

Emperor Vs. Taylor

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Court : Mumbai

Decided On : Dec-12-1907

Reported in : (1908)10BOMLR38

Judge : Chandavarkar and ;Knight, JJ.

Appeal No. : Criminal Reference No. 96 of 1907

Appellant : Emperor

Respondent : Taylor

Judgement :

Chandavarkar, J.

1. The two questions of law referred to this Court by the learned second Presidency Magistrate, Bombay, are as follows :-

(1). Does the person who sends a notice under Section 14 prima facia become the occupier of a factory and does the burden of proving that he is not one he on him?

(2). If he becomes the occupier, then does any other person who succeeds him in the same office also become the occupier unless and until he discharges the same burden.

2. As to the first question, the substance and import of Section 14 merely are that the occupier of a factory shall send the notice prescribed within one month after his occupation has commenced. If any individual sends such a notice, that is evidence or a representation by him that he is the occupier; but there is nothing in the Act which make it necessarily conclusive evidence. The Court may treat the evidence of the notice as sufficient to discharge the onus of proof lying on the prosecution at the outset and to shift the burden on to the person who gave the notice. The Court is of course not bound to treat it as such. Whether it should so treat it or not must depend on the circumstances of each case.

3. On the second question the answer to it must depend upon the circumstances in each case and the question cannot be treated as one purely of law. There is nothing in the Act to make the mere successor in office of a person who has given notice under Section 14 an occupier himself unless the occupation is legally in him. What is an occupation is a question of fact in each case, to be determined with reference to some well-known principles of law. The learned Magistrate, who has made the reference, seems to think that the legal meaning of occupier is a person who is in actual possession. But a person may occupy or possess a land or building actually or constructively. In either case it is occupation. The factories Act does not speak of an actual occupier or actual occupation. If a land or building belonging to A is vacant, the law regards it as occupied by A, unless he has parted with his right of occupation in favour of some other person, such as a tenant or the like. If, again, the said land or building is occupied by A's servant or agent for A's purposes and on A's behalf, the occupier is A, though his occupation is only Constructive. In this connection the familiar illustration of the landlord of a hotel or of a lodging house given in some of the leading cases on the subject of occupation is valuable. Because the landlord lets a room to a lodger, the latter does not become its occupier and that because, though "both in a sense are in occupation" yet "the occupation of the landlord is paramount, that of the lodger subordinate".

4. The question who is the occupier of a factory must, therefore, depend among others upon these considerations, namely, who alone has the right of using the factory for the purposes for which it is constructed and worked; who has the right of regulating and controlling it; whose is the predominant possession of and

general superintendence over it London County Council v. Committee of Holy well &c.; v. Halkyn Churchwardens &c.; of the Parish of District Mines Drainage Co. (1895) Eritk (1893) A.C. 562; Assessment A.C. 117. The Manager may become an occupier if he has these rights; but if he is merely a servant or agent of the owner, then he is not an occupier. As we have said, the question of occupation is one of fact to be determined upon the circumstances of each case of which those abovestated may form the main ingredients. While this is so, it may be that in a particular case, the manager of a factory has given notice as its occupier as required by Section 14 of the Act and he is succeeded by another person as manager some time afterwards; and the prosecution may not be able to find out or prove who is the occupier. In such a case under Section 106 and Section 114 of the Evidence Act the Court may, having regard to surrounding circumstances, presume that as to the factory in question the manager for the time being is the occupier and throw on him the onus of proving that he is not criminally liable for the offence charged.

5. With these answers the reference must be returned to the learned Second Presidency Magistrate.

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