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LAW REPORTS

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of the Middle Temple, Barrister-at-Law

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VOL. 63. No. 1] THURSDAY, FEBRUARY 9, 1939. [BY SUBSCRIPTION

COURT OF APPEAL.

Wednesday, Jan. 11, 1939.

SMITH v. PEARL ASSURANCE COMPANY, LTD.

Before Lord Justice SLESSER, Lord Justice CLAUSON and Lord Justice DU PARCQ.

Practice—Motor insurance—Arbitration—Stay of action—Personal injuries sustained by plaintiff while travelling as passenger in B's car—Judgment recovered against B by plaintiff proceeding under Poor Persons' Rules—Bankruptcy of B—Vesting of right of action against B's insurance company—Action brought against insurance company—Application by company for stay of action, having regard to arbitration clause in policy—Plea by plaintiff that if dispute went to arbitration he would be hampered by reason of his poverty in establishing his case, but that if the matter went before the Court he would have the benefit of the Poor Persons' Rules—Discretion of Court—Arbitration Act, 1934, Sect. 3 (4).

——Held, dismissing appeal from ASQUITH, J., *that whether or not the Court had a discretion in the matter, it could not be exercised to allow the plaintiff to proceed with his action (The personal disability of the plaintiff, whose only title arose through B, the assured, could not affect the contractual right of the company to claim arbitration under the policy)—Action stayed.*

This was an interlocutory appeal by Mr. Charles Henry Smith, of Acre Path, Andover, from an order of Mr. Justice Asquith, who dismissed his appeal from an order of a Master granting a stay of an action by Mr. Smith against the Pearl Assurance Company, Ltd., on the application of the company.

Mr. Smith had been a passenger in a motor car belonging to a Mr. A. L. Blackmore, who was insured against third-party risks with the Pearl Assurance Company. An accident occurred and Mr. Smith was seriously injured. In an action against Blackmore, he was given judgment (proceeding as a poor person) for £2160. Mr. Blackmore was adjudicated bankrupt and under the Third Parties (Rights Against Insurers) Act, 1930, his right to recover against the assurance company became vested in Mr. Smith. On his issuing a writ against the Pearl Assurance Company, however, the company applied for a stay, claiming that, under the policy, arbitration was stipulated and an award was required before an action at law could be started.

The Master upheld the claim of the insurance company and was affirmed on appeal by Mr. Justice Asquith.

The plaintiff now appealed.

Mr. L. B. Schapiro (instructed by Messrs. Pennington & Son) appeared for the appellant; Mr. H. D. Samuels, K.C., and Mr. M. Berryman (instructed by Messrs. Berrymans) represented the respondents.

Mr. SCHAPIRO, for the appellant, said that the main ground of the appeal was that if the action was continued he would have the benefit of the Poor Persons' Rules. But the assistance which he would receive therefrom did not apply to arbitrations. Plaintiff could not afford to go to arbitra-

tion without financial assistance. The Court had power under Sect. 3 (4) of the Arbitration Act, 1934, to order that the provision that the making of an award should be a condition precedent to any right of action, should cease to have effect.

Counsel for the respondents were not called upon.

JUDGMENT.

Lord Justice SLESSER: We are very much indebted to Mr. Schapiro for putting clearly before us all that can be said in this unfortunate case, but having come to a clear conclusion that even if this Court has a discretion in this matter—a matter which we think raises a difficult question—we think that the discretion cannot here properly be exercised to interfere with the contractual conclusions which were arrived at between the two principal parties, and therefore on that ground alone this appeal must fail.

The facts of the case shortly stated are these. A Mr. Blackmore was insured with the defendants, the Pearl Assurance Company, Ltd., against what are generally called third-party risks. The plaintiff was a passenger in the motor car, the subject of the insurance, and owing to the negligence of Blackmore it is alleged that the plaintiff suffered a serious injury, loss and damage which, on judgment being entered on Dec. 24, 1937, was assessed at no less a sum than £2160, and it was adjudged that the plaintiff should recover against Blackmore £2160 and costs to be taxed. Blackmore became insolvent, and in accordance with the provisions of the Third Parties (Rights Against Insurers) Act, 1930, Sect. 1 (1), the rights of the insured under the contract were transferred to and vested in the third party, that is, the plaintiff, to whom the liability was so incurred.

The plaintiff then issued a writ and a statement of claim against the insurance company reciting the facts which I have stated, and the insurance company took the point that under the contract of insurance between them and Blackmore they were entitled to have the action stayed, on the ground that the parties had agreed to refer their differences to arbitration; that was under Clause 6 of the policy which so stated, and went further and added a provision that the making of an award should be a condition precedent to any right of action against the company.

It may well be that the effect of those words would be to exclude the discretion of the Court under the Arbitration Act, 1889, but it has been argued that under the extended language of Sect. 3 (4) of the Arbitration Act of 1934 the Court may order that the provision that the making of an award shall be a condition precedent shall cease to have effect with regard to the dispute, in circumstances such as these. As I have said, on that very difficult question I express no opinion; but I am clearly of opinion that if there were a discretion, the grounds suggested in this case are not sufficient to justify the Court in refusing to stay the action. If the matter had been looked at in the first place as it ought to have been—as between Blackmore and the insurance company—it is clear to my mind that the parties, being both contractors, have contracted, without any condition as to the poverty of Mr. Blackmore or anyone claiming through him, that the making of the award should be a condition precedent to any right of action, and that all differences should be submitted to arbitration.

His LORDSHIP went on to say that the position of the present plaintiff was made clear, and that of Mr. Blackmore, under the Act of 1930. Whatever his rights were they were vested and transferred to the plaintiff, and although by reason of his poverty he might have difficulty in finding the money to proceed with the arbitration, that was no ground for saying that the contract between Mr. Blackmore and the insurance company should not be given effect to when its rights and conditions were vested in the plaintiff.

His LORDSHIP continued: If the contention of the appellants' Counsel is right, it seems to me that every person in a state of poverty—certainly such a state of poverty as to entitle him to have recourse to the Poor Persons' Rules—could argue that he was not bound by the arbitration rules. I can find no authority for that; and, if it be a question which is open at all, I do not think we should exercise our discretion to interfere with the rights of the insurance company merely because of the poverty of the other party to the arbitration clause or a person deriving title from him.

Lord Justice CLAUSON: I agree. As I understand the matter, the learned Judge and the Master took the view that this was not a case in which the Court had the discretion which is *prima facie* given by

Sect. 4 of the Arbitration Act, 1889, to stay the proceedings. That question I should desire to leave entirely open. It turns partly on the construction of the contract and partly on the true result of the Arbitration Act, 1889, as varied by the Arbitration Act, 1934. Accordingly, I assume for the purpose of this judgment that this Court, if satisfied that there is any sufficient reason why the matter should not be referred in accordance with the submission, will not make an order staying the proceedings.

Then I address myself to the question: In this case is there a sufficient reason why the matter should not be referred to arbitration? The only sufficient reason suggested is this, that the plaintiff finds himself to be in such a financial position that if his suit were continued in the High Court he would, as he conceives, have the benefit of the Poor Persons' Rules, and would, accordingly, be in a favourable condition for bringing the matter before the Court. It is pointed out that if the matter is to go to arbitration he will not get any corresponding benefit and will be gravely hampered in establishing his case. This, it is to be observed, is a personal disability under which the plaintiff finds himself, a personal disability in no way connected with the contractual rights or obligations arising out of the contract in respect of which he has, or conceives himself to have, a cause of action. In my judgment, it can only be in some very exceptional case indeed that the Court would be justified in holding that a mere personal disability of one party of this character would be a sufficient reason for the Court to exercise the power given by Sect. 4 of the Arbitration Act, 1889, of overriding the contractual right of arbitration. On that ground, in my view, the order made below must stand.

I only wish to add this. Should it become necessary in the future to deal further legislatively with the matter which was dealt with in the Third Parties (Rights Against Insurers) Act, 1930, I trust that those who have to deal with the matter will carefully consider whether there are not weighty reasons why persons who have the advantage of some such legislative provision should not be freed from the restriction which might otherwise fall upon them of being driven to arbitration. That, however, is a matter of policy, upon which I should not be justified in expressing any view; but I do think, having regard to such experience as I have had in these matters, I am justified in drawing attention to the desirability of that question being very carefully considered should the occasion arise.

Lord Justice DU PARCQ: I agree, both in the result and for the reasons which have been given, with the judgments which have been delivered, and I do not think I can usefully add anything.

Mr. SAMUELS: The appeal will be dismissed?

Lord Justice SLESSER: Yes. There will be no order as to costs.

KING'S BENCH DIVISION. (DIVISIONAL COURT.)

Tuesday, Jan. 17, 1939.

JONES v. MEATYARD.

Before Lord HEWART (Lord Chief Justice), Mr. Justice CHARLES and Mr. Justice SINGLETON.

Road Traffic Act, 1930—Offence under statute—False statement admittedly made by respondent for purpose of obtaining the issue of a certificate of insurance—Evidence that no financial or other advantage was gained thereby — Information preferred against respondent — Dismissal by learned Magistrate—Sect. 112 (2): "If any person for the purpose of obtaining the grant of any licence to himself or any other person knowingly makes any false statement, or for the purpose of obtaining the issue of a certificate of insurance or of a certificate of security under Part II of this Act makes any false statement or withholds any material information, he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such imprisonment and fine"—Appeal. ——Held, that the question whether gain or advantage was derived from making a false statement was immaterial in considering whether an offence had been committed under Sect. 112 (2), and that the case must therefore go back to the Magistrate with the direction that the offence which was charged was proved.

In this case, Police Constable Sidney Jones, of the Metropolitan Police, appealed against a finding of Sir Gervais Rentoul, at West London Police Court, who had dismissed an information preferred against Stanley James Meatyard. The information alleged that Meatyard, on Mar. 26, 1938, at Sheen Lane, S.W., for the purpose of obtaining the issue of a certificate of insurance for a motor car, made a false statement contrary to Sect. 112 (2) of the Road Traffic Act, 1930. The section of the Act reads:—

> If any person for the purpose of obtaining the grant of any licence to himself or any other person knowingly makes any false statement, or for the purpose of obtaining the issue of a certificate of insurance or of a certificate of security under Part II of this Act makes any false statement or withholds any material information, he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such imprisonment and fine.

In the special case stated by the Magistrate for the opinion of the Court, it appeared that Meatyard purchased a motor car and registered and licensed it in the name of "R. Jones." Then he telephoned to Messrs. Andrew & Booth, Ltd. (agents of the Private Motor Car Underwriters' Policies, of St. Helen's Place, E.C.), saying that a friend "R. Jones" required insurance, and asked that the cover note be sent to him. The note to cover the car for 14 days was sent to Meatyard. Later, on Mar. 27, Meatyard was stopped by a police officer, and the next day he produced the cover note. Then he informed Messrs. Andrew & Booth that "R. Jones" had insured elsewhere, and he (Meatyard) was accordingly returning the cover note. Later, in April, Meatyard told the police that Jones was a workmate of his, and the address he gave was that of his brother. He did it because he wanted to "keep on the cheap rate of insurance." It was admitted that there was no person "R. Jones."

Appellant contended before the Magistrate that Meatyard had made a false statement for the purpose of obtaining a certificate of insurance, inasmuch as he told Messrs. Andrew & Booth that "R. Jones" required insurance. It was admitted, however, that Meatyard obtained no financial or other advantage by his conduct.

The Magistrate found that Meatyard had obtained a valid insurance policy, using the name of "R. Jones" as his own, and that no gain or advantage had accrued to him thereby. Therefore he dismissed the information.

Mr. E. J. P. Cussen (instructed by the Solicitor to the Metropolitan Police) appeared for the appellant; Mr. Meatyard was not represented.

JUDGMENT.

Lord HEWART, C.J.: In this case an information was preferred by a police constable of the Metropolitan Police against the respondent for that on a day

in March last he did for the purpose of obtaining the issue of a certificate of insurance make a false statement contrary to Sect. 112 (2) of the statute. The learned Magistrate, having heard the information, dismissed it, and dismissed it, as he says, without calling on the respondent to answer.

It is a little difficult to appreciate the reason for that proceeding. The words of Sect. 112 (2) of the Road Traffic Act, 1930, are, one would have thought, abundantly clear; they provide as follows:

> If any person for the purpose of obtaining the grant of any licence to himself or any other person knowingly makes any false statement, or for the purpose of obtaining the issue of a certificate of insurance or of a certificate of security under Part II of this Act makes any false statement or withholds any material information, he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such imprisonment and fine.

The part with regard to penalty shows clearly enough how seriously the Legislature regards the possibilities of such an offence.

In this case, it was not denied that the respondent did, for the purpose of obtaining the issue of a certificate of insurance, make a false statement. The evidence which is set out in this case and the findings of fact are perfectly clear; a certificate of insurance was obtained, and for the purpose of obtaining it a false statement was made. For some reason which it is not profitable to conjecture, the respondent, whose name is Stanley James Meatyard, having purchased and taken delivery of a small motor car, registered it and licensed it in the name of another person, in the name of R. Jones. Not content with so doing, he telephoned to the agents for the underwriters that a friend of his, a Mr. R. Jones, living at Cranwell, required insurance in order to license a car, of which he was taking delivery; and then he set out the horse-power and the number of this car, and said that the respondent required the cover note to be forwarded to him. In consequence of those statements a cover note of insurance, purporting to cover the car for a period of 14 days, was in fact dispatched to the respondent. In that cover note the name of the proposer is given as R. Jones, the address is given as Cranwell, and his occupation or trade is described as being that of a clerk. Afterwards, on Mar. 27, the respondent himself was seen and stopped by the police officer when he was actually driving this motor car in Hampton Court Road. The police officer pointed out that the car was not carrying a revenue licence, and the respondent replied that it was in the post; that he had sent it up on the previous Friday with a certificate of insurance; and that a friend of his said it would be all right if he took the car out. On the following day he produced the cover note, and he informed the underwriters that R. Jones had insured elsewhere, and therefore he was returning the cover note. Afterwards, on Apr. 12, the respondent was questioned by a police sergeant of the Metropolitan Police. He was asked whether he was the owner of the car, and he replied that he was. The sergeant then informed him that the car was registered with the Surrey County Council in the name of Reginald Jones, of 38, Ember Court, Molesey; and to that statement the respondent answered: "On Mar. 26 I sent the money for the revenue licence in the name of Jones, who is a workmate of mine. He knows nothing about this, and I do not know his address. The address I gave is that of my brother, and the correct address should read: 38, Ember Gardens, Molesey. I did this because I wanted to keep on the cheap rate of insurance." Finally, before the learned Magistrate, it was admitted that there was no such person as R. Jones.

In those circumstances it is a little difficult to appreciate why the information was dismissed, and was dismissed without the calling of any answer from the respondent; indeed, when one observes the finding of fact with regard to the purpose of this: "I did this because I wanted to keep on the cheap rate of insurance," it is a little difficult to exclude wholly the notion of gain or advantage. But, of course, according to this section, it is not necessary that any gain or advantage should be derived, in order that the offence may be complete.

The learned Magistrate says, and I read his very words, "I found that the respondent had obtained a valid insurance policy in the name of 'R. Jones,' using the said name . . . as his own, and that no gain or advantage had accrued to him thereby. I therefore dismissed the said information." It is a little difficult to understand the

meaning in those circumstances of that word "therefore." The sub-section does not contain a proviso that a false statement is permitted in circumstances in which it is established that no gain or advantage has accrued to the defendant from making the false statement. I repeat that it is not possible to understand this decision. The offence was manifestly committed.

I think, therefore, that this appeal must be allowed, and that the case must go back to the learned Magistrate, with the direction that the offence which was charged was proved.

Mr. Justice CHARLES: I agree.

Mr. Justice SINGLETON: I agree.

Lord HEWART, C.J.: It is suggested that there may be something to be added; I cannot imagine what it is, but at least the case must go back to the learned Magistrate with a direction that in this state of the evidence the offence which was charged was proved. I cannot help thinking it is rather an unnecessary formality to put the matter in that way, because it was admitted that this statement was false. What evidence can be offered in those circumstances to qualify the statement which was false, passes my wit to understand.

Mr. CUSSEN: My Lord, I do not ask for costs in this case.

Lord HEWART, C.J.: No; it is unfortunate that you cannot. The case will go back to the learned Magistrate, with a direction that upon the materials before us the charge which was made was proved, and a further direction that the question whether gain or advantage was derived is immaterial and finds no place in the statute.

KING'S BENCH DIVISION. (DIVISIONAL COURT.)

Tuesday, Jan. 17, 1939.

FINCH v. RUDD.

Before Lord HEWART (Lord Chief Justice), Mr. Justice CHARLES and Mr. Justice SINGLETON.

Negligent navigation—Breach of by-laws—Conviction—Appellant navigating vessel in River Yare—Engines put at full speed ahead to navigate round sharp bend, wash created causing damage to moorings—Master required by local by-laws to navigate vessel "at a speed and in a manner which shall not cause damage to other vessels or moorings or to the banks of the rivers"—Conviction upheld by Recorder—Appeal—Whether by-laws ultra vires.

———*Held, that there were facts before the Recorder which entitled him to come to the conclusion that the damage was caused by the speed at which, and the manner in which, the vessel was being navigated; and that the by-law was not* ultra vires—*Appeal dismissed.*

In this case, Mr. Arthur Baxter Finch, master of the motor vessel *Apricity*, of 402 tons gross, appealed against a decision of the Recorder of Norwich, who had dismissed his appeal against a finding of the Norwich Magistrates. The Magistrates had fined appellant £2 for a breach of the by-laws in navigating his vessel on the River Yare on Feb. 1, 1938.

Mr. H. L. Holman (instructed by Messrs. Holman, Fenwick & Willan) appeared for the appellant; Mr. H. R. Boileau (instructed by Messrs. Sharpe, Pritchard & Co., agents for Mr. N. B. Rudd, of Norwich) represented the respondent.

Mr. HOLMAN said that the *Apricity*, at the material time, was navigating down the River Yare. She was in light trim and the wind at the time was blowing strongly from the south-west. She was admitted to be proceeding at a moderate speed, and had reached the point where the river took a sharp bend, and there, her case was, she was compelled to put her engines at full speed ahead in order to have sufficient steerage way to round the corner, in view of the wind and in order to avoid being driven ashore. The result was that her wash broke some mooring ropes of other vessels and did a little damage to staging. The master was fined £2 by the Magistrates on a charge of breaking By-law No. 3 (e) of the By-laws of the Great Yarmouth Port and Haven Commissioners. By-law No. 3 was as follows:

> The master of every vessel navigating the rivers shall navigate such vessel
>
> (a) with care and caution
>
> (b) at a speed and in a manner which shall not endanger the safety of other vessels or moorings
>
> (c) at a speed and in a manner which shall not cause unnecessary annoyance to the occupants of other vessels
>
> (d) at a speed and in a manner which shall not be likely to cause damage to the banks of the rivers
>
> (e) at a speed and in a manner which shall not cause damage to other vessels or moorings or to the banks of the rivers.

The question of law, said COUNSEL, was whether the Commissioners had power to make that by-law and whether the by-law was *ultra vires*. He contended, in the first place, that it was not clear what duty the master of a vessel was to perform in order to carry it out; whether when the master proceeded with due care and caution he satisfied the by-law, or whether an offence was committed when damage was done, regardless of the fact whether the master was innocent or not.

COUNSEL also submitted that the by-law was, in the circumstances, *ultra vires* because it imposed a penalty on an innocent person who caused damage when properly navigating his vessel and exercising all due caution.

Mr. Justice CHARLES: But if you bring a 400-ton vessel up a river in a south-westerly gale with a sharp bend ahead which forces you to put on full speed or go aground, you must know that there is a possibility of doing damage.

Mr. HOLMAN suggested that no fault had been found with the master's tactics, and the by-law seemed an absolute prohibition of the navigation of the river on a windy day by a large vessel, although no steps were taken to prevent such a vessel from using the river.

Counsel for the respondent was not called upon.

JUDGMENT.

Lord HEWART, C.J.: This is a case stated by the Court of Quarter Sessions of the City and County of Norwich, and the question contained in it arises in the following way. At the Quarter Sessions for Norwich on May 2, 1938, the present appellant appealed against his conviction by a Court of summary jurisdiction on Mar. 22, 1938, for failing to navigate a vessel on the River Yare at a speed and in a manner which would not cause damage to moorings there. The Court of summary jurisdiction adjudged that the appellant should pay a fine of £2, together with certain costs. From that conviction the appellant appealed to Quarter Sessions, and at Quarter Sessions certain facts were proved. Those facts, and the contentions said to be based upon them, are stated by the learned Recorder in the special case.

Shortly, the result of the Recorder's findings are as follows: the appellant was master of a motor vessel, the *Apricity*, and the allegation against him was that he had committed a breach of By-law No. 3 (e) of the by-laws made by the Great Yarmouth Port and Haven Commissioners. Now, that by-law is the concluding part of a comprehensive by-law relating to the navigation of vessels, and that by-law begins by saying: "The master of every vessel navigating the rivers" — that is, the Rivers Yare, Bure, and Waveney—

> shall navigate such vessel
>
> (a) with care and caution
>
> (b) at a speed and in a manner which shall not endanger the safety of other vessels or moorings
>
> (c) at a speed and in a manner which shall not cause unnecessary annoyance to the occupants of other vessels
>
> (d) at a speed and in a manner which shall not be likely to cause damage to the banks of the rivers
>
> (e) at a speed and in a manner which shall not cause damage to other vessels or moorings or to the banks of the rivers.

One has only to read those various limbs of the by-law with care to see that each separate limb of that by-law is dealing with, and is directed to, a distinct and separate possibility.

So far as the facts proved before the learned Recorder are concerned, they can be summarised in this way: "On the 1st February, 1938, the *Apricity* left Norwich at about 1 p.m. . . . There was then a west-south-west gale blowing. The vessel proceeded by way of the River Yare bound for Great Yarmouth and thence to Blyth in light trim. The vessel was drawing 6 ft. 6 in. aft and 3 ft. forward and on these draughts the height of her top sides was approximately 18 ft. forward and 10 ft. amidships. The sailing capacity of the vessel was four knots at slow speed, six knots at half speed, and nine knots at full speed. At about 2 45 p.m., after having covered a distance down the river of about eight miles, the vessel was in the vicinity of Coldham Hall," and there the river, the case finds, "takes a bend to the left of about a right-angle." In other words, there was a sharp bend there. Then the case goes on: "The wind was still blowing a gale from the south-west and the tide was about two hours ebb and of the force of about 1½ knots." Then the case finds this fact: "Before reaching the said bend the engines of the vessel, which was previously proceeding at a moderate speed, were put at full speed ahead. Immediately before the said vessel passed Coldham Hall the water in the river was about 2 ft. 9 in. below the head of the landing staith there. The waves caused by the vessel's stern-wash broke over the staith and came within about 10 ft. of the bungalow owned by the witness Crotch"—a bungalow which stands about 30 ft. back from the quay head. Then the case goes on: "The force of the waves so caused broke two stern mooring ropes of a house wherry moored at the staith and smashed the staging between the said wherry and the bank and also broke the mooring rope of a punt moored in a dyke nearby with the result that the punt drifted out into midstream."

In that state of the facts it was contended, on behalf of the appellant, that the vessel was being navigated properly, and in particular that it was necessary "that the engines of the vessel should be put at full speed before rounding the said bend to avoid her being driven on to the banks or on to the vessels moored near the bank." Then by way of supplement, or make-weight, it was contended that By-law No. 3 was *ultra vires*, as being in excess of the statutory powers given to the Commissioners.

It was contended on behalf of the respondent "that the by-law was not *ultra vires* and that the damage was caused by the