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the goods and pay the amounts of the *hundis*, the same are to be recovered from them. If this be not done, then with regard to as many *hundis* as shall be presented, those of the presenters thereof whose *hundis* may be of large amounts are to be consulted and the *hundi* people (holders) shall meet together and sell the goods on account of the drawers of the *hundis*. And as to the net amount which may be realized, all the *hundi* people are to take (divide) the same according to the average. And, if there be any deficiency therein, they are to recover the same from the drawers of the *hundis* with interest at the rate of ¾ per cent. (per mensem); and if there be a surplus, the same is to be deposited with the *mahajans* (1) on account of the drawers.

9. *Ninth Article.*—After the safe arrival (2) of the vessel in which the goods have been shipped from here, the owner of the goods is to take charge of the goods thereof, and to pay the moneys of the *jokhmi hundis* which may have been drawn in respect thereof; but if that party (*i.e.*, owner) after having taken charge of the goods should wilfully decline to pay the moneys of the *hundis*, or if he be unable to pay, and the *hundis* be returned, the moneys thereof shall be paid to the purchasers of the *hundis*, by the drawers or sellers of the *hundis*, (*i.e.*,) whichever may able to pay with the interest and the charges appertaining to the dishonoring (thereof) and the expense without any objections whatever being raised by the latter.

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[349] ORIGINAL CIVIL.

Before Mr. Justice West.

RUSTOMJI EDULJI CROOS, *Plaintiff v.* CURSETJI SORABJI CROOS AND OTHERS. *Defendants.** [29th March and 1st April, 1880.]

Evidence—Admissibility of unstamped document for collateral purpose—Stamp Act (XVIII of 1869), sec. 18, ch. I. 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 defendant's 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 Dossibai, 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 Dossibai'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 Dhunbai, who with her daughter Putlibai resided with them.

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* Suit No. 83 of 1879.

(1) *i.e.*, meaning representing the people in general.

(2) *i.e.*, at the place of destination.

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The first and second defendants alleged that the sum of Rs. 3,000 was originally the property, not of Dossibai, but of the plaintiff himself; that he had made it over as a gift to his daughter Putlibai; that it has been lent by her to the third defendant, and duly [350] 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 Dossibai, and alleged that he had received the money as a loan from the plaintiff's daughter Putlibai, 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 Putlibai 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 the plaintiff had executed an instrument of gift of the Rs. 3,000 to Putlibai, and they produced a document, dated the 3rd July 1878 purporting to be signed by the plaintiff, whereby he made over Rs. 3,000 to Putlibai, of which Rs. 1,000 was to be held by her in trust for his mother Dossibai during her life, and to be paid back to him on her death, and the remaining Rs. 2.000 were to be her own, absolutely.

The document commenced as follows:—

"To Parsi lady Bai Putlibai, the daughter of Rustomji Edulji Croos. Written by Rustomji Eduji Croos: To wit. I give you in writing as follows:—I have brought and paid to you Rs. 3,000, namely, three thousand in cash of the Bombay currency. The 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 of the deceased Dossibai.

3. Whether the said sum was not given to Dhunbai, or Putlibai, or one of them, as alleged.

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

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

[351] *B. Tyabji* (*Viccaji* 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 Putlibai: *Kedarnath 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 Dhunbai: *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, ss. 16 and 17) are similar to those in the Indian Act (XVIII of 1869, s. 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 Dossibai's behalf. We only rely on the first sentence, which shows payment of the money to Putlibai. A part of a document not

(1) 11 B.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.

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requiring a stamp may be received: *Ponsford* v. *Walton* (1), *Ex parte Squire* (2), *Raju Balu* v. *Krishnarav* (3).

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 Dosee* v. *Ramnarain Sadkhan*(4). 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, *Kedarnath Dutt* v. *Shamloll Khettry* (5) is no authority. Cases decided under s. 49 of the Registration Act do not apply, for the excluding words in that section are not so comprehensive as the words in s. 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 [352] 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 Putlibai's money, and that, as such, it was lent to the third defendant. Further, it is alleged that this money was Putlibai'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 Putlibai, and by giving it effect, as such, that it can be of any use as evidence here.

JUDGMENT.

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 Putlibai 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. *Prothero* (6). 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) L.R. 3 C.P. 167. (2) L.R. 4 Ch. 47. (3) 2 B. 273 (283).
(4) 4 C. 83. (5) 11 B.L.R. 405. (6) Mac. & G. 319.