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COURT OF APPEAL.

Monday, Oct. 17, 1949.

CHATBURN v. MANCHESTER DRY DOCK COMPANY, LTD.

Before Lord Justice SOMERVELL, Lord Justice SINGLETON and Lord Justice JENKINS.

Negligence—Breach of statutory duty—Alternative common law claim—"Factory"—"Precincts"—Personal injuries sustained by apprentice fitter's mate (an infant) employed by defendants (ship-repairers) — Apprentice engaged in dismantling water supply pipes on board trawler — Pipes corroded — Necessity to split nuts with cold chisel —Damage to eye by splinter—Action brought by next friend—Defendants' premises (which included fitting shops and offices and dry dock) bounded on one side by Manchester Ship Canal—Trawler lying afloat at defendants' jetty on canal—Whether trawler within "precincts" of "factory" within meaning of Factories Act, 1937—Regulations made under Act requiring supply of goggles (admittedly not supplied).

151. The expression "factory" also includes the following premises in which persons are employed in manual labour, that is to say:—

(i) any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken up. . .

Factories Act, 1937, Sects. 49, 151 — Protection of Eyes Regulations, 1938.

———Held, by C.A., affirming OLIVER, J., *that the trawler was not a "factory" or within the "precincts" of a factory within the meaning of the Factories Act, 1937, and that therefore the Protection of Eyes Regulations, 1938, made thereunder, did not apply; that there was no evidence that defendants had failed in their common law duty to give reasonable protection to their workmen (the evidence was all one way that it was the practice not to wear goggles); and that therefore plaintiff's appeal would be dismissed—Declaration of liability of defendants for workmen's compensation—Costs.*

Workmen's compensation — Alternative remedy—Failure of common law claim —Costs—Action brought on behalf of infant plaintiff by next friend—Next friend nominally responsible for costs —Right of Court to deduct costs from compensation award.

This was an appeal by Mr. Robert Frederick Chatburn, suing through his father, James Edwin Chatburn, of Clover Cottage, Stanney, near Chester, against a decision of Mr. Justice Oliver dismissing his claim for damages for personal injuries brought against his employers, the Manchester Dry Dock Company, Ltd., who occupied premises at Ellesmere Port.

According to the facts found by his Lordship, the infant plaintiff was in the employ of the defendants as a fitter's mate. The defendants were the proprietors of some large works which included (*inter alia*) a floating dry dock and various fitting shops and offices. The premises were bounded on the north by the Manchester Ship Canal; abutting on the canal was a series of jetties belonging to the defendants which could only be approached shoreward through the defendants' premises.

On the day of the accident a steam trawler, the *Sapphire*, was moored in the canal against one of the jetties. The infant plaintiff was working as mate to an experienced fitter named MacReady. The work in progress consisted in the dismantling of some water supply pipes running along the inner side of the ship's bulwarks. These pipes were secured to each other by nuts and bolts, which riveted together flanges on the pipes where they joined. The whole of this plant was badly corroded with rust, and in order to extract the bolts it was necessary to cut out the nuts. This operation did not involve cutting through the bolts themselves, but splitting the securing nuts with a hammer and cold chisel, and as the nuts were disengaged the bolts would be extracted by whatever method became necessary. The infant plaintiff and MacReady were both working together at different parts of the pipe. While the infant plaintiff was engaged in splitting a nut, a piece of metal flew off and hit him in the eye, causing the damage alleged.

His Lordship said that the plaintiff's case was put in two ways. It was contended in the first place that the trawler was a factory within the meaning of the Factories Act, 1937. Sect. 151 of the Factories Act, after giving a general definition of a factory, provided by sub-s. 1 (i) that the expression "factory" also included

> any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken up . . . .

If the ship came within this definition, then by Sect. 49 and regulations* made thereunder suitable goggles had to be provided for workmen engaged in the "cutting out or cutting off . . . of cold rivets or bolts from boilers or other plant or from ships." Secondly, it was contended that in the circumstances of this case, and apart from the Factories Act, there was a duty at common law to provide goggles for the infant.

For the defendants it was contended that the Factories Act had no application to the ship in question; that the operation on which the infant plaintiff was engaged did not come within the expression "cutting out or cutting off bolts" within the meaning of the regulation; and that on the evidence no common law duty arose.

His Lordship continued: "Upon the first and main issue I have come to the conclusion that the Factories Act and regulations do not apply to this case. I cannot hold that this trawler lying in the Ship Canal adjacent to the defendants' jetty either was itself a dry dock or was in a dry dock. For the plaintiffs it was contended that the words in sub-s. 1 (i) of Sect. 151 'including the precincts thereof' covered this case. I cannot so construe these words. To do so would be to say that anything next door to a place is within its precincts. I think 'within the precincts' must mean at least within the boundaries. Indeed, I have some doubt whether the jetty itself was within the precincts of the yard or dry dock of the defendants. However, this does not arise.

"With regard to the contention that the operation undertaken by the infant was not one of 'cutting out or cutting off' bolts, it was contended for the defendants that, inasmuch as the bolts had not to be cut, these words did not cover the operation being performed. With this I disagree. It seems to me that the words 'cutting off' do mean cutting the bolt, but then some other meaning has to be given to the words 'cutting out,' and I think that they must include any process of cutting anything that will release the bolt. On this matter I agree with the opinion of Mr. Justice Stable in the case of Dunn v. Palmer's Hebburn Company, Ltd., (1945) (unreported), the facts of which were curiously similar. The matter can also be put upon the basis that a bolt and securing nut, especially when welded together by corrosion, form one thing and not two. I have decided that matter because it was argued before me, but of course it has no effect if the Factories Act does not apply to this case.

"With regard to the common law duty of giving reasonable protection to a workman in such circumstances, the evidence appears to me to be all one way. The infant's father, who was an old and experienced fitter in the defendants' employ, and who had some years before given the infant instruction in the fitters' shop, deposed that it was normal practice in shipyards to split off nuts without goggles. He said that his son had done this work when under his instruction. He said that he had done nut splitting with a

* Protection of Eyes Regulations, 1938 ([1938] S.R. & O., No. 554).