IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

C.O.E. CCLE,	Chief Justice
S.C.J. BETTS,	Justice of the Supreme Court
E. LIVESEY LUKE,	Justice of the Supreme Court
A. AMUNOR-RENNER,	Justice of Appeal
S.C.E. HARNE,	Justice of Appeal

Civil Appeal No.2/75

MOTOR & GENERAL INSURANCE CO. LTD. - APPELLANTS

vs

P.C. 431 ARKURST
&
P.C. 173 SANTIGIE - RESPONDENTS

J U D G M E N T 30TH APRIL, 1976.

M.R.O. Garber, Esq., (with him M.J. Clinton, Esq.) for the Appellants

S.N.K. Basma, Esq., (with him U.W. Coker, Esq., Mrs. Christine Harding and G. Betts Esq.) for the Respondents

Livesey Luke, J.S.C.: On 1st August, 1971 two motor vehicles (a taxi car WU 6303 and a landrover WU 8075) were involved in a road accident. As a result of the accident the respondents who were passengers in the landrover at the material time suffered personal injuries. In due course the respondents instituted proceedings in the High Court against M.E.A. Thompson (hereafter referred to as the defendant) the registered owner of WU 6303 claiming damages for personal injuries. On 5th December, 1972 the High

Court delivered judgment against the defendant awarding damages as follows: the 1st respondent Le.1125.50c and the 2nd respondent Le.1795.50c and costs to be taxed (hereafter referred to as the judgment debt). Armed with this judgment, the respondents instituted proceedings in the High Court against the appellants (who are approved Insurers under the Motor Vehicles Third Party Insurance Act Cap. 133) on 9th December, 1972 claiming payment of the judgment debt pursuant to Section 11 of Cap. 133.

In their Statement of Claim the respondents alleged inter alia that on the day of the accident the appellants were the insurers of the defendant against third party risk in respect of taxi car WU 6303 (hereafter referred to as the taxi car). In their defence, the appellants denied that at the material time they were the insurers of the defendant against third party risk in respect of the said taxi car. The issue thereby raised by the pleadings was whether the appellants were the insurers of the defendant against third party risk in respect of taxi car WU 6303 on 1st August, 1971. That was the main issue that went to trial. And it is important to state that the burden of proof on that issue was clearly on the respondents.

The action was tried by Ken During J. (as he then was). The respondents called two witnesses. The first witness was the Senior Registrar, High Court who produced the case file of the action against the defendant. His evidence is not relevant for the purposes of this appeal. The second witness was one Elija Emmanuel Coker, a Police Sergeant attached to the Licensing Office, Freetown. He produced and tendered an index card in respect of the

taxi car. The index card was admitted in evidence and marked Ex. B. He said inter alia "on the 1st of August, the card show that the vehicle was insured with Motor and General Insurance Co. Ltd.". The appellants called one witness namely Muctaru Mohamed Kamara, the General Manager of the appellant company. Mr. Kamara said inter alia that the vehicle was insured with his company from 2nd June, 1970 to 1st June, 1971 and that from 1st June, 1971 to 1st August, 1971 when the accident took place the vehicle was not insured with his company. Ken. During J. delivered judgment on 19th June, 1974 dismissing the respondents' claim. In his judgment the learned judge said inter alia

> "In fact there is no evidence before this Court that the defendants were insurers against Third Party risks of Mr. Thompson at the material time the accident took place."

The respondents appealed to the Court of Appeal against that judgment. The Court of Appeal (C.A. Harding, Tejan, JJ.A. (as they then were) and Beccles Davies J.A.) heard the appeal on the 23rd, 30th and 31st days of May, 1974. Judgment was delivered on 16th April, 1975 allowing the appeal and adjudging that the appellants pay the judgment debt to the respondents. The judgment was delivered by Tejan J.A., the other two learned justices concurring. The Court held that the learned trial judge was wrong when he said that there was no evidence that the appellants were the insurers against Third Party risk of the defendant in respect of the taxi car at the time the accident took place. The Court

further hold that there was some evidence, and that the evidence was provided by the evidence of Police Sergeant Coker and Ex. B. The Court then proceeded to draw the inference that the taxi car was insured with the appellants on 1st August, 1971 i,e. the date of the accident. The Court also held that the appellants were estopped by their conduct from disputing liability. It is against that judgment that the appellants have appealed to this Court.

The issues that arise in this appeal may be formulated thus:-

(i) Whether there was some evidence that a certificate of insurance in respect of a policy of insurance effected by the defendant and issued by the appeallants in favour of the defendant in respect of vehicle WU 6303 was in force on 1st August, 1971, and if so whether the Court of Appeal properly evaluated that evidence.

(ii) Whether the appellants were estopped by their conduct or otherwise from denying liability.

The first issue is formulated in the way it is, because the respondents' claim was based on S.11(1) of Cap. 133 which reads as follows:-

> "If after a certificate of insurance has been issued in favour of the person by whom a policy has been effected or a certificate of security has been issued in favour of the person whose liability is covered by such security judgment in

respect of any such liability as is required to be covered by a policy or security issued in favour of the person whose liability is covered by such security judgment in respect of any such liability as is required to be covered by a policy or security issued for the purposes of this Act, being a liability covered by the terms of the policy or security, is obtained against any person insured by the policy or whose liability is covered by the security, as the case may be, then notwithstanding that the insurer or the giver of the security may be entitled to avoid or cancel or may have avoided or cancelled the policy or the security, as the case may be, the insurer or the giver of the secutiry, shall, subject to the provisions of this section, pay to the persons entitled to the benefit of such judgment any sum payable thereunder in respect of the liability including any sum payable thereunder in respect of the liability including any sum payable in respect of costs and any sum payable by virtue of any law in respect of interest on that sum or judgment."

For ~~the~~ a plaintiff to succeed in an action based on this section he has to prove inter alia that a certificate of insurance has been issued by the defendant insurer in favour of the person by whom a policy has been effected and that the policy was in force at the time the liability

arose. See ROYAL EXCHANGE ASSURANCE LIMITED v. TOUFIC BAZZY S.C. Civ. App. No. 1/72 unreported. So in the instant case the respondents in order to succeed had to prove inter alia that an insurance policy had been effected by the defendant with the appellants in respect of the taxi car, that the appellants had issued a certificate of insurance in favour of the defendant in respect of the taxi car and that the policy was in force on the day of the accident.

Mr. Basma submitted that there was evidence that a certificate of insurance had been issued by the appellants in favour of the defendant in respect of the taxi car and covering the date of the accident. He maintained that the evidence was provided by the evidence of Police Sergeant Coker and Ex. B. Mr. Garber conceded that there may be some evidence, but that it was worthless evidence. The Court of Appeal, as stated earlier, held that there was some evidence and then drew the inference that the taxi car was insured with the appellants on the day of the accident. It is therefore necessary to examine and evaluate the evidence relied on by the respondents.

Police Sergeant Coker's evidence was brief. It will be useful to quote it in full. It reads:-

> "Elija Emmanuel Coker. I live at 12, Syke Street, Freetown. I am Police Sergeant No.218 attached to Licence Office in Freetown. I have in my custody Index Card in respect of vehicle AU 6303 which I produce - tendered - no objection - admitted and marked B. On the 1st of August card show that the vehicle was insured

with Motor and General Insurance Co. Ltd. Before licence is issued Certificate of Insurance must be produced by applicant to Licence Authority. I do not make the entry. On the 13th December, 1972, I received a letter from the Commissioner of Police written by the plaintiff's solicitor and produce copy of the said letter dated 13th December, 1972 - tendered - no objection - admitted and marked "C". I know one Metzger - Sub-Inspector. She is in our Department.

XXD by Garber: Licence Office does not make out a copy of cover note or Policy before licence is issued.

By the Court: S.I. Metzger is supervisor in the licence office."

From this evidence, there are certain matters which are beyond dispute viz:- (i) That Ex. B was produced from proper custody, (ii) that Police Sergeant Coker did not make the entries on Ex. B (iii) that Police Sergeant Coker's evidence that the taxi car was insured with the appellants on 1st August, 1971 was based on Ex. B and (iv) that before a licence is issued a Certificate of Insurance must be produced by the applicant to the Licensing Authority.

The practice stated in (iv), is in accordance with Section 6 of the Motor Vehicles (Third Party Insurance) Act (Cap. 133) and Rule 10 of the Motor Vehicles (Third Party Insurance) Rules. Section 6 of Cap. 133 reads:-

"Notwithstanding anything in any law contained, no licence for a motor vehicle shall be issued under the Road Traffic

> Act, until there has been produced to the licensing authority proof in such form as may be prescribed that on the date when the licence comes into operation there will be in force a policy of insurance or a security valid for the purposes of this Act in relation to the user of the motor vehicle by the applicant for the licence or by other persons on his order or with his permission or that the user of such vehicle is not required to be covered by any such policy or security by reason of the provisions of Section 5 of this Act."

By virtue of powers conferred on the Governor in Council by Section 20 of Cap. 133, the Motor Vehicles (Third Party Insurance) Rules (hereinafter referred to as the Rules) were made to come into force on the same day as the Act (Cap. 133) i.e. 1st April, 1951. Rule 10 thereof prescribed the form of proof contemplated by Section 6 of the Act. Rule 10 (so far as relevant) reads:-

> "In accordance with Section 6 of the Act, the person applying for a licence for a motor vehilce shall produce to the licensing authority -
>
> (a) his certificate of insurance or of security in respect of such motor vehicle or;
>
> (b) .....
>
> (c) .....
>
> to show that on the date on which the licence comes into operation there will

be in force a policy or security in respect of such motor vehicle or that such motor vehicle will be exempted from the provisions of Section 3 of the Act."

It is evident that the combined effect of Section 6 of the Act and Rule 10 of the Rules is to create a presumption that an applicant who has been issued with a licence for a motor vehicle produced to the licensing authority a certificate of insurance in respect of such motor vehicle to show that on the date on which the licence comes into operation there will be in force a policy of insurance in respect of such motor vehicle. The presumption, however, is rebuttable.

I now proceed to examine Ex. B with a view to assessing its evidential value. Ex. B. is headed "Form A - Register of Motor Vehicles and Trailers - Reg. 3", and particulars are entered thereon under various headings and columns. The Register of Motor Vehicles and Trailers is kept by virtue of Section 3(4) of the Road Traffic Act, 1964 which reads as follows:-

"The Principal Licensing Authority shall be the central registrar of all motor vehicles and trailers and of all licences. He shall keep the prescribed registers and shall register therein in the prescribed manner all licences issued under this Act and the particulars of every motor vehicle and trailer registered by him or by Licensing Authorities on his behalf. Such registers shall, during normal working hours, be open to inspection

by the public on the payment to the Principal Licensing Authority of a fee of fifty cents." (Emphasis mine).

By virtue of the second proviso to Section 65 of the same Act, the regulations now in force are the Road Traffic Regulations, 1960. Those regulations inter alia prescribe the "prescribed registers" provided for by Section 3(4) of the Act. Regulations 3 and 4 provide as follows:-

"3. Every licensing authority shall keep a register for the registration of motor vehicles as in Form A set out in The First Schedule.

4. (1) Every person who applies to register a motor vehicle shall lodge with the licensing authority an application duly completed as in Form B or C, as the case may be, set out in the "First Schedule".

I now propose to examine forms A and B in some detail. It is not convenient to set them out, but it would suffice to state the particulars prescribed in them. The following particulars are prescribed in Form A:- registered number of vehicle; name of owner; date of change of ownership (if any) and G.N.A. number; description of vehicle including the make, year and model number or letter, horse power, number of cylinders, engine number, chassis number, type of body, weights including net weight cwts, freight weight cwts, gross weight cwts; axle weight including front cwts and rear cwts; tyre sizes of the front, middle and rear giving the rim diameter and the width in each case; class of vehicle; date of registration;

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renewal of licences stating the licence number, date and period of licence in respect of each renewal. The particulars prescribed in Form B include the full name and usual address of the applicant; the make of the vehicle, its year of manufacture, model number or letter, horse power and capacity, number of cylinders, engine number, chassis number, type of body, date of purchase, country of origin of vehicle, net weight, axle weight of front, middle and rear axle, number of wheels, size of front, middle and rear tyres giving in each case the rim diameter and the width. A comparison of the particulars prescribed in Forms A and B, would reveal that most of the particulars prescribed in each form are identical. When an applicant for the registration of a motor vehicle lodges his application in Form B, he would have filled in the particulars there prescribed. It is from the completed Form B that the licensing Authority obtains most of the particulars that are entered in the register of Motor Vehicles and Trailers (Form A). The Registrar acts on the information supplied by another person. He has no personal knowledge of the facts. Most of the particulars stated in the register of Motor Vehicles and Trailers are therefore hearsay, and in normal circumstances the register would be inadmissible in evidence as offending the rule against hearsay. Thus in MYERS v. D.P.P. (1964) 48 Cr.App.R. 348 it was held by the House of Lords that car manufacturers' records of engine block numbers, proved by employees charged with keeping of records, but who had not actually compiled them were not admissible, not being public documents, they did not fall within any recognised exception to the rule against the admissibility of hearsay evidence. Some of the speeches in that case are

instructive, and it will be useful to refer to them. Lord Reid said at pp. 362-363:-

> "It was not disputed before your Lordships that to admit these records is to admit hearsay. They only tend to prove that a particular car bore a particular number when it was assembled if the jury were entitled to infer that the entries were accurate, at least in the main; and the entries on the cards were assertions by the unidentified men who made them that they had entered numbers which they had seen on the cars. Counsel for the respondent were unable to argue that these records fell within any of the established exceptions or to adduce any reported case or any text book as direct authority for their admission."

And Lord Morris of Borth-y-Gest said at pp. 367-368 -

> "The card has no probative value unless it is used to prove that what it records is true. ..... The sole purpose of introducing the card would be to prove that a particular motor car when manufactured did in truth have certain stated particular numbers attached to it. However alluring the language of introduction may be phrased, the card is only introduced into the case so that the truth of the statements that it records may be accepted. There is, in my view, no escape from the conclusion that, if the cards are admitted,

unsworn, written assertions or statements made by unknown, untraced and unidentified persons (who may or may not be alive) are being put forward as proof of the truth of those statements. Unless we can adjust the existing law, it seems to me to be clear that such hearsay evidence is not admissible."

There are however many exceptions, both statutory and at common law, to the hearsay rule. One important exception at common law is statements contained in public documents which, subject to certain qualifications are in general prima facie evidence of the truth of the facts recorded therein. Having regard to the provisions of Section 3(4) of the Road Traffic Act, 1964, the Register of Motor Vehicles and Trailers (Form A) would appear to possess all the elements of a public document. But it is not necessary to decide in this appeal whether it is a public document. Suffice it to say that the legislature has taken care of the situation by enacting Section 61(1) of the Road Traffic Act, 1964 which is in the following terms:-

"In any cause or matter relating to a motor vehicle or to any licence, permit, certificate or other document, issued under this Act or any regulation made hereunder, the production of a document purporting to be, a copy of an entry in a register or a copy of a licence, permit, certificate or or other document as aforesaid by, or from the records of the Principal Licensing Authority or a Licensing Authority or any officer deputed by such authority for that purpose, shall be prima facie evidence of

any matter, fact or thing stated or appearing thereon."

This sub-section therefore creates a statutory exception to the hearsay rule. But it has been held that such enactments which alters the law of evidence must be construed strictly. Thus in NORTHARD v. PEPPER 10 L.T. 782, Erle C.J. said at pp. 782-783 -

> "An enactment altering the law as to evidence and creating statutory evidence whereby the rights of parties may be defeated, must be construed strictly. The law of evidence as it stands, is intended to maintain truth; any alteration of that law for a particular purpose is intended to maintain the truth in a better manner as far as that particular purpose is concerned and no further; otherwise the alteration would have been carried further."

Applying this strict rule of construction, it has been laid down in a long line of cases that there must be a statutory duty to make the entry (in the case of registers). But the rule also applies to other documents, the contents of which are hearsay, but which have been made admissible by statute. Examples of such documents are surveys, inquiries and reports. In some cases the statute makes the contents of the document "prima facie" evidence, in others it makes them "conclusive evidence". But whatever the document, and whether it constitutes prima facie or conclusive evidence, the principle is the same. There must be a statutory duty to make the entry, inquiry or report as the case may be. If there is no such duty then

the entry, inquiry or report, as the case may be, does not qualify as "prima facie" or "conclusive evidence" under the relevant statutory provision. A few authorities should illustrate this point. With regard to registers, it is stated in Chapter 29 of Phipson on Evidence 11th Ed. (a chapter dealing with the position both at Common Law and by Statute) at para. 1130 that -

> "A register is evidence of the particular transaction which it was the officer's duty to record, even though he had no personal knowledge of its occurence. Thus, entries made by an incumbent of parish burials reported to, but not performed by him, are admissible, so, of entries of births and deaths under the Births and Deaths Registration Act 1953 S.34. But entries of matters which it was not his duty to record .... are inadmissible." (Emphasis mine).

In Halsbury's Laws of England 3rd Ed. Vol. 15 P. 381 para. 678 it is stated:

> "Entries in the register of births, marriages or deaths, certified copies of those entries and certified copies of the registers are prima facie, though not conclusive, proof of the particulars of all the matters required by statute to be entered therein." (Emphasis mine).

In Re STOLLERY, WEIR & OTHERS v. TREASURY SOLICITOR (1926) All E.R. Rep. 67 C.A. a case dealing with certificates of birth and of death under the Births and Deaths Registration Acts 1836 and 1874, (S.38 of the 1836 Act providing that the certified copies of entries

" shall be received as evidence of birth, death or marriage, to which the same relates.") Lord Hanworth, M.R. said inter alia at p. 75:-

> "Therefore, I should agree with the view which was taken in the next three common law cases by Phillmore J., Sir Francis Jeune P and McCardie J, - that in the absence of any special statutory provision, those particulars in the certificate, which it was the statutory duty of the registrar to inquire into and learn, and state as a result of his inquiring and learning in the certificate are admissible evidence, although subject to contradiction by other evidence of the facts therein stated." (Emphasis mine).

And Sargant L.J. said inter alia at pp. 79-80 -

> "I think that observation is of particular value when one comes to the fourth certificate in question here, the certificate of the death of one of the children of the union, Harriet Ellen Brown. In that she is described as being the daughter of John Brown, a jeweller, deceased. What the Act requires to be entered, and what the registrar has to make inquiries about, is the rank or profession of the deceased. You find the statement in the register of something which is not a part of the rank or profession of the deceased, namely,

that she is a daughter of John Brown, a jeweller. It seems to me that as to that, it is very doubtful whether the register or the certified copy of the register is any evidence at all, because it is something which was not inserted in the register by the officer as part of his duty under the Act. The register does not make any provision for showing who are the parents of the deceased person." (Emphasis mine).

With regard to inquiries and reports, two cases (NORTHARD v. PEPPER (Supra) and A.G. v. ANTROBUS (1905) 2 Ch.188) illustrate the principle. NORTHARD v. PEPPER (Supra) related to an action for a collision between two ships. The defendants' counsel, in order to show that the plaintiff's ship was in fault, proposed to put in evidence the statement of the plaintiff's captain made on oath, under the Merchant Shipping Act, 1854, before a receiver of wreck. It was held that such evidence was inadmissible, notwithstanding that a section of the Act enacted that such examination shall be admitted in evidence in any Court as prima facie proof of all matters contained therein, as the question as to which ship caused the damage to the other was not a matter which the receiver had power to examine into under the Act.

Erle C.J. who gave the leading judgment said inter alia at p. 783:-

"I think his report is only evidence as to the matters into which it was his duty to inquire, and the part of the hull supposed to be struck in the

collision is not one of those matters ..... Upon this review of the statute, I think the rules of law relating to evidence are altered only for a specified purpose, and that the sections are drawn with great legal knowledge confining each alteration to its appropriate purpose; and on this construction of the Act the examination of the captain was not admissible as substantive evidence that in the collision the starboard bow of the plaintiffs ship was struck." (Emphasis mine).

And Williams J. said inter alia at p. 783:-

"It was argued by Mr. Brett that the evidence was improperly rejected, and that the language of the 449th Section is given without any restriction whatever, that 'the examination taken in writing in pursuance of the 448th Section shall be admitted in evidence in any court of justice, as prima facie proof, as proof of all matters contained in such written examination.' Now it is clear that these general words must necessarily to some extent be controlled. It never was meant that matters contained in the examination were matters spoken to by a witness without having power to speak of his own knowledge; in other words, that this matter received in evidence is not to mean any matter contained in such examination. I think it necessary

to put some limit upon the generality of the words, and it seems to me contrary to the good sense and meaning of the words to impose any other limit than that the matters contained in such written examination into which the receiver might inquire. According to the ordinary rules of law that would be so, otherwise he might inquire into matters which it was not part of his duty to make an inquiry into." (Emphasis mine).

In ATTORNEY GENERAL v. ANTROBUS (1905) 2 Ch. 188 the defendant's counsel proposed to put in a map and award made in 1847 by the Tithe Commissioners under The Tithe Act 1836. According to Section 64 of the Act, "every recital or statement in a map or plan ..... shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such plan." In giving his ruling Farwell J. said inter alia at p. 194:-

> "I must not be understood as deciding that, in my opinion, the tithe map would be evidence on any matter (although it is a public document) which is not within the scope and purview of the authority of the Commissioners who made it. I think they have to attend to their own business, and I guard myself against being supposed to say that I should hold that the tithe map was evidence of something it was not their business to ascertain". (Emphasis mine).

I now return to Ex. B. It contains the particulars prescribed in Form A, and more. It contains particulars like the registered number of the vehicle (i.e. WU 6303) the date of registration, the name of the owner (i.e. M.E.A. Thompson) the address of the owner, description of the vehicle including the make (i.e. Peugeot 204), engine number, chassis number, and renewal of licences, There is no doubt that all these particulars constitute prima facie evidence by virtue of S.61(1) of the Road Traffic Act, 1964.

But Ex.B also contains particulars about Income Tax and Insurance Policy. The question then arises: do these additional particulars constitute prima facie evidence by virtue of S.61(1) of the Road Traffic Act, 1964? As far as I am aware, the Road Traffic Regulations, 1960 have not been amended to provide that Form A should include these additional particulars. So there was clearly no statutory duty on the Licensing Authority to enter particulars about Insurance policy and income tax on the register. And if there was no statutory duty to make the entries, on the basis of the principles stated above, those unauthorised entries do not constitute prima facie evidence under S.61(1) of the Road Traffic Act, 1964. Similarly if particulars about the colour of the vehicle had been entered on the register, that entry would not constitute prima facie evidence of the colour of the vehicle, because the colour of the vehicle is not one of the particulars prescribed in Form A. In my judgment therefore the entries in Ex. B relating to Insurance Policy are not prima facie evidence of the matters "therein stated or appearing thereon". And these were the entries relied on by the respondents to prove that a certificate of insurance in respect of a policy of

insurance effected by the defendant and issued by the appellants in favour of the defendant in respect of the taxi car was in force on 1st August, 1971. In my opinion the entries were of no evidential value and Sergeant Coker's evidence based, as it was, on them was worthless. It may be desirable to amend the Road Traffic Regulations to provide that particulars relating to the name of the insurer, the date of commencement of the insurance, the date of expiry of the insurance and the serial number of the Certificate of Insurance be stated in the Register of Motor Vehicles and Trailers (Form A). The licensing authority would obtain those additional particulars from the Certificate of Insurance produced when application for licence is made, because they, and other particulars, are all stated in the Certificate of Insurance (see the prescribed Certificate of Insurance in Form A of the Schedule to the Cap. 133 Rules). Those additional particulars would then, and only then, in my view, constitute prima facie evidence under S.61(1) of the Road Traffic Act, 1964. Such an amendment would certainly, in my view, facilitate proof and lighten the burden on third-party claimants under S.11(1) of Cap. 133.

But let me assume that the entries in Ex. B relating to Insurance Policy constitute prima facie evidence. What then is the position? I will set out the relevant entry. It is

Renewal of Licence

		Period		Insurance Policy	
Year	Licence No.	From	To	No.	Closing Date
1971	529	27/8	31/12	Z	3.8.71

In my opinion this entry would constitute prima facie evidence that a licence numbered 529 was issued in 1971 in respect of the period 27th August, to 31st December,

1971 and that a Policy of Insurance numbered Z was in force but expiring in 3rd August, 1971. It should be noted that what is entered in the register (Ex. B.) is the number of the Insurance Policy and not the name of the Insurer. Indeed nowhere in the register (Ex.B) is the name of the Insurer stated. So there is no evidence on Ex. B of the name or identity of the Insurers issuing the Policy of Insurance or the Certificate of Insurance. How then could it be said that any entry on Ex. B constitutes prima faice evidence of the name of the insurers? I fail to see how.

Let me assume that "Z" is a code indicating the identity of the Insurers. But in the first place no evidence of any code was given. Secondly, Sergeant Coker, not having made the entry, could only tender the document. He could not give evidence of the truth of its contents, for the simple reason that he could not vouch for the accuracy of the entry. See MYERS v.. D.P.P.(Supra). The document speaks for itself. I concede that if the maker of the entry had been called, he could have given evidence based on his recollection that he saw a valid Certificate of Insurance before making the entry and that the Certificate of Insurance was issued by a particular insurer. And for this purpose he may have refreshed his memory from the entries in Ex. B relating to Insurance Policy: See BRYANT & DICKSON 31 Cr. App. R. 146.

On closer examination of the entry it shows that a licence was issued on 27th August, 1971 and the Insurance Policy on the strength of which that licence was issued expired on 3rd August, 1971. In other words the Insurance Policy had expired some 24 days before the licence was issued. According to Rule 10 of the Rules an applicant

for a licence should produce to the licensing authority his Certificate of Insurance "to show that on the date on which the licence comes into operation there will be in force a policy." According to the entry the licence came into operation on 27th August, 1971. So a Certificate of Insurance to show that there will be in force a policy on that date should have been produced to the licensing authority. If no such Certificate of Insurance (what I would call an operative Certificate of Insurance) was produced, then in accordance with S.6 of Cap. 133 no licence should have been issued. Section 6 of Cap. 133 imposes a prohibition against issuing a licence for a motor vehicle until an operative Certificate of Insurance has been produced to the licensing authority as prescribed by Rule 10 of the Rules. The entry shows quite clearly that an operative Certificate of Insurance was not produced to the licensing authority in respect of the relevant renewal of licence. Consequently a licence should not have been issued. And if no licence should have been issued, no entry should have been made. The entry was therefore unauthorized and therefore no cognisance should be taken of it. Also the presumption raised by Rule 10 of the Rules that an operative Certificate of Insurance was produced to the licensing authority is rebutted. Furthermore, the prima facie evidence (which I assumed to be provided by the entry under Section 61(1) of the Road Traffic Act, 1964) is also rebutted by the entry itself.

In the end, whichever way one looks at Ex. B, the result is the same. The entry relied upon by the respondents is of no evidential value and Sergeant Coker's evidence based on it is worthless.

The Court of Appeal relied heavily on Ex. B and

Sergeant Coker's evidence in drawing the inference that the said taxi car was insured with the appellant company on the date of the accident and that the appellant company had issued a Certificate of Insurance in respect of the policy. That basis having collapsed, could the inference founded on it stand? Of course if the inference was founded only on that material, it would inevitably collapse along with its foundation. But the Court of Appeal also referred to the evidence of Muctaru Mohamed Kamara, the appellants' witness in drawing their inference. So the question is, could the evidence of Kamara alone support the inference? The answer must be "No" in view of the categorical evidence of Kamara that

> "I, after looking my records came to the conclusion that Policy held by the Insured expired on the 2nd August, 1972 which commenced on the 3rd August, 1971. Accident took place before the vehicle was insured. Previous insurance which commenced on 2nd June, 1970 expired on 1st June, 1971. From 1st June, 1971 to 1st August, 1971 when accident took place the vehicle was not insured with our company."

In my judgment therefore the Court of Appeal drew the wrong inference from the evidence.

It only remains to consider the second issue formulated above i.e. estoppel. The evidence relied on by the respondents in support of the estoppel is that the appellants engaged a solicitor to defend the defendant and undertook the defence in the action in the High Court

by the respondents against the defendant. The Court of Appeal held this conduct of the appellants to amount to an estoppel. Learned Counsel for the appellants submitted that the conduct relied on was due to a mistake of fact, that the respondents were strangers to the estoppel and that in any case estoppel was not pleaded. This issue can be disposed of briefly. The parties to the estoppel were the defendant and the appellants. The respondents were not parties to the estoppel, they were strangers to it. It is a well established principle of law that a stranger to an estoppel cannot rely on it. In VANDEPITTE v. PREFERRED ACCIDENT INSURANCE CORPORATION OF NEW YORK (1933) A.C. 70, the appellant obtained a judgment in British Columbia against one Mr. Berry's daughter for damages for personal injuries caused by her negligence while driving her father's motor car with his permission. Execution issued, but nothing was recovered. Mr. Berry had effected in respect of his car an insurance in his own name with the respondents, and they had taken charge of the defence of the action. By the policy the respondents agreed to indemnify the insured against third party risks, and that the indemnity should be available to any person operating the car with the permission of the insured. The appellant sued the respondents to recover the amount of the unsatisfied judgment. It was held inter alia by the Privy Council that the fact that the respondents conducted the defence of the action did not raise an estoppel available to the appellant. Learned counsel for the respondents referred us to the case of THEOPHILUS GREENE v. NEW INDIA ASSURANCE CO. LTD. Civ. App. 15/71 unreported, a decision of the Court of Appeal, in support of his submission that estoppel arises in the instant case. But the facts of that case show quite clearly that the decision is not applicable to the facts

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of the instant case. The facts of that case briefly were that the insurers instructed a solicitor to represent the insured in an action instituted against the insured by third parties for personal injuries. The third parties obtained judgment against the insured. The insured then instituted action against the insurer claiming indemnity in respect of the judgment debt. The Court of Appeal held that the insurer was estopped by their conduct in defending the insured in the action instituted by the third parties from denying liability. With respect that decision is in accord with the principle stated earlier. The parties to the estoppel were the Insurer and the insured, so that the insured could raise and rely on the estoppel. But it would have been a different matter if the third parties had raised the estoppel in subsequent action by them against the insurance company. They were not parties to the estoppel and therefore they could not have raised it. In the circumstances circumstances the issue of estoppel raised by the respondents fails.

I have great sympathy for the respondents. They have a judgment debt which still remains unsatisfied. I hope that all is not lost. However, I would regretably allow the appeal.

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E. LIVESEY LUKE - J.S.C.

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