OFFICIAL RECEIVER, CUDDAPAH v. SUBBIAH.

CORNISH, J.

the movables by a private person, and I think it may well be taken not to have been the intention of the executant of the deed that this consequence should ensue. I consider accordingly that under the Trusts Act also the deed would be invalid.

I agree therefore with my learned brother that the order of the learned District Judge so far as it declares the respondent to be a duly constituted trustee in respect of the movable property should be set aside with costs and the Official Receiver empowered to take possession of the movables as well as of the house.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

1926, August 2.

V. RAMANATHAM (ACCUSED), PETITIONER,

v.

KING-EMPEROR.*

Indian Factories Act (XII of 1911), ss. 2 [(2), (3)], 41, and 46—Groundnut decorticating room in a building—Drying yard five or six yards away from wall of building—If part of "factory"—Children employed in drying, cleaning and sorting kernels—If incidental to or connected with article subject of process—Liability of occupier.

Where a drying yard was situated about five or six yards from the wall of a building in which a groundnut decorticating machine was installed, but the said yard had no connexion with machinery, and children were employed in the yard for cleaning, drying and sorting the groundnut kernels, *held*, that the drying yard was part of the factory within the meaning of section 2 (3) of the Indian Factories Act, and that the occupier (or manager) was liable under section 41 as having employed children in

* Criminal Revision Case No. 47 of 1926.

work incidental to a manufacturing process or connected with the article, subject of the process, within the mischief of the Act.

Law v. *Graham*, [1901] 2 K.B., 327 and *Paterson* v. *Hunt*, (1909) 101 L.T., 571, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Vizianagram, dated 5th September 1925, in Calendar Case No. 33 of 1925.

G. Lakshmanna for petitioner.

Public Prosecutor for the Crown.

JUDGMENT.

The petitioner seeks to revise the Judgment in Calendar Case No. 33 of 1925 on the file of the Subdivisional Magistrate, Vizianagram, whereby he has been fined Rs. 25 under section 41, Indian Factories Act, XII of 1911, for employing children in his factory in contravention of section 23.

2. The first ground taken is that the drying yard in which the children were employed does not form part of the factory.

This place is five or six yards from the wall of the building and has no connexion with machinery or any work incidental to the manufacturing process (D.W. 1).

A factory as defined by section 2 (3) means any premises wherein, or within the precincts of which. . . . Pausing here for a moment, it may be observed that these terms, premises or precincts, are the most comprehensive that can be conceived. "Premises" means the main building and its appurtenances, and lest it should omit part of the establishment, "precincts" are added which means any adjunct. Therefore factory includes everything, machine rooms, sheds, godowns, yards. If within these premises or precincts mechanical power is

RAMANATHAM v. KING-EMPEROR.

used in aid of any process for altering for transport or sale of any article then these premises or precincts are a factory. The definition does not run, if in any part of such premises mechanical power is used then such part is a factory. The vital question would be, is mechanical power in aid of a manufacturing process used in the premises. If the answer is, yes, in the decorticating room, then the whole premises, including the yard, are a factory, and not merely the decorticating room, as petitioner contends.

In support of this contention Mr. Lakshmanna relies upon *Law* v. *Graham*(1), where it was held that premises occupied by a mechanical bottle washer, and used for bottling beer by hand were not a factory. But the decision of this case turned upon the question whether washing the bottles was a manufacturing process. Lord ALVERSTONE, C.J., conceded that putting beer into bottles, might by a somewhat strained construction of the words, be said to be an adapting of the article for sale. But he held that the washing of bottles by mechanical means cannot be fairly called a process which is used "in aid of" the bottling of beer. To put the present case on all fours with *Law* v. *Graham*(1) one must postulate premises wherein the children put groundnuts into bags, and somewhere on these premises is a machine for washing the bags, and no other machinery for any other purpose, then such premises will not be a factory, for the reason that the machinery is not in aid of a manufacturing process, not for the reason that the machinery is in some other portion of the premises. But if in the premises there is machinery admittedly in aid of the process, then the premises would be a factory.

(1) (1901) 2 K.B., 327.

In *Paterson* v. *Hunt*(1), the premises consisted of two rooms separated by a closed door. In one room several girls sorted rags by hand and in the other room a mechanical shaker for cleaning the rags was occasionally used for some of the rags. Lord ALVERSTONE held that the process in question, sorting rags for sale, was not adapting for sale. This ruling would help the petitioner if the process in his factory were confined to sorting groundnuts, a portion of which was occasionally cleaned by a mechanical shaker. But the fact that a mechanical decorticator is used on the premises carries the present case beyond the scope of *Paterson* v. *Hunt*(1). DARLING, J., puts the point succinctly. "I cannot come to the conclusion that there was here any manufacturing process whatever . . . ." 'here,' of course, referring to the whole premises, and not to that portion of the premises occupied solely by manual workers. In the present case it cannot possibly be said that there is no manufacturing process whatever on the premises.

Part of the premises used solely for some purpose other than the manufacturing process carried on in the factory, may under section 149 of the English Factory and Workshops Act 1, Ed. VII, C. 22, constitute a separate factory, or be excluded from the operation of the Act; Halsbury, Vol. 14, pages 443-444; but these circumstances do not assist the interpretation of the Indian Act. On the first ground I hold that the drying yard does form part of the factory.

It is next urged that there was no employment of children in the factory as contemplated by the Act. Under section 46 if a child is found in any part in which children are employed and in which work

(1) (1909) 101 L.T., 571.

RAMANATHAM v. KING-EMPEROR.

incidental to any manufacturing process is being carried on he shall be deemed to be employed in the factory until the contrary is proved. Under section 2 (2) a person who works in a factory in any kind of work incidental to the manufacturing process or connected with the article, subject of the manufacturing process, shall be deemed to be employed therein.

The question then arises whether sorting groundnuts can be said to be incidental to the process or connected with the article subject of the process. The article, subject of the decorticating process, being groundnut, it must be held that sorting that article is work connected with the article, subject of the manufacturing process. No doubt mere sorting was held to be no manufacturing process in the case of rags, *Paterson* v. *Hunt*(1), but then the rags were not subject of any manufacturing process on the premises. They were simply collected, and the only mechanical process, which brought the case as their Lordships observed near the line, was the intermittent use of the shaker for some of the rags. The regular use of the decorticator for all the groundnuts leaves no room for doubt that the article has been subject of manufacturing process.

It must be held, therefore, that the children were employed within the mischief of the Act.

Once it is found that the children were employed in the factory it is immaterial who actually paid them their wages; the occupier or manager is liable under section 41.

No other ground was raised, and there is no reason to revise the judgment of the lower Court.

The petition is dismissed.

B.C.S.

(1) (1909) 101 L.T., 571.