

1930  
 EMPEROR  
 v. \*  
 BALKRISHNA  
 ANANT  
 Murphy J.

it is not necessary to direct the Magistrate to proceed from the point of taking the accused's statement and that the convictions and sentences should be set aside.

*Convictions and sentences  
 set aside.*

J. G. R.

### CRIMINAL APPELLATE.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and  
 Mr. Justice Murphy.*

EMPEROR v. JAMSHEDJI NASSERWANJI MODI.\*

1930  
 December 2

*Indian Factories Act (XII of 1911), sections 27, 28 and 41(a)—Owner of  
 press—Management left with the Manager—Owner liable as occupier.*

The word "occupier" in section 41 of the Indian Factories Act, 1911, means a person who occupies the factory either by himself or his agent. He may be an owner, or a lessee or even a mere licensee but he must have the right to occupy the property and dictate how it is to be managed.

CRIMINAL Appeal by the Government of Bombay against the order of acquittal made by D. N. D. Khandalawalla, Presidency Magistrate, third Court, Bombay.

One Jamshedji Nasserwanji Modi was the proprietor of the Soona Printing Press, Bombay. He was charged under section 41A of the Indian Factories Act as the occupier of the press on the ground that he employed a person for more than 11 hours on January 11, 1930, and for more than 60 hours in the week ending January 11, 1930, contrary to sections 28 and 27 of the Act. The accused contended that he knew nothing about the internal management of the press which was left in the sole charge of his manager, Mr. Mistry, and was therefore not guilty of the offence charged.

The Presidency Magistrate, third Court, Bombay, acquitted the accused on the ground that the full management as to the employment and selection of the operatives was a matter entirely within the control of the manager, who admitted his responsibility to see that the provisions

\* Criminal Appeal No. 475 of 1930.

of the Indian Factory Act were not violated, and therefore the accused could not be held responsible.

The Government of Bombay appealed against the decision.

*P. B. Shingne*, Government Pleader, for the Crown-appellant.

*H. C. Coyajee*, with *S. E. Bamji*, for the accused-respondent.

BEAUMONT, C. J.:—In this case the accused is charged with an offence under section 41 (a) of the Indian Factories Act (Act XII of 1911). The allegation is that he is the occupier of the factory in question, the Soona Printing Press, and that he employed a person there for more than 11 hours in a day and more than sixty hours in a week, contrary to the provisions of sections 28 and 27 of the Act. The learned Presidency Magistrate, Third Court, acquitted him and the Government appeal.

In his written statement the accused says he is the owner of the Press, but that he knows nothing about the management of the Press, the whole conduct of which is left to his Manager Mr. Mistry. Mr. Mistry went into the witness-box and admitted that he was the Manager of the Press and did everything in connection with the Press. The question for our consideration is whether in those circumstances the accused is liable. Section 41 of the Indian Factories Act provides that if in any factory certain offences are committed, which include the offences charged in this case, the occupier and Manager shall be jointly and severally liable for a fine which may extend to Rs. 500. So that it is perfectly plain from this provision that both the occupier and the Manager may be respectively liable. I do not propose to attempt to do what the Legislature refrained from doing, namely, give an exhaustive definition of the word

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“occupier” for the purposes of the Act, but I should say that “occupier” in general means a person who occupies the factory either by himself or his agent. He may be an owner, he may be a lessee or even a mere licensee, but he must, I think, have the right to occupy the property and dictate how it is to be managed. It seems to me clear on the facts in this case that the accused is the occupier of the factory, and that the manager, who in fact controls it, is a servant of the accused, and in those circumstances, I think, the accused as occupier is liable. It is suggested by Mr. Coyajee on his behalf that he could escape liability under section 42 of the Indian Factories Act. But, in my opinion, the answer to that is that he has not adopted the procedure pointed out by that section. Therefore, in my opinion, section 42 does not help him. The order of the lower Court acquitting the accused is set aside, and we convict and sentence the accused to pay a fine of Rs. 50.

*Order set aside and accused  
 convicted and sentenced.*

J. G. R.

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## ORIGINAL CIVIL.

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*Before Mr. Justice Rangnekar.*

YUSUF I. A. LALJI v. ABDULLABHOY LALJI (No. 1).\*

1929  
 February 18.

*Civil Procedure Code (Act V of 1908), section 151, Order XLVII—Chamber Order—Review of—High Court—Inherent jurisdiction—Practice and Procedure.*

An interlocutory order made in chambers on the Original side of the High Court could and ought to be reviewed by the Court, if the ends of justice require it, even though such an application does not expressly fall within the language of Order XLVII of the Civil Procedure Code.

A summons taken out for reviewing an order, can be treated as an application under the inherent jurisdiction of the Court.

\*O. C. J. Suit No. 2638 of 1921.