1905.

RAJYA v. BALKRISHNA GANGADHAR.

3. If so, was he in possession at that time as tenant of the person to whom the Inám grant was made, and had he Mirási rights?

4. Is it rent or assessment that is payable?

5. Has the plaintiff the right by virtue of usage or otherwise to enhance as against the defendant?

6. If there is a right to enhance, then to what extent can the enhancement be made having regard (*a*) to the usage of the locality in respect of land of the same description and tenure, and (*b*) to what is fair and equitable?

Return in two months.

Parties at liberty to adduce fresh evidence.

Issues sent down.

G. B. E.

CRIMINAL APPELLATE.

Before Mr. Justice Russell and Mr. Justice Batty.

EMPEROR *v.* RAMPRATAP MAGNIRAM.*

1905. *April* 10.

Indian Factories Act (XV of 1881), sections 12, 15 (1) (e)[1]*—Fencing Machinery—Manager—Occupier—Liability.*

The accused who was the manager of a ginning factory at Dhulia resided in a part of the premises on which the factory stood. He was charged under section

* Criminal Appeal No. 595 of 1904.

(1) The Indian Factories Act (XV of 1881), sections 12 and 15 (1) (e) run as follows:—

Section 12.—(*a*) Every fly-wheel directly connected with a steam-engine, water-wheel, or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Section 15.—Any person who, in breach of this Act or of any order or rule made thereunder,—

* * * * * *

(*e*) neglects to fence any machinery or mill-gearing in any factory

* * * * * *

shall be punished with fine which may extend to two hundred rupees.

1905.

EMPEROR v. RAMPRATAP.

15 (1) (*e*) of the Indian Factories Act (XV of 1881) with having neglected to fence certain machinery in the factory; and he was convicted and sentenced by the Magistrate. On appeal, the Sessions Judge reversed the conviction and sentence and acquitted the accused. On appeal by the Government of Bombay against this order of acquittal:—

Held, that the accused was not liable to conviction under section 15 (1) (*e*) of the Indian Factories Act (XV of 1881), since the manager of a factory cannot be said with truth to have been the occupier thereof.

APPEAL by the Government of Bombay against an order of acquittal passed by E. M. Pratt, Sessions Judge of Dhulia.

The accused, Rampratap Magniram, the manager of Ramnarayan Baldev Ginning Factory at Dhulia, was charged with neglecting to fence machinery, an offence punishable under section 15 (1) (*e*) of the Indian Factories Act (XV of 1881). On the 17th January 1903, the Presidency Inspector visited the factory and passed an order in writing that the second motion pulley should be guarded with a strong iron fencing within 15 days. This order the accused failed to carry out, and he was convicted of the offence charged by the First Class Magistrate of Dhulia and was sentenced to pay a fine of Rs. 60.

On appeal, the Sessions Judge of Dhulia reversed the conviction and sentence and acquitted the accused. The grounds of his decision were expressed as follows:—

> The evidence ... is of two witnesses who say the accused lived on the premises of the factory and paid the land revenue. Mr. Hartley and the other witnesses have said that he is the manager and the Public Prosecutor admits that the accused was resident manager. The occupier under the Act is the person who gives notice of occupation under section 14. It is admitted that no such notice was given by the accused. He is, therefore, not the occupier and cannot be made liable unless the occupier has exonerated himself: see section 17 and the remarks in the case of *Chairman of the Serampore Municipality* v. *Inspector of Factories*, I. L. R. 25 Cal. at page 458.

Against this order of acquittal, the Government of Bombay appealed to the High Court, on the following, among other, grounds: (1) that the lower appellate Court erred in starting an objection of its own and holding that the accused was not an "occupier" within the meaning of section 15 of the Indian Factories Act (XV of 1881); that there was distinct evidence that the accused though described as manager was a resident manager of the factory, in physical occupation of the factory,

the owner himself living at Indore; and that the lower appellate Court erred in holding that the expression "occupier" applies only to one, who has given notice of occupation under section 14 of the Act.

PER CURIAM.—In this case the accused was the manager of the Ramnarayan Baldev Ginning Factory at Dhulia and he resided in a part of the premises in which the factory is. He was charged before the City Magistrate of Dhulia with having neglected to fence certain machinery in the Factory and thereby to have committed an offence punishable under section 15 (1) (*e*) of the Indian Factories Act (XV of 1881). The City Magistrate convicted him and sentenced him to pay a fine of Rs. 60. On appeal, the Sessions Judge of Khandesh reversed the conviction and sentence and ordered the fine if paid to be refunded. The Government of Bombay have appealed from this acquittal and appeared by the Advocate General, Mr. Coyaji representing the accused.

The grounds on which the learned Sessions Judge proceeded were that inasmuch as the accused had not given the notice of occupation under section 14 of the Act he was not the occupier. But these grounds are clearly untenable as appears from the case of *Queen-Empress* v. *Manordas Harakhchand* (page 902 of the Unreported Criminal Cases of the High Court of Bombay by Ratanlal); there it was held (*inter alia*) by Parsons and Ranade, JJ., that the proprietor in that case was none the less an "occupier" because he had not sent in any notice under section 14 as no notice is obligatory. The above case was not brought to the attention of the Sessions Judge and was not cited before us.

But an important and interesting question arises whether the accused was the "occupier" of the Factory within the meaning of the Act.

In the first place the preliminary sections of the Act XV of 1881 must be referred to.

Section 2 provides (*inter alia*) that any part of a factory should be deemed to be a Factory except any part used exclusively as a dwelling. In the present case no evidence was given to show

1905.

EMPEROR v. RAMPRATAP.

whether the place where the accused resided was used exclusively as a dwelling.

By Act XV of 1881 as amended by XI of 1891 (Indian Factories Act, 1891) "any manager" comes under the heading of "All Operatives," section 5B. The prohibitions and directions contained in sections 8, 9, 10 and 11 of the Act XV of 1881, as amended by the Indian Factories Act, 1891, are directed to the occupiers of Factories. Section 12 of the Act imposes the obligation to fence machinery upon the occupier.

Section 15 as amended by Indian Factories Act, 1891, provides that any person who, in breach of this Act or of any order or rule made thereunder, (*e*) neglects to fence any machinery should be punished with fine which may extend to Rs. 200. Section 17 (as amended) provides that every occupier of a factory shall be deemed primarily liable for any breach of this Act or of any order or rule made thereunder; but he may discharge himself from such liability by proof that such breach was committed by some other person without his knowledge or consent, and in that case the person committing such breach shall be liable therefor.

This Act does not give any definition of "occupier" and in this respect resembles the English Factory and Workshop Act, 1895 (58 and 59 Victoria, chapter 37), as to which see *Carrington* v. *Bannister & Co.* (1) and *Merrill* v. *Wilson Sons & Co., Limited* (2).

To ascertain the meaning of the word, therefore, we must consider the cases bearing on the point and general principles. Before doing so, however, it is material to observe that the Indian Factories Act, XV of 1881, does by section 13 observe a distinction between an occupier and a manager. For by that section notice of accidents is to be given "by the occupier of such factory, or, in his absence, his principal agent in the management of such factory." From this we may infer that if the Legislature had intended to make the manager of a factory liable to fence the machinery it would have done so in direct terms.

Strictly speaking an occupier is one who can maintain an action of trespass; see *Sheppard* v. *Bradford* (3), *The King* v. *Sutton* (4).

(1) (1901) 1 K. B. 20.
(2) (1901) 1 K. B. 35.
(3) (1864) 16 C. B. N. S. 369 at p. 378.
(4) (1835) 3 Ad. & E. 597.

In the present case if an action of trespass in the factory had been brought by the accused, the defendant therein would have successfully pleaded that the factory was not the plaintiff's; see Bullen and Leake's Precedents of Pleadings, Title Trespass, and the Pleas to such action, pages 417, 810, 3rd edition. No doubt, on the other hand, the word "occupier" has had an extended meaning given to it in *The Manchester S. and L. Railway Company* v. *Wallis*[1], where it was held that section 68 of the Railway Clauses Act (8 and 9 Victoria, chapter 20) obliged Railway Companies "to fence, so as to keep the cattle of the owners or occupiers of the adjoining lands not taken, from straying thereout ..." and that "whilst cattle are passing along a highway, the owners of such cattle are using it according to the dedication of the owner of the soil, and, being there with his consent, the owners are strictly occupying the highway." In *Charman* v. *South-Eastern Railway Company*[2] Lord Esher M. R. describes that case as a "strong decision, but it was the decision of a very strong Court." But looking at the above sections of the Indian Factories Act we do not think we can hold that the manager of the factory in question herein can be said with truth to have been the occupier thereof. The Records from the Collector's office show that this factory is there registered under the names of Javermal Jamnadas Brothers as the occupiers. In the case of *Imperator* v. *Manordas Harakhchand*[3], above referred to, it was the proprietor of the factory who lived in a house on the factory premises for the greater part of the year.

Again in *Chairman of the Serampore Municipality* v. *Inspector of Factories, Hooghly*[4] it was held, *inter alia*, that it lay upon the occupier of the factory as being primarily liable for breach of any of the provisions of the Factories Act, to give the strictest proof of circumstances exonerating himself from the liability to fix it on any other persons. For these reasons we must dismiss the appeal.

The result is to be greatly regretted. In the present case the occupiers, we are told, live at Indore outside British Jurisdiction. We are also told that in Khandesh there are several factories the

(1) (1854) 14 C. B. 213, at pp. 223, 224: 22 R. C. 315 at p. 322.

(2) (1888) 21 Q. B. D. 524 at p. 527.

(3) Ratanlal's Unrep. Cr. C. p. 902.

(4) (1898) 25 Cal. 454.

1905.

EMPEROR v. RAMPRATAP.

occupiers of which reside in England. It is obvious, in such cases, that the result of our decision must make the provisions of the Act nugatory for a considerable time at all events, that is, until steps can be taken to summon the occupiers of the factories, during which time of course the employés of the factory will be exposed to all the dangers of the machinery not properly fenced. But we have only to construe the words of the Legislature irrespective of the possibly injurious consequences to a class of persons incapable of protecting themselves.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1905.
April 17.

MAHAMMADUNISSA BEGUM (ORIGINAL DEFENDANT), APPELLANT, *v.* J. C. BACHELOR (ORIGINAL PLAINTIFF), RESPONDENT.*

Mahomedan Law—Gift—Possession, transfer of, by the donor—Relinquishment of a share by a Mahomedan in the property of the deceased—Valuable consideration—Transfer of Property Act (IV of 1882), section 53—Fraudulent transfer—Good faith.

To facilitate the action of the Collector in obtaining the certificate of guardianship to the property of a Mahomedan minor, under the Guardian and Wards Act (IX of 1890), *M*, the uncle of the minor, relinquished in favour of the minor, the share to which he was entitled in the property of his deceased brother, the father of the minor girl. The certificate was duly obtained by the Collector. The plaintiff, a judgment-creditor of *M*, then, sued the minor for a declaration that *M*'s share in the property of his brother, which he had relinquished, was liable to attachment and sale in execution of his decree. The lower Court decreed the plaintiff's claim on the grounds that the relinquishment was not valid and binding upon the donor under the Mahomedan Law since being a gift it had not been accompanied and perfected by possession and that it was void against *M*'s creditors under section 53 of the Transfer of Property Act (IV of 1882) because it had been made with intent to defeat, delay or defraud them:

Held, that the relinquishment by *M*, of his share in the property of his brother was not a gratuitous transaction, but was supported by valuable consideration, since as consideration for the Collector's undertaking the responsibility of administrator of the minor's property, he agreed to relinquish his share to the minor: the relinquishment was not a mere gift but was supported

*First appeal No. 121 of 1903.