

PRIVY COUNCIL.

*Before Lord Macmillan, Sir John Wallis, and
Sir George Lowndes.*

MADHO RAM

versus

SECRETARY OF STATE.

1933

Dec. 5.

P. C. Appeal No 65 of 1931.

(High Court Appeal No. 2924 of 1924.)

*Contract—Contract by Tender—Supply of Goods as re-
quired—Tender as to oil petroleum—Whether contract as to
“petrol”—Ambiguous form of tender.*

By a written tender, which was accepted, the appellant agreed that for a specific period he would supply a Military Department with various sorts of oils at named prices, as required; one of the items was “Oil petroleum.” On certain occasions the department called on him to supply ‘petrol’ which he did, charging and being paid at the agreed price for ‘oil petroleum.’ Upon the department buying petrol elsewhere he sued for damages for breach of contract. The High Court, without deciding whether the tender related to petrol, dismissed the suit on the ground that there was no contract binding the department to buy all or any of its requirements from the appellant:—

Held, that the suit failed, because “Oil petroleum” did not mean or include “petrol.” It was, therefore, unnecessary to determine whether the view of the High Court as to the effect of the contract was right; the Board was not to be taken as concurring in that view.

It is extremely desirable that in tenders of the above kind it should be made clear beyond all doubt on the face of the documents whether the accepted tender is for *all* supplies which may be required, or only for such as may be ordered.

Decree of the High Court, in *Secretary of State v. Madho Ram* (1) affirmed on a different ground.

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In the circumstances stated in the judgment of the Judicial Committee, the appellant instituted a suit against the respondent claiming damages for an alleged breach of a contract constituted by a tender in writing and its acceptance.

At the trial the appellant obtained a decree for Rs. 37,500, but upon appeal to the High Court the decree was set aside and the suit dismissed. The grounds of the judgment of the High Court, delivered by Ffordde J. and concurred in by Bhide J. appear from the judgment of the Bench, and more fully from the report of the case (1).

DE GRUYTHER K. C., Parikh and W. C. Dutt for the appellant—There was a contract binding the S. & T. Corps to order from the appellant all the petrol which it required during the specific period. Under the view adopted by the High Court the Corps could order its supplies from the appellant or elsewhere according as the market price or the price of tender was more favourable, and the appellant would be compelled to keep large stocks of all the goods tendered for and might never be called on to supply any of them. Neither party can have intended that the contract should be of that nature. Clauses 5 and 6 in the tender form contained provisions for rescission of the contract, and they are inconsistent with the contract being of the effect held: *Hornsby v. Vestry of St. Luke Chelsea* (2). In *Reg. v. Demers* (3), *Percival, Ltd. v. London C. C. Asylum's Committee* (4), *Ford v. Newth* (5), *Burton v. G. N. Ry. Co.* (6), *G. N. Ry. Co. v. Witham* (7), *Moore v. Camberlay Corporation*

(1) 1929 I. L. R. 10 (Lah.) 493. (4) (1918) 87 L. J. K. B. 677.

(2) (1860) 2 L. T. 176.

(5) (1901) 1 Q. B. 683.

(3) 1900 A. C. 103.

(6) (1854) 23 L. J. Ex. 184.

(7) L. R. 9 C. P. 16.

(1), *Bengal Coal Co. v. Homee Wadia & Co.* (2), *Kundan Lal v. Secretary of State* (3) and Benjamin 'On Sales,' 7th Ed., p. 83.

DUNNE K. C. and WALLACH for the respondents.—The evidence shows clearly that "Oil petroleum" mentioned in the tender neither means nor includes 'petrol' as the appellant contended. The fact that on some occasions petrol by mistake was indented for, and was charged and paid for, as though it were oil petroleum cannot affect the matter. If that is so, it is unnecessary to consider whether the High Court rightly construed the contract resulting from the tender and its acceptance; it is submitted, however, that it was the right view. [*They were stopped, the appellant's counsel being called on as to the subject matter of the tender.*]

DE GRUYTHER K. C. replied on that point.

The judgment of their Lordships was delivered by—

SIR JOHN WALLIS—In this case the plaintiff Madho Ram, contractor, Lahore Cantonment, instituted a suit to recover Rs. 37,500 from the defendant, the Secretary of State for India in Council, by way of damages for breach of contract, entered into by the Supply and Transport Corps with the sanction of the General Officer Commanding the Lahore Divisional Area, for the supply of "oils of sorts other than kerosine," deliverable at Lahore Cantonment, Ferozepore, Multan, Jullundur and Amritsar, for the year 1st April, 1917, to 31st March, 1918.

The plaintiff having put in a tender for this year in the prescribed form, the written sanction of the

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(1) (1903) 89 L. T. 595.

(2) (1899) I. L. R. 24 Bom. 97.

(3) 72 P. R. 1904.

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G. O. C. was obtained "for the period at the rates quoted" in the schedule to the tender after a "comparative statement" had been submitted to him, which no doubt showed the rates accepted in the preceding year or years.

The sanction having been duly recorded in the schedule to the tender, the schedule was signed on the same day by the plaintiff and the Deputy Assistant Director of Supplies, and on the 5th February, 1917, acceptance of the tender was communicated to the plaintiff and entered in the tender.

In the tender the plaintiff agreed to supply so much oil of sorts as the officers specified "may require, subject to the conditions set forth in this tender and in the schedule annexed thereto."

Twelve different sorts of oil were entered in Column 1 of the schedule, which was headed "Exact description of supplies required," and in other columns the rates per gallon in figures and words and the "estimated requirements" were entered. These estimated requirements, read with note A, were for the quantities entered "and as required after completion of these quantities."

One of the oils specified in the schedule was "oil petroleum," at Rs. 3-12-0 per gallon, and the "estimated requirements" were entered as 200 gallons. The tender for the preceding year 1916-17 included "oil petroleum," at Rs. 4 per gallon, with estimated requirements of 10 gallons. "Oil petroleum" had not been included in the accepted tender for 1915-16.

The sole question in the case is whether by the acceptance of this tender for an estimated 200 gallons of "oil petroleum" in January, 1917, the plaintiff obtained a contract for the supply of all the petrol

required by the Supply and Transport Corps for five of the most important military stations in the Punjab at a rate which, according to the evidence of one of his own witnesses, was double the rate for petrol in 1917.

The plaint alleged that the plaintiff under his contract continued to supply petrol under the heading of "oil petroleum," up to the 17th July, 1917, and in this way supplied over 200 gallons of petrol, which were duly accepted as "oil petroleum" and paid for at the contract rate of Rs. 3-12-0 per gallon, but that subsequently in breach of the contract the defendant had obtained supplies of petrol from other dealers, and during the running period of the contract so obtained approximately no less than 25,000 gallons. He further alleged that during the period from July, 1917 to March, 1918, the market price of petrol was Rs. 2-4-0 per gallon, as compared with the contract rate of Rs. 3-12-0, and that he had suffered a loss at the rate of Rs. 1-8-0 per gallon, or Rs. 37,500, which he claimed to recover as damages.

In the written statement the defendant alleged that the contract did not compel the S. and T. Corps to indent even for 200 gallons on the plaintiff or to draw its supplies from the plaintiff alone. It denied that the plaintiff had supplied petrol under the heading of "oil petroleum" up to July, 1917, and had supplied 200 gallons of petrol which were duly accepted and paid for as "oil petroleum." "The schedule provided for the supply of 'oil petroleum.' If the plaintiff cleverly supplied and the defendant by a mistake received petroleum (*sic*) for 'oil petroleum' it does not affect the case. Petrol was never knowingly received as, or in the place of, 'oil petroleum.'"

Both the lower Courts in their judgments embarked in the first place on an elaborate consideration of

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the question whether in the light of the English decisions the acceptance of the plaintiff's tender amounted to a contract binding the S. and T. Corps to draw all their supplies of the oils specified from the plaintiff.

The Subordinate Judge found that such a contract was proved, and being of opinion that "oil petroleum" included petrol, gave the plaintiff a decree for Rs. 37,500 as claimed.

The High Court held that the plaintiff was not entitled under the contract to insist on the S. and T. Corps getting all or any of their supplies from the plaintiff, and reversed the decree of the lower Court and dismissed the suit on that ground without going into the question whether "oil petroleum" included petrol. As their Lordships, after hearing the latter question fully argued, are clearly of opinion that petrol was not included, and that on this ground the appeal must fail, they do not propose to decide the question of contract, and will merely observe that they are not to be taken as concurring in the High Court's finding as to the effect of the contract. They think it right to add that in their opinion it is extremely desirable that in tenders of this kind it should be made clear beyond all doubt on the face of the documents whether the accepted tender is for all the supplies which may be required while the tender is in force, or only for such supplies as may be ordered from time to time, and that these questions should not be left to become the subject, when differences arise, of protracted litigation.

As to what was meant by "oil petroleum," the Subordinate Judge found, in the first place, that "oil petroleum" and "petrol" were different things, and that "oil petroleum" was crude oil used for cleaning

rifles and guns, and petrol was a distilled spirit used for driving motor-cars, but that in this contract both parties understood that the article to be supplied was petrol, and accordingly gave the plaintiff a decree for Rs. 37,500, the damages claimed in the plaint. With the latter part of this finding their Lordships are wholly unable to agree.

“ Oil petroleum, Russian lubricating,” is one of the supplies included in the Army Tables of a Battery, R.F.A. According to the defendant’s evidence the “ oil petroleum ” in this case was required for cleaning guns. In both instances the term “ oil petroleum ” would appear to have been used in contradistinction to spirit of petroleum now commonly known as petrol.

Reference to the words petroleum and petrol in the New English Dictionary shows that in the early days of motoring, motor spirit was known as spirit of petroleum and in France as *essence de pétrole*. Something shorter apparently being wanted, *pétrole* or *essence* came into use in France and petrol in England. In 1917, petrol was the only term in use for motor spirit both in England and in India. All the indents exhibited in the case were for petrol, and there is no reliable evidence that motor spirit was ever known as “ oil petroleum.” When the plaintiff first saw the words “ oil petroleum ” in the printed form of tender he may not have known what exactly was meant, and may have had to enquire before making his tender, but he can hardly have avoided knowing that it was not petrol. This was sufficiently apparent from the fact that only 200 gallons were entered as the estimated requirements for these five stations, whereas the plaintiff proved from the books produced by the defendant that the S. and T. Corps in this contract year

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purchased 26,540 gallons of petrol for the contract stations from the Shell and Burma Oil Companies, and it is not clear whether these quantities included the petrol which the officers in charge of supplies at the out-stations obtained on indents from other contractors under their contracts, as evidenced in this case.

That the plaintiff did not think that "oil petroleum" meant petrol also appears from the fact that his rate of Rs. 3-12-0 per gallon was double the market price of petrol at the date of the tender.

As for the "oil petroleum," mentioned in his contract, he presumably ascertained that it was crude petroleum, wanted for cleaning guns, before he tendered for it at Rs. 3-12-0 a gallon, unless indeed he simply took the rate tendered by his predecessor and reduced it by 4 annas a gallon. In any case, he cannot possibly have supposed that "oil petroleum" included petrol. The plaintiff did not venture to go into the box and depose that he understood his contract to include petrol.

Captain Payne, the plaintiff's twelfth witness who signed one of these supply orders, deposed that he was unable to explain why in this instance the supply order was made out for oil petroleum when the indent was for petrol, and that he signed the order put before him "as an ordinary routine."

The plaintiff's claim would appear to have been suggested by the fact which had come to the plaintiff's knowledge that the previous contractor had on two occasions been allowed to supply petrol wanted by the Armoured Motor Unit, Lahore, under supply orders for oil petroleum purporting to be made under his contract; and the claim was at once rejected by the

Officer Commanding the Supply and Transport Corps, Lahore, as soon as the true facts were ascertained.

For these reasons their Lordships are of opinion that the appeal must be dismissed, and they will humbly advise His Majesty accordingly. The appellant will pay the respondent's costs.

A. M. T.

Appeal dismissed.

Solicitors for appellant: *T. L. Wilson & Co.*

Solicitors for respondent: *Solicitor, India Office.*

FULL BENCH.

*Before Shadi Lal C. J. and Broadway, Tek Chand,
Goldstream and Agha Haidar JJ.*

KALU RAM (PLAINTIFF) Appellant

versus

HANWANT RAM AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 553 of 1930.

Appeal—course of—in suits for money due on unsettled accounts—where trial Court finds a lesser amount due than that fixed tentatively by plaintiff in his plaint—Punjab Courts Act, VI of 1918, Sections 3 (4), 39 (1)—“Amount or value of subject matter of the original suit”—meaning of—Court Fees Act, VII of 1870, Sections 7 (IV) (f), 11—Suits Valuation Act, VII of 1887, Section 8—Civil Procedure Code, V of 1908, Order VII, rule 2.

The plaintiff instituted a suit in the Court of the Subordinate Judge, 1st Class, Delhi, claiming dissolution of partnership and rendition of accounts, and under Section 7 (IV) (f), Court Fees Act, and Section 8, Suits Valuation Act, he fixed the value of the suit for purposes of jurisdiction and court-fee tentatively at Rs. 8,000. In this suit a final decree was passed, decreeing Rs. 3,375 in favour of the plaintiff. The defendant preferred an appeal to the District Judge valu-

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March 29.