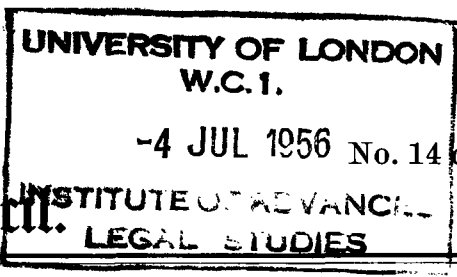


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In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

POPAT HIRJI . . . . . Appellant

AND

FAZAL KASSAM VELJI . . . . . Respondent.

Case for the Appellant

RECORD.

10 1. This is an appeal from a decree, dated the 1st November, 1952, p. 23.  
 of the Court of Appeal for Eastern Africa (Nihill, P., Worley, V.-P. and  
 Pelly Murphy, Ag. C.J.), allowing an appeal from a decree, dated the p. 16.  
 28th November, 1951, of His Britannic Majesty's Court for Zanzibar  
 (Gray, C.J.), awarding the Appellant damages for breach of a contract  
 for the sale of cloves.

20 2. By his plaint, dated the 26th April, 1951, the Appellant alleged pp. 1-3.  
 that he and the Respondent were both merchants dealing in cloves in  
 Zanzibar. By a contract in writing dated the 5th July, 1950, the  
 Respondent sold to him 10,000 lbs. of fair quality cloves at 110/- per 100 lbs.,  
 delivery to be given on the 31st March, 1951, on payment of the price.  
 The Respondent failed to deliver any of the cloves. The market price of  
 cloves on the 31st March, 1951, was 310/- per 100 lbs. The Appellant  
 claimed 20,000/- damages, being the difference between the contract price  
 and the said market price.

30 3. By his amended defence, dated the 20th July, 1951, the Respondent pp. 5-6.  
 denied that the document of the 5th July, 1950, was a contract or had any  
 legal effect. He alleged that it was a note or memorandum made by a  
 broker and, not being duly stamped, was not admissible in evidence or  
 enforceable in law. He also denied the damage alleged, and the alleged  
 market price of cloves on the 31st March, 1951.

4. The statutory provisions relevant to this appeal are set out in  
 the Case for the Appellants in Appeal No. 13 of 1954, *M. Takim & Co. v.*  
*Fazal Kassam Velji.*

5. The action was tried by Gray, C.J., on the 31st October, 1951.  
 The effect of the evidence given for the Appellant, so far as it is now p. 9.

p. 25. relevant, was that on the 5th July, 1950, he met a broker named Popat Mitha, who told him that 10,000 lbs. of cloves belonging to the Respondent were to be sold. After speaking to the Respondent, the broker told the Appellant that the price of the cloves was 110/- per 100 lbs., for delivery on the 31st March, 1951. The Appellant told the broker to go and make the contract, and said that, if the broker brought the Respondent's signature, he would agree to it. A day or two later the broker brought him three copies of the contract, signed by the Respondent. The Appellant signed the three copies, and kept one of them. About five minutes later he noticed that his copy was not stamped, and affixed a shilling stamp. This document (Exhibit 2) was dated the 5th July, 1950; in other respects it was, for the purposes of this appeal, indistinguishable from Exhibit 1 in Appeal No. 13 of 1954 summarised in paragraph 4 (B) of the Case for the Appellants in that appeal. The Respondent did not deliver any cloves. The market price of cloves on the 31st March, 1951, was 310/- per 100 lbs. The broker (according to his own evidence) had no authority to sign the contract for either party. He did not act as agent for either of them, but as broker for both. The evidence given by Madhavji Kalidas and Mohanlal Karunshankar Jani in *M. Takim & Co. v. Fazal Kassam Velji*, describing mercantile custom in Zanzibar, was admitted in this case (this evidence is summarised in paragraph 4 (D) and (E) of the Case for the Appellants in Appeal No. 13 of 1954).

pp. 11-12. 6. The only evidence given for the Respondent concerned a point about the damages. The learned Chief Justice decided this point against the Respondent, and it was not raised in the Court of Appeal. It is not, therefore, relevant to this appeal.

pp. 14-15.  
p. 14, ll. 24-26. 7. The learned Chief Justice delivered judgment on the 28th November, 1951. He held that, for the reasons given in *M. Takim & Co. v. Fazal Kassam Velji*, Exhibit 2 did not fall under Article 41 of the First Schedule to the Stamp Decree, 1940, and could therefore be received in evidence. He then discussed the damages, and ultimately gave judgment for the Appellant for 20,000/- and costs.

p. 17. 8. The Respondent delivered a memorandum of appeal, dated the 15th January, 1952, in substance identical with that summarised in paragraph 7 of the Case for the Appellants in Appeal No. 13 of 1954.

pp. 20-22.  
p. 22, ll. 38-44. 9. The appeal was heard on the 28th October, 1952. The judgment of the Court (Nihill, P., Worley, V.-P. and Pelly Murphy, Ag. C.J.) was delivered on the 1st November, 1952. After dealing with a preliminary objection, on which the Appellant does not now rely, the learned Judges said the issues of fact and law were the same as those arising in *M. Takim & Co. v. Fazal Kassam Velji*. In accordance with their judgment in that case, the appeal was allowed, with costs.

10. The Appellant relies upon the arguments set out in paragraphs 10 to 14 of the Case for the Appellants in Appeal No. 13 of 1954.

11. The Appellant respectfully submits that the decree of the Court of Appeal for Eastern Africa was wrong and ought to be reversed, and the decree of His Britannic Majesty's Court for Zanzibar ought to be restored, for the following (amongst other)

### REASONS

- 10
- (1) BECAUSE Exhibit 2 is an agreement or memorandum of an agreement for or relating to the sale of goods exclusively and therefore does not require a stamp.
  - (2) BECAUSE Exhibit 2 is not, nor ever was, a note or memorandum sent by a broker to his principal intimating a purchase or sale on the principal's account.
  - (3) BECAUSE the contractual obligations evidenced by Exhibit 2 only arose when Exhibit 2 was signed by Popat Hirji, and even if it could be construed as such a note or memorandum it was duly stamped.
  - (4) BECAUSE Gray, C.J., rightly held Exhibit 2 to be admissible in evidence.

FRANK GAHAN.

J. G. LE QUESNE.

No. 14 of 1954.

**In the Privy Council.**

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**ON APPEAL**  
*from the Court of Appeal for Eastern Africa.*

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**BETWEEN**  
**POPAT HIRJI . . . . .** *Appellant*  
**AND**  
**FAZAL KASSAM VELJI . . . . .** *Respondent*

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**Case for the Appellant**

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