Rs. 2,500 on the 20th of November 1859 might entitle the Court to presume a prior demand of payment, but, as there was not any legal necessity for a demand, I do not give any opinion as to whether the part-payment would warrant such a presumption. For the reasons already given, I think that this action is barred by the Limitation Act (XIV. of 1859, Sec. 1., cl. 16), and, therefore, that the issue must be found in the affirmative for the defendant.

But as it is not pretended that more than half of the amount of the note has been ever paid, and the only excuse put forward for not paying the remaining half and interest is the statement of the defendant's counsel, unsupported by any evidence given in this cause, that the defendant has, in some manner not disclosed, rendered himself useful to the late Jáfar Alí, and, therefore, that the latter did not intend to enforce the payment of the balance due on the note, I must, in making a decree for the defendant on the ground that this action is barred by the Limitation Act, decline to award him any costs.

Decree for the defendant without costs.

Attorney for the plaintiffs : *C. Tyabji.*
Attorney for the defendant: *Khanderáv Moroji.*

Appeal Suit No. 164.

April 7.

MULTA'NI MULCHAND CHUTUMAL *et al.* .....*Appellants.*
THAKAR SUNDARJI NA'RANJI .....*Respondent.*

Authority of Agent how proved—Insurance—Procedure—Nonsuit.

To prove the authority of an agent who underwrites a policy of insurance, it is not necessary, in order to charge his principal, that the instrument appointing such agent should be produced, if it is shown that he has been in the habit of underwriting policies for his principal, *and that the latter has been in the habit of paying losses upon policies so subscribed.*

Semble—When at the close of the plaintiffs' case the evidence adduced is not sufficient to connect the defendant with the instrument sued upon, the presiding Judge acts rightly in entering a decree for the defendant without hearing his evidence.

THIS was a suit brought on a policy of insurance, bearing date the 20th of March 1866, effected by the plaintiffs

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on their coasting vessel "Khaṭáv Pasá," for a voyage from Ghodábari to Bombay, and alleged to have been underwritten by the defendant for Rs. 2,000.

The case came on for hearing before SARGENT, J., on the 27th of November 1869. The first issue raised was whether the policy sued upon was underwritten by the defendants. The other issues are not material for the purpose of this report.

It appeared from the evidence that the defendant, at the date of the policy, carried on business by means of a *munim*, Jivan Ladhá, and that the policy in question was underwritten by Chápsi Jivan, the son of Jivan Ladhá. No written instrument authorising Chápsi to underwrite policies for the defendant was given in evidence, but the witnesses for the plaintiff (whose evidence on this point is given at length in the judgment of the Chief Justice) stated that Chápsi was in the habit of underwriting policies in the name of the defendant, but no further evidence of authority was given. The broker who negotiated the policy was not called, and, it was alleged, could not be found.

The plaintiffs put in evidence the following letter, written by the attorney of the defendant to the plaintiff:—

"To MULCHAND CHUTUMAL—I am instructed by my clients, Vassanji Ranandás, Sundarji Náranji, Mávji Prágji, and Dámodhar Karsandás, to state that they believe that the signatures of my clients were obtained this day by your broker on a policy of insurance of goods shipped by the native vessel Ganjá 'Khaṭáv Pasá,' from Ghodábari for Bombay, after you were in possession of some information of the loss of the vessel, as my clients received a letter this afternoon intimating the loss. I am to call upon you to return the policy to my clients by the bearer of this notice, otherwise such legal proceedings will be adopted against you as my clients may be advised, for the costs of which you will be held responsible. Dated this 20th day of March 1866.

"Yours truly,

(Signed) "VINA'YAKRA'V HARICHAND."

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At the close of the case for the plaintiff, the learned Judge stopped the case, stating that the evidence given for the plaintiff of Chápsi's authority to negotiate for the defendant was not sufficient. He found the first issue for the defendant, and gave judgment for him with costs.

The plaintiffs appealed from this decision, and the appeal was argued before COUCH, C.J., and WESTROPP, J., on the 5th of March 1870.

Anstey and *Marriott*, for the appellants, contended—(I.) That there was sufficient evidence of authority, as Chápsi must be considered to have acted as the broker of the underwriter to sign the policy. (II.) That the evidence of authority, if not sufficient to have justified a decree for the plaintiffs, was sufficient to render it necessary for the defendant to rebut it. (III.) That the Judge had no power under the Code to enter what was substantially a nonsuit, as it was the right of the parties to have the whole evidence taken. [COUCH, C.J.:—The question is whether, on the evidence you gave, the Judge could not properly find for the defendants.] There was here an implied authority in Chápsi, which was sufficient: *Pickering* v. *Busk* (*a*).

The Honorable *A. R. Scoble* (Acting Advocate General) (with him *McCulloch*), for the respondent, contended that there was no evidence of authority, express or implied; that a mere scintilla of evidence did not necessarily call for counter-evidence on the part of the defendant: *Giblin* v. *McMullen* (*b*), *Maxted* v. *Paine* (*c*); that the course adopted by the learned Judge in the court below was correct.

Anstey in reply.

Cur. adv. vult.

7th April. COUCH, C.J.:—This was an appeal from a decision of Sir Charles Sargent, who made a decree in favour of the defendant. The suit was brought on a policy of marine insurance, and the first issue raised was whether the policy was underwritten by the defendant. The policy was alleged to have been made, by the defendant's

(*a*) 15 East, 38. (*b*) Law Rep. 2, P. C. Ca. 317, 339.
(*c*) Law Rep. 4, Ex. Ca. 81.

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authority, by Chápsi Jivan, and the question was whether he had authority from the defendant to sign it.

With regard to the law as to what evidence of authority should be adduced in such a case by the plaintiff, I cannot do better than refer to the valuable work of Sir Joseph Arnould, lately one of my colleagues on this bench. His work is one of great authority, and at page 199 (2nd ed.), where he deals with this subject, he says, "Agents may be appointed for the purpose not only of effecting sea policies for the assured, but also of subscribing them for the underwriters. In this latter case they are generally authorised to act by power of attorney; but it is not requisite that such power should be produced at the trial if satisfactory evidence can be given of the agent's authority without its production. As to what shall be satisfactory evidence in the absence of the written authority is a point on which there has been some little fluctuation in the decisions. Thus, where a broker, called by the plaintiff to establish the defendant's subscription of the policies, proved that the defendant's name had been written under the policy by one Hutchins, who was in the constant habit of subscribing policies in the defendant's name, and had done several for the witness and for others to his knowledge, Lord Kenyon ruled that this was sufficient evidence to charge the defendant, without the production of the written authority under which he acted; but Lord Ellenborough in a later case held precisely similar evidence insufficient." Sir Joseph Arnould quotes *Courteen* v. *Touse* (*d*) as the case in which it was so decided, and adds in his note, "and rightly, see Duer, vol ii., p. 341, note *a*." In a case in 4 Campbell, p. 88, also cited by Sir Joseph Arnould (*e*), the note is that, in an action on a policy of insurance subscribed by the defendant's agent under a power of attorney, it is sufficient proof of the agency that the defendant is in the habit of paying losses upon policies so subscribed by the agent in his name, without producing the power of attorney.

Now, to apply this law to the case before us, let us see what

(*d*) 1 Camp. 43. (*e*) *Haughton* v. *Ewbank*.

the evidence is upon which the appellant relies, and whether it fulfils these requirements.

Megráj Dharamdás, the first witness who speaks to this point, says, "I am a broker, and know the defendant. I know his *munim*, Jivan Ladhá, and also his son, Chápsi Jivan. I know his handwriting. Of the policies shown me, three were signed by Chápsi in my presence. The policy sued upon was signed by him. I am a Multáni, and of the same caste as the plaintiff, and am employed by him as broker. I and my brother were the brokers employed in effecting this policy. We personally took part in the transaction, but I can't swear that I saw Chápsi Jivan sign it, but I recognise the signature as his. It is not in the handwriting of Jivan Ladhá. It is usual to have a *kachchá* policy first made out, upon which the *pakká* policy is afterwards prepared. I have known Chápsi sign *pakká* policies without receiving instructions from Jivan. I cannot give any instance in particular, there are so many policies; but I used to see Chápsi signing them without consulting Jivan. I know Chápsi used to sign. He is 15 or 16 years old now. I have known him four or five years. He was 11 or 12 when I first knew him."

Tájumal Nárandás, the only other witness who gives evidence as to the authority, says, "I carried on business in Bombay, in partnership with Manjatrám Manumal, during 1865-1866. I know the parties to this suit. I have known the defendant for twenty years. I have sometimes transacted business in Bombay with the defendant, through the agency of Chápsi Jivan. The nature of his business was writing and executing policies of insurance. I did not personally take part in effecting the insurance the subject of this suit. My partner, Manjatrám Manumal, may have procured the policy to be signed. Chápsi Jivan was 13 or 14 years old in 1865-1866. He was in the habit of signing policies, subject to the approval of Jivan Ladhá. I never knew of any instance of a policy signed by Chápsi Jivan being cancelled because it was disapproved by Jivan Ladhá. I cannot give any instances of Jivan Ladhá paying or otherwise ratifying policies of insurance signed by Chápsi Jivan

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in the defendant's name." That is all the oral evidence given for the plaintiff, and it falls short of what is necessary to show that Chápsi Jivan had authority to underwrite this policy. It is very much less than what was considered by Lord Ellenborough to be necessary in such cases, and what is stated by my brother Arnould to be required—his opinion being supported not only by English, but also by American, authority.

The appellant's counsel also relied upon the letter of the 20th of March, written by the attorney for the defendant on the day that the policy appears to have been underwritten, which, it was said, amounted to an admission of the authority of Chápsi Jivan to sign for the defendant. [His Lordship read the letter.] After considering its terms, I think that this letter cannot be construed as an admission of the authority of Chápsi Jivan. It is to be remembered that the writer of it is not writing merely on behalf of the defendant, but on behalf also of the other underwriters of the policy, with regard to whom this question does not arise, and in writing he is putting forward grounds of complaint that were common to all the underwriters. He wanted to give notice that the policy was not binding; and on that ground he seeks to have it returned. He had no right to have that done; but he, very properly, informed the assured of the facts which he alleged vitiated the policy.

As, then, there is not that amount of evidence as regards the authority of Chápsi which was sufficient for the Court to act upon, and as that deficiency is not supplied by the letter relied upon for the appellant, I think the conclusion at which the learned Judge arrived was right, and one at which I should myself have arrived if I had presided at the trial; and his judgment must, therefore, be affirmed.

WESTROPP, J.:—I fully concur, and cannot add anything with advantage to what the Chief Justice has said.

Decree confirmed with costs.

Attorneys for the appellants: *Dallas and Lynch.*

Attorney for the respondent: *J. Cleary.*