirectly used as a piece of evidence. Mere handing the document to a witness for the purpose of refreshing his memory does not make the document a piece of evidence in the case. As against that Mr. Mukharji has drawn our attention to the case of *Fenql v. Fenql*⁽¹⁾ where it was laid down that a document which requires stamp but is unstamped cannot be received in evidence except in criminal proceedings for any purpose whatever, including a collateral purpose. I would not have referred to these two cases but for the stress that was laid upon the earlier case by the learned Counsel appearing for the plaintiff because I am of opinion that the case of *Kumar Braja Mohan Singh v. Lachmi Narain Agarwala*⁽²⁾ makes clear the purpose for which unstamped or improperly stamped documents could be used. So there being no document to prove the transaction and the oral evidence having been disbelieved by the courts below, the appellate court has passed the only order that it could pass under the circumstances, i.e. dismiss the plaintiff's suit.

I would, therefore, dismiss the appeal with costs.

SAUNDERS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Wort and James, JJ.

SHAH ZAHIRUL HAQUE

v.

SYED RASHID AHMAD.*

Appeal—suit under section 92, Code of Civil Procedure, 1908 (Act V of 1908)—District Judge directed by High Court

* In the matter of First Appeal no. 70 of 1934.

(1) (1914) Pr. Div. 274.

(2) (1920) 1 Pat. L. T. 719.

1934.
 September,
 20.