

1213, Srikishunpur tauzi no. 9190 and Mathura Sri Ram tauzi no. 8902. The valuation on which court-fee has to be assessed can be ascertained if extracts from Register D or land revenue chalans relating to these estates are on the record; otherwise the appellant may be required to demonstrate what is the revenue payable in respect of each of the three estates, or what may be their market value, if revenue has not been assessed.

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*Order accordingly.*

J. K.

## APPELLATE CRIMINAL.

*Before Khaja Mohamad Noor and Madan JJ.*

EMPEROR

v.

1937.

*May, 3.*

JUGAL KISHORE TEBERAWALLA.\*

*Boilers Act, 1923 (Act V of 1923), sections 2 and 23—  
“owner” meaning of—appeal against acquittal.*

The definition of “owner” in section 2 of the Act is inclusive, that is to say, it extends the dictionary meaning of the word and does not restrict it. It says that the “owner” includes any person using a boiler as agent of the owner thereof and any person using the boiler which he has hired or obtained on loan from the owner thereof. The definition does not mean that an owner of a boiler who uses it through his agent is not its owner for the purposes of the Act. The only effect of this inclusive definition is that an agent who uses a boiler owned by his principal and who under the ordinary meaning of the term is not its owner, comes under the Act.

*Held, therefore, that an absentee owner of a boiler, which is being used for his work comes within the purview of section 23 of the Indian Boilers Act, which makes the owner of a boiler liable for its use without a certificate.*

\*Government Appeal no. 2 of 1937 against an order of acquittal, dated the 3rd of November, 1936 passed by Mr. Shyam Narain Sinha, Magistrate, 1st class of Dhanbad.

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EMPEROR

v.

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KISHORE  
TEBERA-  
WALLA.

Appeal against acquittal under section 417 of the Code of Criminal Procedure, 1898.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

*Assistant Government Advocate*, for the appellant.

*S. N. Sahay*, for the respondent.

KHAJA MOHAMAD NOOR, J.—This is an appeal by the Government under section 417 of the Code of Criminal Procedure against an order of acquittal passed by the Magistrate of Dhanbad in a case under section 23 of the Indian Boilers Act (Act V of 1923). The case of the prosecution was that a boiler owned by the accused was being used on the 20th of June, 1936 in a colliery belonging to him without the boiler having been certified under the provisions of the Act. The Inspector found it under steam on that day. The registration period of it had expired on the 28th of January, 1935. The fact that the boiler was used on the day in question seems to have been denied on behalf of the accused inasmuch as a witness was examined to prove that the boiler was unfit for use from some time before that date. The accused when examined under section 342 of the Code of Criminal Procedure denied any knowledge of the affair and said that he was living in Calcutta. A witness was also examined to prove that the accused never lived in his Gareria colliery. The learned Magistrate without deciding the question whether or not the boiler was under steam on the day in question has acquitted the accused, holding that he did not come within the term 'owner' as used in section 23 of the Indian Boilers Act. He has relied upon the definition of the word 'owner' in section 2 of the Act. Section 23 makes the owner of a boiler liable for its use without certificate. The definition of "owner" in section 2 of the Act is inclusive, that is

to say, it extends the dictionary meaning of the word and does not restrict it. It says that the

“ ‘owner’ includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof.”

The definition does not mean that an owner of a boiler who uses it through his agent is not its owner for the purposes of the Act. The only effect of this inclusive definition is that an agent who uses a boiler owned by his principal and who under the ordinary meaning of the term is not its owner, comes under the Act. The learned Magistrate seems to have been of the opinion that because an agent is liable to be prosecuted for breach of the provisions of the Act, inasmuch as he comes within the term ‘owner’ the owner to whom the boiler belongs is absolved from responsibility. This view is not supported by the definition. The learned Advocate who appears on behalf of the respondent accused has contended that the word “owner” used in section 23 means the owner who actually uses the boiler. I am unable to accept this contention. If it be given effect to it will lead us to hold that the word “owner” in the section means the man who actually uses the boiler, either as owner, agent or hirer or the one who uses it having taken loan of it from the owner. In other words, the word “owner” will mean the one who uses the boiler. If the legislature had meant what the learned Advocate contends for, there was no need of using the word “owner”. It would have been enough to say that the one who uses the boiler without a certificate will be liable. Therefore I must take it that the word “owner” in the section has been used in its dictionary meaning and also includes an agent or other persons mentioned in section 2. The question whether an owner who is absent should or should not be prosecuted and if prosecuted how he should be dealt with is one which depends upon the facts and circumstances of each particular case. As a mere

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proposition of law I am clearly of opinion that an absentee owner of a boiler, which is being used for his work comes within the purview of section 23 of the Indian Boilers Act.

The next question is whether the accused should be convicted. The learned Magistrate has not come to any conclusion in respect of the conflicting version of the fact. As I have said, according to the only witness of the prosecution the boiler was under steam on the day in question, but according to the manager of the colliery (D. W. no. 1) it was unfit for use. The learned Advocate for the respondent has contended that there is no evidence that the accused was the owner of the colliery or of the boiler on that particular day. The boiler was registered in the name of a firm Baijnath Jugal Kishore and as is generally the case, it bears two names, those of the father and the son. Baijnath was the name of the father of accused Jugal Kishore. It appears that the prosecution was first started against Baijnath, but later on it was discovered that he was dead and the prosecution proceeded in the name of the present accused. It does not appear on what date actually the father died. No doubt from the manner in which the case was defended, it does not appear that the accused denied the ownership of the colliery or the boiler on this date in question. But the point has not been made clear. Unfortunately the learned Magistrate did not strictly follow the procedure laid down in section 242 of the Code of Criminal Procedure for the trial of summons cases in spite of the fact that the attention of the Magistrates has been drawn to this more than once by this Court. When the legislature has provided a particular procedure to be followed in a particular class of cases, it is incumbent that that procedure should be strictly followed. The order-sheet shows that when the accused appeared on the first day he pleaded not guilty. But it does not appear whether the particulars of the offence were explained to him. Had this

been done the answer would have made it clear whether the accused admitted or denied the ownership of the boiler and the colliery on the day in question. Then, when examined under section 342 of the Code of Criminal Procedure, the accused was not asked about the ownership of the boiler and the colliery on that day. Strictly speaking, therefore, the necessary facts to justify a conviction are not on record.

The next question is whether we should order a retrial. Now, assuming that the accused was the owner of the colliery and the boiler on the date in question and that the boiler was being used on his behalf, the responsibility of the accused is somewhat technical. It appears from the evidence of the defence witness no. 1, who is a Mechanical and Mining Engineer and holds a first class certificate in mining, that he was in charge of the colliery since the previous May. Therefore the accused, if he was the owner of the colliery and the boiler, had placed a competent man in charge of them. The prosecution would have been well-advised had they proceeded against the manager who has also been made liable under the Act. The learned Magistrate has pointed out that the acquittal of the accused would not in any way interfere with the prosecution of the manager. This being so, I think we should not order a retrial. The object of this appeal was to have the points of law cleared up and that has been done.

I would, therefore, dismiss this appeal.

MADAN, J.—I agree.

*Appeal dismissed.*

J. K.

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