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CORNISH J.

police officers exercising police authority under the Act. There is, therefore, no reason in point of policy or construction for excluding from the Madras Act the principle which is applicable to the English Act. I think, then, upon this principle, that an act done by a police officer in the exercise of his Police-powers will not have the benefit of section 53 of the Act if it was done maliciously. But the onus is on the plaintiff in the suit to prove by strong and cogent evidence the existence of malice and the absence of any honest desire to execute his powers on the part of the police officer ; *G. Scammell & Nephew, Ld.* v. *Hurley*(1). If the plaintiff, the present appellant, is unable to discharge this burden, his suit will come within section 53 and will be hopelessly time-barred.

G.R.

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice.

1936, November 17.

PERUMAL MUDALIAR (PLAINTIFF), PETITIONER,

v.

THE SOUTH INDIAN RAILWAY CO. LTD., BY ITS AGENT AT TRICHINOPOLY (DEFENDANT), RESPONDENT.*

Expert—Report embodying opinion of—Evidentiary value of, without oral examination of expert—Exceptions—R. 15 *of the South Indian Railway Co., Ltd., Goods Tariff, Part I—Powers under, to re-classify goods even after acceptance of declaration by consignor about quality and description of same—Powers under r.* 20 *to levy excess charge.*

Subject to certain exceptions, as, for example, the certificate of the Imperial Serologist touching the matter of blood-stains and of the Chemical Examiner, the opinion of an expert

(1) [1929] 1 K.B. 419.

* Civil Revision Petition No. 603 of 1935.

must be given orally and a mere report or certificate by him is not evidence.

Rule 15 of the rules of the South Indian Railway Co., Ltd., Goods Tariff, Part I, gives power to the Railway Company to re-classify a consignment, even after the acceptance of the declaration as to the nature, quality and description of the goods at the forwarding station, if it finds that there has been an incorrect description of the same; and rule 20 gives power to the Railway Company to call upon the consignee to pay the excess charge on the basis of such corrected description.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of the Court of the District Munsif of Coimbatore dated 8th December 1934 in Small Cause Suit No. 625 of 1934.

R. Rangachari and *V. Seshadri* for appellant.

S. S. Ramachandra Ayyar for respondent.

JUDGMENT.

This is really a comparatively simple case although a great deal has been made of it here and certainly one part of the case, although it does not affect the matter, gave rise to a considerable amount of discussion. With that I will deal later.

The suit was filed by the petitioner against the South Indian Railway Company claiming a refund of an excess charge levied by the company at Podanur on a consignment of 200 bags of coconut oil-cakes and also a charge made for demurrage as well. There was also a claim for interest. The bags were consigned at Rajahmundry on 20th September 1932, the destination of the consignment being Podanur. The bags arrived at Podanur and on 27th September 1932

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a sum of Rs. 159-14-0 was tendered as freight for the bags by the petitioner to the Railway Company. The company refused to deliver the consignment to the petitioner unless an excess charge of Rs. 90-8-0 was paid and also a smaller sum, Rs. 7-15-0, for demurrage. On 29th September 1932 the amount of excess charge and demurrage was paid by the petitioner under protest and delivery of the bags taken. The goods when they were put on the railway for carriage at Rajahmundry were certified by the consignor in the risk note as being "intended for manurial purposes and for inland use only, not intended for shipment". A declaration (Exhibit III) was also given by the consignor to the following effect :

"This is to certify that the consignment of 200 bags oil-cake booked under invoice No. 3 of 20th September 1932, Rajahmundry to Podanur, and loaded in E.I.R.C.G. No. 27300 is for manurial purposes and for inland use only and not intended for shipment."

As before stated, the consignment arrived at Podanur and the Railway Company, having reason to suppose that these oil-cakes were not going to be used for the purpose set out in the certificate but as cattle-fodder, under rules 15 and 20 of the South Indian Railway Company Ltd., Goods Tariff, Part I, re-classified the consignment and called upon the consignee to pay the excess charge which the Railway Company are entitled under rule 20 to levy. The question in the lower Court was whether in fact there had been an incorrect description of the consignment given by the consignor at Rajahmundry. The question of description is one of considerable importance, because if the oil-cakes were intended for the purposes of manure as was stated,

the consignment would have applied to it a lower rate namely, the C-FF rates, whereas, if the oil-cakes were for other purposes, a higher rate, namely, that ultimately levied by the Railway Company, would have to be applied. The learned District Munsif after hearing the evidence of the petitioner's witnesses which he describes as not being very convincing held that the petitioner had not established his case, namely, that these goods were correctly described in the certificate and the declaration to which I have already referred. He accordingly dismissed the suit. Then a further point was taken, namely, that the Railway Company was not entitled, after the acceptance of the declaration at the forwarding station, to re-classify the goods consigned. Upon this point he was in favour of the Railway Company and obviously quite rightly, having regard to rules 15 and 20 to which I have already referred and I imagine every common-sense principle. Here it has been contended that there was no evidence before the District Munsif upon which he could hold that there had been a misdescription of these goods at Rajahmundry, in other words, the learned District Munsif was bound to accept the plaintiff's oral evidence and that of his own witnesses upon this point, there being no evidence at all to the contrary called on behalf of the Railway Company. It is here that the matter to which I first referred at the beginning of my judgment arises. At the trial, the following documents were put in and marked as exhibits on behalf of the Railway Company, namely, a report made by a Claims Inspector of the South Indian Railway to the company touching this matter setting out the

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result of his enquiries and the opinions of others and his own with regard to the use of coconut oil-cakes in Coimbatore and elsewhere. This report was marked as Exhibit VI. Two letters were put in, Exhibits VII and VIII-*a*, the former being from the Chief Commercial Superintendent of the Railway Company to the Director of Agriculture, Madras, and the latter being the reply from the Director of Agriculture giving his opinion upon the question put to him touching the matter of these oil-cakes. I am amazed to see that those documents were allowed to be exhibited without the writers of them being called to give evidence if they were tendered, as apparently it is contended they were, as forming the opinion of experts. But Exhibit VI, the report of the Claims Inspector, cannot be regarded as expert evidence on the question as to the use of oil-cakes, since the report is based purely upon hearsay evidence, though the opinion of the Director of Agriculture is certainly the opinion of an expert, but this evidence, being only documentary, is clearly inadmissible. The evidence of experts must be given in the ordinary way. Subject to certain exceptions—those exceptions being amongst others the certificates of the Imperial Serologist touching the matter of blood-stains and of the Chemical Examiner, which are made admissible in evidence by themselves—it is quite obvious that the opinion of an expert must be given orally and that a report merely or certificate by him cannot possibly be evidence. Unless he goes into the witness box and gives oral evidence, there can be no cross-examination of the expert at all. Most amazingly these documents were allowed to be marked as exhibits

without any sort of objection by the pleader for the petitioner and had he raised the objection which it was his duty and right to do, then the Railway Company would have been given time, I have no doubt, to call the experts in question. No such objection was ever taken; and, quite apart from that, even without an objection, it seems to me that the learned District Munsif was quite wrong in allowing those documents to be marked at all as exhibits in the case. This matter, no objection having been taken to the evidence, I thought at one time would justify me in remanding the case for a further finding of fact after the respondent company had been given an opportunity of putting forward the evidence in the regular way by means of witnesses. But, having gone through the evidence adduced on behalf of the petitioner, I entirely agree with the learned District Munsif that the petitioner did not show that the certificate given, Exhibit III, was a correct one and that the description that the goods were intended for use as manure was a correct description. He could have shown this by producing evidence to show that the oil-cakes had in fact been put to that use, but, although the evidence was given two years after the consignment was taken delivery of at Podanur, no such evidence was forthcoming. The plaintiff was bound to prove that this particular consignment was used for the purpose of manure. It would not have availed him—and in fact his evidence did not go to anything like that length—to show that some other consignment of coconut oil-cakes had been used for that purpose. As I read the evidence, account books were kept but no account books were produced in order to show

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that this consignment was used for the purpose of manure or was sold to somebody for use for that purpose. No evidence whatever worthy of the name has been called to show how that consignment was dealt with by the petitioner after he had taken delivery of it. On the facts, therefore, the petitioner failed to prove his case.

On the question of law, I am clearly of the opinion that the learned District Munsif was right in holding that the Railway Company was entitled to re-classify the goods in the manner it did. I had presented to me an argument which completely ignored rules 15 and 20 of the South Indian Railway Company Limited, Goods Tariff, Part I, and proceeded to the length of stating that, when once a Railway Company has accepted goods and the certificate and the declaration made as to the nature, quality and description of the goods, then thereafter, even if the Railway Company discovers that the certificate is false and the description is wrong and that the goods ought to have had applied to them a higher rate, it is not entitled to charge the higher rate. Quite apart from the fact that this amazing proposition is not supported by any authority in point, were that to be the law, then fraud would be made easy. For example, a person could consign goods enclosed in a securely packed chest and give to them a certain description and without opening the case the Railway Company would be unable to say at the time the consignment is made whether the goods answer to the description or not. If the Railway Company accept the goods as being of that description, it does so on the assumption that the description is correct. If it finds that the description is

otherwise, it is entitled to its remedy. Apart from this obvious right, there are rules 15 and 20. Rule 15 lays down that the Railway reserves the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or under-charged and that no admission is conveyed by a railway receipt that the weight as shown therein has been received or that the description of goods as furnished by the consignor is correct. How the argument addressed to me could possibly be presented with any hope of success in view of the latter words of this rule I cannot understand. Rule 20 provides that, if on arrival at destination it is found that goods have been improperly described and that a lower rate than that correctly applicable has been thereby obtained, charges at double the highest rate in force, viz., 9th clause, will be levied, calculated on the entire distance over which the consignment has been carried. I may here mention that no double rate was in fact levied by the company but all that the company did was to levy the rate which is properly applicable to that particular consignment, it being a consignment which could not be carried under C-FF rates. This disposes of the case entirely. Both on the facts and upon the law the petitioner's suit rightly failed and this civil revision petition must be dismissed with costs.

Solicitors for respondent : *King & Partridge.*

G.R.