

(1908) 07 CAL CK 0032
In the Calcutta High Court

Sitarampur Coal Co. Ltd.

APPELLANT

Vs

T.H. Colley

RESPONDENT

Date of Decision : 08-07-1908

Acts Referred:

Citation : 1 Ind. Cas. 351

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—The Plaintiff Company in this suit seek to recover damages against the Defendant who is an inspector of boilers employed by the Government of Bengal in the office of the Commissioners for the Inspection of Steam-boilers under the circumstances hereinafter mentioned. The facts in the main are not in dispute.

2. It appears that the Plaintiffs' manager, Mr. Hannaford, in the month of December 1906, approached the Defendant with a view to acquiring two second hand steam-boilers capable of working at 100 lbs. working pressure.

3. The Defendant fell in with the proposal of Mr. Hannaford and undertook to find two boilers as required by Mr. Hannaford. There can be no doubt but that Mr. Hannaford, in his correspondence with the Defendant, made it clear to the Defendant that the boilers required by the Plaintiff Company must be capable of working at a minimum pressure of 100 lbs. to the square inch.

4. In the month of January, the Defendant wrote to Mr. Hannaford informing him that he had found some boilers which were suitable for the Plaintiffs' purposes.

5. Mr. Hannaford arrived in Calcutta on the 31st of January 1907, and on the 1st of February, called at the offices of the Boiler Commission. The Defendant states that he showed Mr. Hannaford, on that occasion, the register of the Commissioners showing the history of the boilers which he had selected for the Plaintiffs.

6. Having heard the evidence on both sides, I have no hesitation in accepting Mr. Hannaford's evidence that he was not shown the register at all. From the office of the Commissioners, Mr. Hannaford and the Defendant went together to see the boilers.

7. Mr. Hannaford selected two of the boilers but in doing so, I am satisfied that, he relied upon the statement of the Defendant as an expert that the boilers were capable of working at 100 lbs. working pressure. On the next day, both boilers were purchased and it is with reference to the purchase of one of these boilers that the present suit is brought. Now, it is common ground between the parties that, the boiler in question was not, in its condition as purchased, capable of working at 100 lbs. working pressure, although there is a conflict on the evidence as to at what pressure the boiler might have been safely worked. In my view of the evidence, however, it is obvious that the boiler was not capable of working at a pressure of anything like 100 lbs., without having very serious repairs done to it.

8. With respect to the terms upon which the Defendant was employed, there is a direct conflict of evidence between Mr. Hannaford and the Defendant as to whether or not the Defendant was to be paid for his services. Again, I have no hesitation in accepting Mr. Hannaford's statement that the Defendant was to be, and was in fact, remunerated for the services he was to render in procuring the boilers. I am wholly unable to accept the Defendant's story that the commission paid to him by the Plaintiffs was handed over by him to a broker named P.K. Dutt. How, then, did the Defendant, an agent with special skill employed for reward, perform his duty towards the Plaintiff? In the first place, the Defendant admits that he made no internal inspection of the boiler but relied solely on the register kept in the office of the Boiler Commission. There is a considerable conflict between some of the Plaintiffs' witnesses and the Defendant as to what the actual state of the register was on the 1st February 1907, but even if I were to accept the Defendant's story as to the state of the register on that day, I should still hold that the Defendant had not discharged his duty to the Plaintiffs. The Defendant as an expert with special skill was bound to exercise his skill in the selection of the boilers and ought not to have relied on any other statement.

9. I hold, therefore, subject to the question as to whether the contract between the Plaintiffs and the Defendant was void on the ground of its being against public policy, that the Defendant failed in his duty towards the Plaintiffs and was guilty of gross negligence in the selection of the boiler in question.

10. The next matter in dispute between the parties is whether or not the Defendant received or made a secret commission of Rs. 500 on the purchase of the boiler. Now, although the Plaintiffs do not by their plaint ask for any specific relief on this ground, I should, if I were satisfied that this claim is well founded, not allow a claim of this nature to fail simply on the ground that the plaint had failed to ask for proper relief in respect thereof. That the actual vendor received only Rs. 2,500 out of the Rs. 3,000 paid by the Plaintiffs for the boiler cannot be

doubted. The Defendant, however, says he knows nothing about this and that he paid the whole of the Rs. 3,000 to the broker P.K. Dutt and produces a receipt in respect thereof from P.K. Dutt, The Defendant subpoenaed P.K. Dutt as a witness but he failed to answer to his subpoena. The onus of proving that the Defendant received or retained this secret commission is on the Plaintiffs, and although I think the circumstances are extremely suspicious, I must, on the evidence before the Court, give the Defendant the benefit of the doubt and find this issue in his favour.

11. The only point remaining to be decided is whether or not the contract sued upon by the Plaintiffs is void as being against public policy.

12. This point is to my mind the only serious question in this suit.

13. The Defendant is an inspector of boilers under the Bengal Boiler Commission, and as such, it is his duty to inspect all such boilers as the Commissioners may direct him to. The Commission is constituted under Act III of 1879 (B.C.) and under certain regulations made by the Lieutenant-Governor under the provisions contained in the Statute. Now, it has been urged on behalf of the Defendant that, as it might have been his duty to inspect the boiler in question, the contract made between him and the Plaintiffs must be void. The boiler in question was not in fact inspected by the Defendant but by Mr. Rowe, another inspector, but I think that the argument of the Defendant's counsel is well founded to this extent, viz., that, if the Defendant had been sent to inspect the boiler, there is a strong probability that he would have tried to pass it, having regard to the fact that he had advised the Plaintiffs to purchase it. The duty cast upon the inspectors under the Act and regulations is to hold an independent inspection of the boiler in order to see whether the boiler is safe for use. The object of the Act is to prevent loss of life by reason of user of defective boilers. There was, therefore, a probability that the duties cast upon the defendant as inspector of boilers would conflict with the duty he undertook to the plaintiffs under the contract. It is to be remarked, moreover, that Mr. Hannaford knew from before the date of the contract that the Defendant was an inspector of boilers and that he approached the Defendant first. The Plaintiffs' counsel, on the other hand, has argued that the Defendant was capable of entering into the contract, although he might render himself liable to be dismissed by the Commissioners for doing so. I have come to the conclusion that the argument of the Defendant's counsel on this point ought to prevail.

14. If a person enters into a contract with a public servant, which he knows casts upon the public servant duties which may conflict with the duties he owes to the public, such contract is, in my opinion, void. To adopt the argument of the learned Counsel for the Plaintiffs and hold this contract valid, although the public servant would be liable to dismissal from the public service, would be fraught with grave danger to the public interest. Nor would the two parties to the contract stand on an even footing. The public servant would not dare to move even to sue for his commission, if unpaid, for fear of the fact of the contract

being discovered by his superiors, and any liability that he might be under by virtue of the contract, if valid, he would probably endeavour, if he could, to hide it by committing a breach of the duty he owed to the public. I, therefore, hold that the contract sued upon is void. This suit accordingly fails and must be dismissed. I, however, make no order as to costs.