

1894.

TIRMUKLAL  
HARRISANRAIv.  
KALYANDAS  
KHUSHAL.

We must, therefore, make the rule absolute, but we think, under the circumstances, without costs, as the precise point now taken was not raised before the First Class Subordinate Judge, nor made a distinct ground in the application for the rule.

*Rule made absolute.*

## APPELLATE CIVIL.

### FULL BENCH.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine and  
Mr. Justice Candy.*

#### IN RE MARINE INSURANCE CERTIFICATE.\*

1894.  
January 15.

*Stamp—Stamp Act (I of 1879), Sec. 3, Cl. 15—Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document.*

A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and, lastly, expressly guaranteeing payment of losses and claims settled under it, and which on the face of it does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under clause 15, section 3 of the Stamp Act (I of 1879).

THIS was a reference by J. M. Campbell, Collector and Superintendent of Stamps at Bombay, under section 46 of the Indian Stamp Act (I of 1879).

The reference was made in the following terms:—

"By a certificate of insurance of the Underwriting and Agency Association, Limited, dated at Karachi 14th January, 1893, and signed by the agents of the Association \* \*, it is certified that insurances having been effected, the conditions of which are in the assurer's possession, the assurers declare under such insurances the sum of Rs. 800 on certain goods shipped at and from Karachi to Bombay, and note appears at the foot of the certificate.

"That on application at the head office in London the certificate may be exchanged for a stamped policy, and that losses and claims shall be payable in conformity with the conditions of the

\* Civil Reference, No. 8 of 1893.

insurances, on surrender of the certificate to the agents of the Association at Karáchi.

"No policy of insurance stamped under the law in force in India appears to have existed in respect of the insurance at the date of the certificate."

The Collector and Superintendent of Stamps was of opinion that having regard to section 3 (clause 15) of the Stamp Act (I of 1879) the certificate should be regarded as a policy of insurance, and as such required to be stamped under article 49 (a), Schedule I of the Act.

He, therefore, submitted the following question:—

"Whether the above-mentioned certificate requires any and what stamp?"

The certificate of insurance referred to above was as follows:—

Certificate of Insurance of the Underwriting and Agency Association, Limited, 20 Bucklersbury, London E. C.	No. IV 8 C <span style="border: 1px solid black; padding: 2px;">R</span> K 2 packages piece-goods. Payable in Karáchi. Sum insured Rs. 800. Premium, including guarantee and Agency commission, per cent.	Rs. 800 Agent's No. 2. Marine Insurance Certificate of the Underwriting and Agency Association, Limited, 20 Bucklersbury, London E. C. <p style="text-align: center;"><i>Dated at Karáchi, 14th January 1893.</i></p> This is to certify that insurances having been effected, the conditions of which are in our possession and open to the inspection of the assured, and that we hereby declare under such insurances the sum of Rupees eight hundred only on goods as p. margin F.S.A. p. clause in policy valued at Rupees eight hundred only, shipped per B. I. S. N. Co. (Ld) S. S. "Karagola" V. 55 G. at and from Karáchi to Bombay. On application at the head office in London this certificate may be exchanged for a stamped policy. Losses or claims shall be payable in conformity with the conditions of the said insurances to the order of Messrs. Ritchie, Stewart and Co. on surrender of this certificate to the Underwriting and Agency Association, Limited, Agents to the Association at Karáchi. The consideration paid hereon is not necessarily the same as that paid on the original insurance, any difference being the consideration as between the Association and the assured for the guarantee of the Association and in lieu of Agency expenses. The Underwriting and Agency Association, Limited, hereby guarantees the payment of losses or claims settled under this certificate or under policies against which this certificate is issued. (Signed) McLEAR MACKENZIE, Agents.	Certificate of Insurance of the Underwriting and Agency Association, Limited, 20 Bucklersbury, London E. C.
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*Anderson* (with *Lang*, Advocate General) for the Collector and Superintendent of Stamps :—The document is a policy of insurance under clause 15, section 3 of the Stamp Act. The mere production of the document itself would entitle the holder to get himself reimbursed for loss, because the document itself guarantees such payment. It refers to some other document in England, but the reference is merely colourable. The stamped policy in England would not make the present document the less a policy.

*Ghanashám N. Nádkarni* (*amicus curiæ*) *contra* :—The document is nothing but a certificate or a declaration that certain conditions have been accepted subject to the execution of a formal policy. It, therefore, falls under clause 14, Schedule II of the Stamp Act. It merely states that a contract has been entered into, and that the document evidencing the contract is to be made hereafter. In order to save misunderstanding it merely mentions the terms which are to be embodied in the formal document. Such a document as the present is not valid in law and cannot be made the basis of a suit. An action can lie only on a policy and not a slip like the present.

*Anderson*, in reply :—The description of a slip is given by Arnould at p. 194. It is merely a piece of paper which a broker takes round for the initials of the underwriter. There are no conditions mentioned in it.

SARGENT, J. :—We think the document requires to be stamped as a policy. It is not a mere "slip" or memorandum of a proposed insurance, the effect of which is discussed in *Xenos v. Wickham*<sup>(1)</sup>. It mentions the sum for which the assurer declares the name of the ship, the voyage and the premium, and provides for the losses being paid on its production in conformity with certain conditions in the possession of the assurers, and, lastly, it expressly guarantees the payment of losses and claims settled under it. The document on the face of it does not contemplate the necessity of any other document of a more formal character being passed to the assured, and read with the conditions to which it refers, is clearly the instrument upon which the assured is intended to enforce his claim. It is, therefore,

(1) 14 C. B. Rep., N.S., 452.

a document by which the parties executing it engage to indemnify against losses arising from an unknown or contingent event, and falls under clause 15 of section 3 of the Stamp Act; I of 1879.

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INSURANCE  
CERTIFICATE.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

PATEL KILA'BHA'I LALLUBHA'I (ORIGINAL PLAINTIFF), APPLICANT,  
v. HARGOVAN MANSUKH AND OTHERS (ORIGINAL DEFENDANTS),  
OPPONENTS.\*

1894.

January 17.

*Landlord and tenant—Lease—Ejectment—Title—Tenant cannot dispute  
landlord's title.*

The plaintiff sued for possession of a certain house, alleging the expiry of the lease (*kabulāyat*) on which the defendants held it as tenants. The Mámlatdár dismissed the suit, being of opinion that the plaintiff had no title to the house when he granted the lease, and that the house belonged to the defendants when they passed the lease.

*Held*, reversing the decree, that the defendants (tenants) having executed the *kabulāyat* could not deny the plaintiff's title as a ground for refusing to give up possession, and the Mámlatdár himself, therefore, could not go into the question.

*Parbhudás v. Fulba*<sup>(1)</sup> distinguished.

APPLICATION under the extraordinary jurisdiction—section 622 of the Civil Procedure Code (Act XIV of 1882)—against the decision of the Mámlatdár of Daskroi, in the Ahmedabad District.

The plaintiff sued under the Mámlatdárs' Act (Bom. Act III of 1876) to recover possession of a house from the defendants, alleging that they were his tenants under a lease which he had granted to them, and that although the term of lease had expired they refused to vacate.

\* Application No. 134 of 1893 under extraordinary jurisdiction.

(1) P. J., 1892, p. 406. The case of *Parbhudás Lakshmidás v. Fulba* above referred to, was an application, No. 141 of 1892, under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code Act XIV of 1882) to reverse the decision of the Mámlatdár of Nadiád in the Ahmedabad District.

The plaintiff Parbhudás Lakshmidás sued the defendant Fulba, widow of Vansang Navalsang, for possession of a house, alleging that she was his tenant and that her term of tenancy had expired. In proof of her holding as his tenant he produced a rent-note signed by her.