ORIGINAL CIVIL.

Before Mr. Justice West.

RUSTOMJI EDULJI CROOS, PLAINTIFF, *v.* CURSETJI SORA'BJI CROOS AND OTHERS, DEFENDANTS.*

1880
March 29,
April 1.

Evidence—Admissibility of unstamped document for collateral purpose—Stamp Act (XVIII of 1869*), Sec.* 18, *Sch.* 1, *Art.* 14; *and Sch. II, Art.* 36.

The plaintiff as administrator of D sued to recover from the defendants the sum of Rs. 3,000, alleging that in February 1878 the said sum had been entrusted to defendants Nos. 1 and 2 for investment on D's account, and had been advanced by them as a loan to defendant No. 3. The defendants alleged that the money was originally the property, not of D, but of the plaintiff himself; that he had made it over as a gift to his daughter P, by whom it had been lent to defendant No. 3, and that defendant No. 3 had duly repaid it to P. In the defendants' written statement it was alleged that the gift to P had been made in the month of February 1878, and evidence to this effect was given at the trial. At the trial, however, the defendants also alleged that in July 1878 the plaintiff had executed an instrument of gift of the Rs. 3,000 to P, and they produced a document, dated 3rd July 1878, purporting to be signed by the plaintiff, whereby he made over Rs. 3,000 to P, of which Rs. 1,000 was to be held by P in trust for D during D's life, and to be paid back to plaintiff on D's death, and the remaining Rs. 2,000 were to be the property of P absolutely. When tendered in evidence the document was objected to as being unstamped, and, therefore, inadmissible.

Held, that the document, though unstamped, was admissible in evidence, on the ground that the purpose for which it was tendered, was collateral to the object of the document, and that its admission did not involve giving effect to it as operative between the parties to it.

THIS was an action by the plaintiff as administrator of his mother Dossibái, the original plaintiff in the suit, to recover from the defendants the sum of Rs. 3,000 which it was alleged had been entrusted to the first and second defendants for investment on Dossibái's account, and advanced by them as a loan to the third defendant.

The first and second defendants were the parents of the plaintiff's wife Dhunbái, who with her daughter Putlibái resided with them.

The first and second defendants alleged that the sum of Rs. 3,000 was originally the property, not of Dossibái, but of the plaintiff himself; that he had made it over as a gift to his daughter Putlibái; that it had been lent by her to the third defendant, and duly

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repaid by him to her; and that they (defendants Nos. 1 and 2) had never had possession of the money or been in any way concerned therewith.

The third defendant also denied that he had obtained any loan from Dossibái, and alleged that he had received the money as a loan from the plaintiff's daughter Putlibái, to whom he had duly repaid it.

In the written statement of the defendants it was alleged that the plaintiff had given the Rs. 3,000 to Putlibái in the month of February 1878, and evidence to this effect was given at the trial. At the hearing, however, they also alleged that in July 1878 t plaintiff had executed an instrument of gift of the Rs. 3,000 Putlibái, and they produced a document, dated the 3rd July 18 purporting to be signed by the plaintiff, whereby he made o Rs. 3,000 to Putlibái, of which Rs. 1,000 was to be held by in trust for his mother Dossibái during her life, and to be p back to him on her death, and the remaining Rs. 2,000 were be her own, absolutely.

The document commenced as follows:—

"To Pársi lady Bái Putlibái, the daughter of Rustomji E Croos. Written by Rustomji Edulji Croos: To wit. I giv in writing as follows:—I have brought and paid to you Rs. namely, three thousand in cash of the Bombay currency. particulars thereof are as follows:"

The succeeding clauses were to the effect above stated.

Among the issues raised at the hearing were the following

1. Whether the sum of Rs. 3,000 was the property o deceased Dossibái.

3. Whether the said sum was not given to Dhunbái or l libái, or one of them, as alleged.

8. Whether the plaintiff is entitled to recover from the defen ants, or any and which of them, the sum claimed, or any pa thereof.

In the course of the hearing, the above instrument of gift wa tendered in evidence. It was unstamped, and was objected to a therefore inadmissible, being an instrument of trust.

B. Tyabji (*Viccáji* with him) for the defendants.—The document is admissible, although not stamped. We put it in evidence, not to establish the trust which it declares, but merely as a record of a transaction already complete, viz., the gift of the Rs. 3,000 to Putlibái : *Kedarnáth Dutt* v. *Shamloll Khettry* (1).

(2) It is admissible on the question whether the third defendant, in respect of this Rs. 3,000 admittedly advanced to him, was liable to the plaintiff or to Dhunbái : *Manley* v. *Peel*(2), *Smart* v. *Nokes*(3), *Millen* v. *Dent*(4), *Haigh* v. *Brooks*(5), *Matheson* v. *Ross*(6). The provisions of the English Stamp Act (Stat. 33 and 34 Vic., c. 97, secs. 16 and 17) are similar to those in the Indian Act (XVIII of 1869, sec. 18).

(3) It is admissible to disprove the plaintiff's allegation that he had paid the money to the first and second defendants, to be invested by them on Dossibái's behalf. We only rely on the first sentence, which shows payment of the money to Putlibái. A part of a document not requiring a stamp, may be received: *Poncford* v. *Walton*(7), *Ex parte Squire*(8), *Raju Bálu* v. *Krishnáráv*(9).

Kirkpatrick (with *Lang*) for the plaintiff.—The document is inadmissible under art. 36 of sch. II and art. 14 of sch. I of the Stamp Act. Part of a document cannot be admitted in evidence. A document must be admitted or rejected as a whole: *Mattongeney Dossee* v. *Rámnáráin Sadkhan*(10). This document is not a record of a past transaction. It purports to state a contemporaneous gift. The past transaction is not proved, and, therefore, *Kedarnáth Dutt* v. *Shamloll Khettry*(11) is no authority. Cases decided under section 49 of the Registration Act do not apply, for the excluding words in that section are not so comprehensive as the words in section 18 of the Stamp Act.

The cases cited are, no doubt, authorities to show that documents, although unstamped, are admissible when tendered in evidence for a collateral purpose and not for the purpose of giving

(1) 11 Beng. L. R. 405.
(2) 5 Esp. 119.
(3) 6 M. & Gr. 911.
(4) 10 Q. B. 846.
(5) 10 Ad. & E. 309.
6 13 Jur. 307.
(7) L. R. 3 C. P. 167.
(8) L. R. 4 Ch. 47.
(9) I. L. R. 2 Bom. 273 at p. 283.
(10) I. L. R. 4 Calc. 83.
(11) 11 Beng. L. R. 405.

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effect to them; but this document is tendered, not for a collateral purpose, but as a valid instrument of gift, and by admitting it the Court will give it effect. The defendants' case is that the money claimed by the plaintiff was Putlibái's money, and that, as such, it was lent to the third defendant. Further, it is alleged that this money was Putlibái's by virtue of a gift of it made by the plaintiff to her. Apart from such gift it is not pretended that she had the money to lend. This document is produced in support of that case, and it is only by regarding it as a valid instrument of gift to Putlibái, and by giving it effect, as such, that it can be of any use as evidence here.

WEST, J.—I think that, for the purposes of this case, the use desired to be made, and which can be made, of the document sought to be put in, is collateral, and does not involve giving effect to the document as operative between the parties to it. The legal relation between the parties here depends on the transactions that took place between them and to these what passed between one of them and another third person is necessarily collateral, such person not being represented by a party in this suit. Nor can the admission of the document, as showing a particular fact to be probable in this suit, at all affect the relative positions of the parties to the document itself. That Putlibái had or had not the money, may be of importance in determining whence the third defendant obtained it, and the document, if proved, may aid me in determining whether she had it. The question of the terms on which she took it, is not for this purpose material; if it were, the document could not be received: *Evans* v. *Phero*(1). The document and the translation must be admitted on the latter being officially authenticated.

Attorneys for the plaintiff.—Messrs. *Ardesir and Hormusji.*

Attorney for the defendants.—Mr. *Pestonji Kavasji.*

(1) 2 Mac. & G. 319.