law. It would, we think, be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals.

In the result, the appeals are allowed, the orders passed by the High Court in the two writ petitions filed by the respondent are set aside and the said writ petitions are ordered to be dismissed with costs.

Appeals allowed.

R. RATILAL & CO.

v.

NATIONAL SECURITY ASSURANCE CO. LTD.

(A.K. SARKAR, J.C. SHAH AND RAGHUBAR DAYAL, JJ.)

Indian Stamp Act (II of 1899), s. 35, Sch. I. Art. 47—Unstamped letter of cover of fire insurance—If and when admissible in evidence.

The appellant filed a suit on a duly completed policy of fire insurance and an unstamped letter of cover in respect of the same kind of insurance, issued by the respondent, to recover from it the loss suffered as a result of the destruction of the insured goods by fire. The respondent admitted liability on the policy but with regard to the letter of cover it contended that the letter was not admissible evidence for want of stamp.

Held : Per Sarkar and Shah JJ. (i) A letter of cover no doubt contains a contract of insurance but it is not a policy of insurance and cannot be admitted in evidence as such under s. 35 of the Stamp Act.

The Citizens Insurance Co. of Canada v. *William Parsons*, 7 A.C. 96.

(ii) The proper construction of the General Exemption in Art. 47 of schedule I of the Stamp Act is that a letter of cover is not exempt from duty only when it is used for compelling the delivery of the policy mentioned in it. If it is used for any other purpose it is not exempted. When it is not so exempt it is an instrument chargeable with duty under s. 3 of the Stamp Act and admissible

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in evidence on payment of the requisite duty and penalty under s. 35 of the Act.

Per Raghubar Dayal J. (*dissenting*):— Section 35 contemplates letters of cover to bear the necessary stamp at the time of execution and that any subsequent affixing of requisite stamp on an unstamped letter of cover will not make it a document which can be used for any purpose including the basing of a claim. The proviso to the General Exception cannot be construed to mean that subsequent to the execution of a letter of cover any party standing to gain thereby may just put the requisite stamp on it and thereafter use it for enforcing any claim for any purpose.

Narayanan Chettiar v. *Karuppathan*, I.L.R. 3 Mad. 251.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 382 of 1961.

Appeal from the judgment and decree dated May 24, 1960, of the Calcutta High Court in Appeal from Original Decree No. 144 of 1958.

B.K. Bhattachargee, D.K. De and S.N. Mukherjee, for the appellant.

N.C. Chatterjee and *D.N. Mukherjee*, for the respondent.

December 16, 1963. The Judgment of A.K. Sarkar and J.C. Shah JJ. was delivered by Sarkar, J. Raghubar Dayal J. delivered a dissenting Opinion.

Sarkar J.

SARKAR J.—The appellant filed a suit in the Original Side of the High Court at Calcutta on a duly completed policy of fire insurance dated March 15, 1951 and bearing No. 26625, and an unstamped letter of cover dated November 5, 1951 in respect of the same kind of insurance issued by the respondent, to recover from it the loss suffered as a result of the destruction of the insured goods by fire. The respondent admitted liability on policy No. 26625 but with regard to the letter of cover it contended that the letter was not admissible in evidence for want of stamp. As it did not contest liability on that letter on any other ground nor on the policy, the only question in this appeal is whether the letter of cover can be admitted in evidence. That question depends on some of the provisions of the Stamp Act, 1899, to which reference will be made in due course.

The letter of cover which bore the description 'Interim Protection Note' provided that the appellant "Proposing to effect insurance against fire..... and having agreed to pay .....Tariff Premium thereon, the property is hereby held insured to the extent of Rs. 1,00,000 in the manner, specified below." Then followed a description of the goods and the statement that the risks to be covered were to be as per the said policy No. 26625 for twelve months from November 5, 1951. Thereafter it was stated, "The protection is in force for thirty days..... or until the Company's Policy is prepared unless the Insurance is declined". The fire on which the claim is based, occurred on the night of November 5, 1951 or during the early hours of the morning of the next day. It is not in dispute that the appellant offered to pay all premium due on the letter of cover.

It will be useful at this stage to refer to two of the provisions of the Stamp Act and they are s. 35 and Art. 47 in Schedule I. Section 35 provides, "No instrument chargeable with duty shall be admitted in evidence for any purpose.....unless such instrument is duly stamped: Provided that —(a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable,.....together with a penalty of....." There is no dispute that the letter of cover is an "instrument". Schedule I of the Act specifies the duties payable on various instruments. Article 47 of the Schedule specifies the duties chargeable on various kinds of policies of insurance. Section B of this article deals with fire insurance policies and specifies various duties as payable in respect of various kinds of policies of fire insurance for diverse amounts, the minimum duty chargeable on a policy of insurance under this article being fifty naye paise. Now this article contains at the end a general exemption which is in these words:

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"GENERAL EXEMPTION.

Letter of cover or engagement to issue a policy of insurance: Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned."

It seems to us clear that the words 'such policy' in the proviso to the General Exemption in Art. 47 refer to the kind of policy with which a letter of cover or engagement to issue a policy mentioned in the first part of the exemption, is concerned. In the present case, therefore, the words "such policy" would indicate a policy of fire insurance. This does not appear to be disputed.

It was said on behalf of the appellant that the letter of cover was really a policy of insurance and would be admissible in evidence on payment of the duty chargeable on a policy of fire insurance and penalty under the provisions of s. 35 proviso (a) of the Act. It was next said that even if it was not a policy of insurance but a letter of cover only, it would still be admissible in evidence under that section as an instrument chargeable with duty as it was neither a bill of exchange nor a promissory note nor an instrument chargeable with duty not exceeding ten naye paise.

The learned trial Judge held that the instrument was not a letter of cover but it was in reality a policy of insurance because it contained a contract of insurance. It is not in dispute that if this view is correct, then on payment of the duty and the penalty the instrument would be admissible in evidence under s. 35. The Appellate Bench of the High Court, however, was unable to accept the view of the learned trial Judge and, we think, in this the Appellate Bench was right. The fact that a letter of cover contains a contract of insurance cannot make it a policy of insurance. As the learned Judges of the Appellate Bench rightly pointed out, the letter of

cover was granted a general exemption from the liability to the duty specified in Art. 47, that is to say, it was exempted from duty which would, but for such exemption, have been payable on it under that article. Now under Art. 47 duty was payable on various policies of insurance. It would follow that a letter of cover would have been liable to duty as a policy of insurance if the exemption had not been granted. The letter of cover had, therefore, to contain a contract of insurance for it would not otherwise have been liable to duty under Art. 47. But it did not thereby become a policy of insurance only for then the exemption and the article would have been in conflict with each other. We may also mention that the word 'cover' itself indicates that property is held insured or covered by it against certain risks.

What then is a letter of cover? How is it to be distinguished from a policy of insurance? The Act contains no definition of it or of an 'engagement to issue a policy of insurance', but the terms are well known in trade. The Act is dealing with business-men and with mercantile documents well known to them. It may be shortly stated that a letter of cover no doubt contains a contract of insurance but it is not a policy of insurance in the common understanding of that word in the trade. It is well known that in order to obtain an insurance against the risk of fire the assured has first to send a proposal to the insurer and then the insurer takes a little time in making enquiries as to whether it would accept the proposal and undertake the obligation of covering the risk. He issues a policy only after he is satisfied that it would be a prudent business proposition to do so. Experience of trades people has however shown that some kind of protection for the interim period when the insurer is making the enquiries is necessary. This protection is given by what is called a 'letter of cover'. It is expressly a contract granting insurance for the period between its date and until a policy is prepared and delivered if one is eventually issued or otherwise upto a date mentioned in it, just as a period of thirty days is mentioned in the Interim

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Protection Note issued in this case: see *The Citizens Insurance Co. of Canada* v. *William Parsons*(1). We think that the present Interim Protection Note satisfies the conditions which would make it a letter of cover in this sense. It gives protection for a period of thirty days or the period upto the date of the issue of the policy. An engagement to issue a policy means, it seems to us, more or less the same thing as a letter of cover. A letter of cover, therefore, cannot be admitted in evidence under s. 35 as a policy of insurance.

The next question is whether a letter of cover is itself an instrument chargeable with duty under the Act. It is not disputed that if it is not so chargeable, it cannot be admitted in evidence under s. 35 by subsequent payment of duty and penalty. Now s. 3 specifies instruments which are chargeable with duty under the Act. It says, "Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor respectively, that is to say,—(a) every instrument mentioned in that Schedule which.....is executed in India on or after the first day of July 1899". July 1, 1899 is the date on which the Act came into force.

Now the contention of the respondent is that a letter of cover is not an instrument chargeable with duty because the General Exemption in Art. 47 of the Schedule exempts it from such duty. This contention was accepted by the learned Judges of the Appellate Bench of the High Court who pointed out. "It is significant that the words used are not that such letter is chargeable with duty. The words used are 'bears the stamp prescribed by the Act for such policy'. On a proper interpretation this means that such letter of cover is not chargeable with duty as such under the Act but if it bears the stamp prescribed by the Act for a policy of insurance, then it will shed its inability and will become a competent document on which a claim for loss could be made."

(1) 7 A.C. 96.

They further observed, "as no stamp is fixed for such a letter of cover being not a document chargeable with duty, the statute uses the significant words or 'bearing the stamp' and indicates the rate by saying that the stamp must be the same for such a letter of cover which is prescribed for a policy of insurance under the Act". In this Court Mr. Chatterjee for the respondent also advanced the same argument.

We are unable to accept the view which found favour with the Appellate Bench of the High Court. The matter was put in two ways. The first was that an instrument which is exempted from duty by Schedule I is not chargeable with duty under s. 3 and a letter of cover is so expressly exempted. No doubt, if an instrument is exempted by the Schedule from duty, then it cannot be chargeable. But we do not think that a letter of cover is for all purposes exempted from duty by the General Exemption. We think the proper construction of the General Exemption clause is that the exemption is to apply only if the letter of cover is used for compelling the delivery of the policy mentioned in it. If it is used for any other purpose, then it is not exempted. That is why a proviso has been employed in the provision and the effect of that is to take the letter of cover out of the exemption in all other cases. If it is taken out of the exemption, then, of course, the present argument fails. We are unable to see how a letter of cover can be said to have been exempted for all purposes, if certain things cannot be claimed under it for the sole reason that it does not bear a stamp. If it were exempted for all purposes, it would be fully enforceable even without a stamp. When a letter of cover is not stamped, then nothing is claimable under it except the delivery of a policy. If, however, it bears the stamp prescribed for the appropriate policy, a claim can be made under it. It seems to us that if an instrument bears a stamp, it has incurred the liability for the stamp duty; it has not then been exempted. Therefore it cannot be said that a letter of cover is exempted from duty in all cases. When

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it is not exempted, it is an instrument chargeable to duty.

The other way in which the contention was put is based on the use of the words 'bears the stamp prescribed by this Act'. It was said that if an instrument is made to bear a stamp, it is not thereby made chargeable to stamp duty. We are wholly unable to see how an instrument can bear a stamp prescribed by the Act unless it is chargeable to duty under the Act for the Act deals only with instruments chargeable to duty under it. It is difficult to appreciate the argument that what the proviso meant by the use of the words 'bears the stamp prescribed by this Act for such policy' was only to indicate the amount of the duty. No doubt the rate is there, but the instrument has to bear a stamp of that rate. The Act nowhere says anything as to how an instrument is to bear a stamp. Section 17 says that all instruments chargeable with duty shall be stamped before or at the time of execution. If the letter of cover was not chargeable to duty but has only to bear a stamp as the respondent contends, s. 17 would not apply to it. There would then be no provision to prevent an instrument which is not chargeable to duty but is required to bear a certain stamp, from having that stamp affixed to it at any point of time. The result would then be that where an instrument has only to bear a stamp, the stamp can be affixed even at the hearing before the instrument is tendered. That, of course, would not assist the respondent at all and would, in our view, introduce an anomaly in the Act which would be the result of putting an unnatural construction on the words 'bears the stamp'. We think that by the use of the words 'bears the stamp' the legislature intended to convey that a letter of cover would be chargeable to duty in all cases except for compelling delivery of a policy.

A letter of cover is, in our opinion, therefore, an instrument chargeable to duty under the Act and so admissible in evidence on payment of the requisite duty and penalty under s. 35 of the Stamp Act as

it is neither an instrument chargeable to duty not exceeding ten naye paise nor a bill of exchange or a promissory note.

It seems to us, though we do not base our judgment on it, that the idea of exempting a letter of cover from payment of duty in the first instance was to avoid the hardship of payment of duty twice over on the same insurance, for the policy issued after the letter of cover had to insure the goods from the time that the letter of cover itself insured them and the policy had to be stamped. If the policy insured the goods from a date after the expiry of the insurance by the letter of cover, the latter would then be an independent policy of insurance, may be for a shorter time; it would not then be an interim cover and, therefore, not a letter of cover at all. It may also be stated that in very few cases it would be necessary to enforce the letter of cover as an insurance for it is unlikely that in many cases the fire would have occurred during the period covered by it.

We have now to state that the appellant had paid the duty and penalty as required by s. 35. There is no objection any more to the admissibility of the letter of cover in evidence. The only defence that was taken by the respondent to the claim of the appellant, therefore, fails and the appeal should succeed.

We wish, however , to observe that we have in this judgment dealt only with a letter of cover concerning fire insurance and our remarks on the interpretation of the proviso in the General Exemption in Art. 47 of Schedule I to the Act have been made in that context only. Whether those remarks would apply in the case of a letter of cover concerning other varieties of insurance was not a matter for our consideration and on that question we have expressed no opinion.

We would for these reasons allow the appeal and pass a decree in favour of the plaintiff-appellant for Rs. 93,628/8/- and costs with interest thereon from the date of the judgment of the learned trial Judge at six per cent.

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RAGHUBAR DAYAL J.—I agree that the interim protection note does not amount to a policy of insurance and that it is a letter of cover or engagement to issue a policy of insurance. I do not agree that it can be subsequently stamped in view of the proviso (a) to s. 35 of the Indian Stamp Act, hereinafter called the Act.

The interim protection note, being a letter of cover, is exempted from stamp duty under the general exception to art. 47 of Schedule I of the Act. It can be used to base a claim, or for any other purpose, only if it bears the stamp prescribed by the Act for the policy which is to be issued in pursuance of the letter of cover. The trial Court admitted this letter of cover on the appellant's paying the requisite duty and penalty under s. 35 of the Act. The High Court has held that this could not be done as the provisions of s. 35 of the Act were not applicable to documents which were not chargeable with duty under the Act. The correctness of this view is challenged for the appellant.

The general exception, together with the proviso reads:

> "Letter of cover or engagement to issue a policy of insurance:
>
> Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned."

Section 35 of the Act, omitting the provisos other than (a), reads:

> "No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees of a sum equal to ten times such duty or portion;"

It is clear that an unstamped letter of cover or engagement to issue a policy of insurance can be used only for compelling the delivery of the policy therein mentioned, and can neither be used for any other purpose nor can any claim be based on it. A claim can be based on it if it bears the stamp prescribed by the Act for the policy contemplated by the letter of cover or engagement. The question then is whether the proviso contemplates the letter of cover to bear the stamp prescribed for the policy at the time it is executed or can take in a letter of cover which is not so stamped at the time of its execution but is subsequently stamped by any person interested in stamping it or under any orders under the Act. I am of opinion that it contemplates letter of cover to bear the necessary stamp at the time of execution and that any subsequent affixing of requisite stamps on an unstamped letter of cover will not make it a document which can be used for any purpose including the basing of a claim.

The various provisions of the Act provide for the subsequent stamping of the document only when that document is chargeable with duty, under the provisions of s. 3 of the Act. The Act does not, and naturally, could not have dealt with orders for subsequent stamping of documents which at the time of execution are not liable to stamp duty. They

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are good valid documents without any stamp duty and therefore no question can arise in future about their being stamped under the orders of Court or a public officer. There is no such provision either in the Act, though a number of sections deal with the subsequent charging of the deficit duty and penalty as well. No penalty can be contemplated on account of a document being not stamped when it required no stamp under the provisions of the Act and was therefore not chargeable with stamp duty.

It is pertinently remarked in. *Narayanan Chetti* v. *Karuppathan*(1) :

> "It appears to me that the levy of a penalty authorized under the proviso, on the admission of an insufficiently stamped document, implies, a punishment for neglect in failing to affix the proper stamp at the time of execution..... The levy of a penalty shows that the date of execution is that which is regarded in the use of the word 'chargeable', and that chargeable therefore, means not chargeable under the Act of 1879, but chargeable under the Act in force at the date of execution."

The view expressed in this case was affirmed by the Full Bench in a reference from the Board of Revenue to the Madras High Court under s. 46 of the Act(2).

The provisions of s. 35 apply to such instruments which were chargeable with duty. Such instruments, if not properly stamped, were not to be admitted in evidence for any purpose, nor could they be acted upon, registered or authenticated by any person or by any public officer. Certain instruments which are not duly stamped can be admitted in evidence if they fall under any of the provisos of the section. The provisions of this section will not apply to instruments which are not chargeable with duty.

'Chargeable', according to s. 2(6), means 'chargeable' as applied to an instrument executed or first executed after the commencement of the Act, chargeable

(1) I.L.R. 3 Mad. 251, 253. (2) I.L.R. 5 Mad. 394.

under the Act and as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed. The expression 'chargeable under the Act' indicates that the chargeability would be the ultimate result of the various provisions of the Act.

Section 3 of the Act provides that subject to the provisions of the Act and the exemptions contained in Schedule I, the instruments mentioned within its clauses (a), (b) and (c) would be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor. This means that instruments which are exempted under any provision of the Act cannot be said to be chargeable with duty even though in the absence of the exemptions those instruments would have fallen under any of the articles of Schedule I. A policy of insurance is chargeable with duty under Art. 47 of Schedule I, but a letter of cover is not chargeable with duty in view of the general exemption to this article. It follows that the letter of cover is a document which, as such, is not chargeable with duty.

A document chargeable with duty and executed by any person in India is to be stamped before or at the time of execution : *vide* s. 17. If the letter of cover is intended by either the insured or the person offering to make an insurance to be used for making a claim thereunder and therefore to be treated as a policy, it is incumbent on that person to have the letter of cover properly stamped with the requisite stamp for that policy. If they do not so intend and desire the letter of cover to remain as a letter of cover on the basis of which only the delivery of the policy mentioned therein can be enforced, they may take the advantage of the general exception and need not stamp it. The decision to stamp it or not to stamp it is to be taken at the time when it is to be executed. If it is not then stamped, it is a mere letter of cover which requires no stamp duty. It is a valid and

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complete document. No provision of the Act for its being stamped subsequently either by any of the parties to it or by any public servant exists. The provision in the proviso to the general exception about the letter of cover being used to found a claim or for any other purpose when it bears the stamp prescribed by the Act for such policy, cannot be construed to mean that subsequent to its execution any party standing to gain thereby may just put the requisite stamp on it and thereafter use it for enforcing any claim or for any purpose. Such a construction of the proviso would be against public policy and may defeat one of the objects of the Act. It is true that the Act is a revenue measure, but at the same time the stamping of documents gives a certain formality to the transaction and to the preparation of the document. The letter of cover is exempted from stamp duty because as unstamped it cannot be used for any purpose except for enforcing delivery of the policy. If subsequent stamping of such document, in order to convert the letter of cover into a real policy, be left at the sweet will of the party standing to gain on account of the uncertain event having occurred, it would be against public policy because thereby a party who is sure to gain by fixing the requisite stamp, whose value is bound to be negligible compared to the monetary gain it stands to gain, will not mind the fixing of the necessary stamp and parties in general would like to avoid payment of the stamp duty in the first instance when the document is executed. Further, the letter of cover is issued by the insurer and, on the happening of the uncertain event, it would be the person insuring who would like to affix the requisite stamp and thereafter claim the amount of damages incurred within the limits of the policy. The executant of the letter of cover may thus be forced to abide by the terms of the document as a policy when he, at the time of executing the document, did not intend to be so bound. When a letter of cover is not stamped at the time of execution, both the parties stand to lose what they are to gain monetarily on its basis. The person insuring stands to lose the

recovery of any loss he may incur prior to the issue of the policy. The insurer-company stands to lose the recovery of the premium for the limited period, *i.e.*, the period between the date of the cover note and the date when loss occurs to the proposer. Both the parties take risk of loss by not stamping the letter of cover and thus not making it a document on which the claim other than the delivery of the policy can be based.

In this connection, reference may be made to s. 47 of the Act which provides for a subsequent stamping of certain documents in certain circumstances. But this too deals with certain documents which, though chargeable with duty, are not covered by proviso (a) to s. 35.

Section 62(1)(b) makes it penal to execute or sign otherwise than as a witness, any instrument chargeable with duty and not included in cl. (a), without it being duly stamped. Any subsequent stamping of a letter of cover with the requisite stamp would lead to the parties avoiding the penalty prescribed by s. 62(1)(b), as the letter of cover is not chargeable with duty and the subsequent stamping would mean that it becomes a policy of insurance, a document which could be enforced on account of being properly stamped.

Section 29 provides that in the absence of an agreement to the contrary, the expenses of providing the appropriate stamp shall be borne in the case of a policy of fire-insurance by the person issuing the policy. Though there is no definite provision in the Act as to who should stamp the document, in view of the provisions of s. 62, the person to suffer for non-stamping a document chargeable with duty is the executant. The insurer will not like to stamp the letter of cover subsequently and specially when the uncertain event had taken place. Subsequent stamping by the assured in such circumstances, could not have been contemplated by the Legislature.

Further, in view of the proviso to the general exception to art. 47, nothing could be claimed under

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an unstamped letter of cover. This means that no suit can be instituted for the recovery of any amount alleged to be due to the plaintiff. When the suit itself cannot be instituted, no question of taking action under s. 35(a) of the Act can arise , as that action is to be taken subsequent to the institution of the suit and at the time of admitting the document in evidence.

It is suggested for the appellant that the provisions of the general exception indicate that the letter of cover was exempted from stamp duty as the Legislature did not intend that the stamp duty be paid twice over, once on the letter of cover and a second time when the policy was issued. If the Legislature had really intended so, it could have simply provided that if a letter of cover bears the requisite stamp, the policy need not be stamped. The Legislature, however, spoke differently. It exempted the letter of cover and provided that a letter of cover without stamp could be used only for enforcing the delivery of the policy mentioned therein. The object behind the exemption therefore appears to be the very limited purpose for which the letter of cover can be used. The Legislature was aware of a letter of cover usually containing material which would make it a policy for a limited period and therefore further provided that it can be used to found a claim or for any other purpose if it bears the requisite stamp for a policy. The reasonable inference is that the Legislature left it to the discretion of the parties concerned to have the letter of cover stamped or not according to the use they intended to make of it, and therefore it would be wrong to construe the provision to the effect that any subsequent stamping of the document in any circumstance would change the nature of the document and make it available for purposes for which it was not intended to be used at the time of execution.

Reliance has been placed for the appellant on the case reported as *Tricamji Damji & Co.* v. *Virji Kanji* (1).

(1) [1922] 24. B.L.R. 820.

In that case the plaintiff had claimed damages on the bases of an unstamped protection note with respect to a contract of sea-insurance. Marten J., held that the expression 'unless such letter or engagement bears the stamp prescribed by this Act for such policy' in the general exception to art. 47 meant affixation of the stamp before or at the time of execution, as provided by s. 17 and that s. 35(a) must be read subject to the express direction in the proviso to the general exception in art. 47. His view was not accepted, wrongly I think, by the Appellate Bench, which held the protection note to be a policy which could be received in evidence after necessary action under s. 35 of the Act is taken. We have already held the protection note in the present suit to be not a policy.

I am therefore of the opinion that the High Court was right in holding that the interim protection note, not properly stamped as a policy at the time of its execution, cannot be subsequently stamped with the requisite stamps in pursuance of the provisions of s. 35(a) of the Act and that the appellant cannot base his claim on the interim protection note in suit. I would, accordingly, dismiss the appeal with costs of this Court and the High Court and modify the decree of the High Court to the effect that the suit for Rs. 93,628-8-0 be dismissed with proportionate costs in the trial court.

ORDER

In accordance with the opinion of the majority, the appeal is allowed, decree in favour of the plaintiff-appellant for Rs. 93,628/8/- is passed, and costs with interest thereon from the date of the judgment of the learned trial judge at six per cent.