NARAYANA-SWAMI NAYUDU v. SUBRA-MANYAM.

WALLIS, C.J. AND SRINIVASA AYYANGAR, J.

defendant, these lands are described as "jeroyati lands," and in Exhibit IX, a previous lease of the same lands, they are described as "mamul wet." We hold therefore that these lands are *not* proved to be "old waste"; but are "ryoti lands."

The appellant finally contended that the receiver is not a landholder within the meaning of section 6 of the Act. It is admitted that the definition of "landholder" in section 3 includes the plaintiff. But it is said that unless the landholder is also a beneficial owner of the estate, he is not a landholder within the meaning of section 6. We do not see any reason to put any such restricted construction on the word "landholder," in that section. A receiver must have the same powers of management as an owner, and letting a tenant into possession of cultivable lands in the estate would ordinarily be included in the power of management. We agree in the conclusions of the lower Court and dismiss the appeal with costs.

S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Tyabji.

1915. July 3.

Re HAWKINS, GENERAL MANAGER, THE INDIAN ALUMINIUM COMPANY, LIMITED, ACCUSED.*

Criminal Procedure Code (Act V of 1898), sec. 432, reference under—Indian Electricity Act (IX of 1910), sec. 33, scope of—"Every person", meaning of.

The term "every person" in section 33 of the Indian Electricity Act are not confined to persons licensed under Parts II and III of the Act.

Section 33 of the Act is not confined to cases in which the accident actually results in personal injury or death but also extends to cases likely to have resulted in loss of life or personal injury.

CASE referred for the orders of the High Court under section 432 of the Code of Criminal Procedure (Act V of 1898) by L. A. CAMMIADE, the Fourth Presidency Magistrate, Madras.

The facts appear from the letter of reference which is as follows:—

"Under the provisions of section 432 of the Criminal Procedure Code, I have the honour to submit the following case for the opinion of the High Court on the points of law raised.

* Criminal Revision Case No. 356 of 1915 (Referred Case No. 39 of 1915).

"Mr. Hawkins, General Manager of the Indian Aluminium Company, Limited, has been charged under section 33 (1) of the Indian Electricity Act, 1910, for not having notified to the Electric Inspector to the Government of Madras an accident which occurred in his works on or about the 17th March last.

"In his written complaint, the Electric Inspector states that he came to hear of the accident on the 9th of April and that on interviewing the General Manager he learnt from him that one of the two bolts of the large end of the connecting rod of a 66 B.H.P. gas engine driving an electric generator broke and set loose the connecting rod and piston with the result that the major portion of the engine was wrecked; the crank guard was broken and flying piece narrowly missed a man at work close by.

"It is admitted for the defence that an accident did happen as described by the Electric Inspector and that it was not reported. But, it is denied that a flying piece narrowly missed a man at work.

"This, however, is not the main defence. Firstly, it is argued that there was no objection on the part of the accused to report the accident and secondly that the accident is not of the character described in section 33 of the Act.

"The first point is based on the contention that the Act was not intended and does not apply indiscriminately to all persons using electric energy but only to such as are licensed under Parts II or III of the Act. The Indian Aluminium Company is not a licensee under Part II and had not a license under section 30 of Part III. But I can see no reason why section 33 of the Act, for the infringement of which this prosecution has been instituted, should be thus limited. It requires that 'every person shall send . . . a notice . . . of any accident in connection with the generation . . . of the energy resulting or likely to have resulted in loss of life or personal injury in any part of such person's works . . . .' It seems clear from this that the quantity of electric energy used is immaterial in regard to the question whether an accident in the generation or use of electricity should be reported and that if an accident is such as resulted in, or was likely to have resulted in, loss of life or personal injury in any part of a person's works and is in connection with the generation or use of electric energy the accident must be reported to the Electric Inspector whatever the quantity of energy used and this, although an obligation may also lie under the Indian Factories Act to report the accident to the Factories Inspector. The points however are not quite free from doubt.

"The second plea turns on the interpretation of the words *'accident . . . likely to have resulted in personal injury.'* It is

Re HAWKINS.

admitted for the defence that somebody in the factory might have been injured and even killed. But it is argued that until and unless somebody was injured it is almost impossible to say that an accident is likely to have resulted in personal injury. It is pointed out that section 34 of the Indian Factories Act which was passed a year after the Electricity Act requires a report only in case an accident has actually resulted in personal injury. Also it is argued that almost any machine accident, even the most trivial, is capable of causing personal injury of some kind to people around and that the section is certainly not intended to apply to all such accidents. It is therefore contended that 'accident', as used in this section, means only an accident resulting in personal injury or death. These arguments for the defence would, if accepted, delete altogether the words 'likely to have resulted' from section 33 and further the limitation of word 'accident' to personal injuries is opposed to the context. But there is some difficulty in interpreting the word 'likely.' In ordinary parlance, an accident or injury is spoken of as likely to happen when in the given circumstances of the case the probabilities are that it will happen. In the case of a machine accident in a factory the elements that have to be taken into consideration in order to determine the chances that an accident will or will not result in injury to people employed near at hand are so numerous and complicated that even experts might differ. In the present case, the Inspector of Electricity could not say that the chances were in favour of an accident happening, and unless the probabilities are in favour of accident resulting in the given circumstances in personal injuries, I think it could not be said that the accident was likely to cause personal injury. But such an interpretation places the prosecution in a very different position and will lead to the introduction in cases of this kind of the most hopelessly conflicting expert evidences."

Partridge for the accused.

J. C. Adam, the Crown Prosecutor, for the Crown.

The following order of the Court was delivered by AYLING, J.:—

AYLING AND TYABJI, JJ.

In making this reference the Presidency Magistrate should have distinctly formulated the questions of law which he referred for our opinion.

As far as we can deduce them from his letter of reference they are two in number—

(1) Whether the term "every person" in section 33 of Act IX of 1910 is confined to persons licensed under Parts II and III of the Act?

(2) Whether section 33 is confined to cases in which the accident actually results in personal injury or death?

Our answer to both questions is "No." As regards the second we may add that the wording of the section is perfectly clear and specifies cases *likely* to have resulted in loss of life or personal injury as well as those which actually so resulted. Whether such a result was likely in any case in which it did not actually ensue is a question of fact to be determined with reference to the surrounding circumstances.

Attorneys for the accused—*Messrs. King and Partridge.*

S.V.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

C. A. EASWARA IYER (PLAINTIFF), APPELLANT,

v.

K. GOVINDARAJULU NAIDU (DEFENDANT) RESPONDENT.*

1913. September 3.

Presidency-Towns Insolvency Act (III of 1909), sec. 17—Decree of Presidency Small Cause Court—Judgment-debtor, adjudicated insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court, not obtained—Release of Judgment-debtor on security—Non-appearance, effect of—Security bond, validity of—Jurisdiction—Waiver—Presidency Small Cause Courts Act (XV of 1882), sec. 69.

Where a decree was passed by the Presidency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction, the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under section 17 of the Insolvency Act III of 1909. Consequently a security bond, executed to the former Court by a third party for the appearance of the judgment-debtor in the course of the execution proceedings carried on without the leave of the High Court, was obtained without jurisdiction and was void in law.

A reference to the High Court under section 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court.

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* Referred No. 3 of 1914.