THE PEOPLE v BEAUMONT (1965) ZR 130 (HC)
HIGH COURT
PICKETT J
21st October 1965
Flynote and Headnote

[1] Factories and shops - Safety regulations - 'dangerous' machine defined - regulation 19 of Factories (Safety) Regulations construed:
The test of whether a machine is 'dangerous' within the meaning of regulation 19 of the Factories (Safety) Regulations is objective and impersonal: whether some part of the machinery is in fact dangerous.

[2] Factories and shops - safety regulations - 'efficient guard' defined - regulation 19 of Factories (Safety) Regulations construed:
It is impossible and hence unnecessary to devise an infallible method of assuring that machinery will not injure persons; in particular, an 'efficient guard' need not protect against someone's defiance of specific management instructions.

[3] Factories and shops - Safety regulations - 'greaser' not a 'person' within meaning of regulation 19 of Factories (Safety) Regulations:
A greaser is not a 'person' covered by regulation 19 of Factories (Safety) Regulations.

[4] Statutes - Interpretation of statutes - construction of all sections of statute together:
A court must construe all sections of a statute together, not one part only by itself, so that all clauses are brought into harmony.

[5] Statutes - Interpretation of statutes - penal sections - construction toward leniency:
If a reasonable construction of a penal section will avoid that penalty, the court must adopt that construction.

Cases cited:

(1) *John Summers and Sons Ltd v Frost* [1965] 1 All ER 870.

(2) *Mitchell v North British Rubber Co. Ltd* 1945 SC (J) 69; 2nd Digest Supp.

(3) *Charles v Smith and Sons(England) Ltd* [1954] 1 WLR 451; [1954] 1 All ER 499; 98 SJ 146.

(4) *Walker v Bletchley Flettons Ltd* [1937] 1 All ER 170.

(5) *Smith v Chesterfield and District Co - operative Society Ltd* [1953] 1 All ER 447; [1953] 1 WLR 370; 97 S.J. 132.

(6) *Blenkinsop v Ogden* [1898] 1 QB 783.

(7) *Atkinson v London and North Eastern Railway Co.* [1926] 1 KB 313.

(8) *Butler v Glacier Metal Co. Ltd* (1924) 92 JP Jo. 504.

(9) *Tuck & Sons v Priester* (1887) 19 QB D. 629.

Statutes construed:
Factories (Safety) Regulations (Cap. 193, subsid.), rr. 19, 21, 22.
Thistlethwaite, State Advocate, for the appellant
Houstoun - Barnes, for the respondent

PICKETT J
Judgment
Pickett J: This is a case stated by the Senior Resident Magistrate, Kitwe, arising out of his acquittal of the above - named respondent on the 14th day of December, 1964, on a charge of failing to provide and maintain efficient guards to such parts of machinery as may be a source of danger to persons contrary to regulation 19 of the Factories (Safety) Regulations (Cap. 193) as read with regulation 10 (2), and section 5 (1) of the Factories Ordinance (Cap. 193) of the Laws of Zambia, and the particulars of the offence alleged that on or about Saturday the 9th day of May, 1964, Mr G. E. Beaumont, factory manager

of Westhuizen Brickfields Limited in the Kitwe District of the Western Province of Zambia, being the responsible person in actual charge of a factory did fail to provide and maintain efficient guards to the pug mill gears of a brick - making machine, being parts of machinery which might be a source of danger to persons.

At the hearing the following facts were found proved by the learned magistrate:

(i) The respondent was on the 9th May, 1964, Manager of Westhuizen Brickfields Limited, Kitwe;

(ii) Davison Ndaka was on the 9th May, 1964, employed as a greaser by Westhuizen Brickfields, Kitwe, which entailed lubricating a Handle Muhlacker brick - making machine which was installed on the factory premises of Westhuizen Brickfields Limited, Kitwe;

(iii) Davison Ndaka was on the 9th May, 1964, over the apparent age of eighteen years;

(iv) The premises of Westhuizen Brickfields Limited, Kitwe, are a factory within the meaning of the Factories Ordinance and the Factories (Safety) Regulations;

(v) The Handle Muhlacker brick - making machine was machinery within the meaning of the Factories Ordinance and the Factories (Safety) Regulations;

(vi) On the 9th May, 1964, an accident occurred at the premises of Westhuizen Brickfields Limited, Kitwe. This accident occurred whilst Davison Ndaka was greasing the Handle Muhlacker brick - making machine. The fingers of one hand of Davison Ndaka were severed in this accident;

(vii) The Handle Muhlacker brick - making machine was completely housed and fenced. There was an aperture at a point 3 to 4 feet from the ground which was covered with a hinged flap. The purpose of this aperture was to allow inspection and lubrication of the machine;

(viii) Inside the casing of the machine there were eight lubricating cups, four of these lubricating cups were to the left of the aperture and the remaining four to the right of the aperture. The four cups to the left could be lubricated with safety, the four cups to the right could not safely be used whilst the machine was in motion without incurring a very evident and grave risk of personal injury;

(ix) Before commencing this employment on the Handle Muhlacker brick - making machine Davison Ndaka was instructed by a competent person, namely the manager Mr G. E. Beaumont, that he was not to grease the cups on the right whilst the machine was in motion;

(x) Prior to the accident on the 9th May, 1964, the Handle Muhlacker machine had been inspected on many occasions by Patrick G. Rosario, an Inspector of Factories.'

At the trial, various submissions of law were made to the learned magistrate, and the magistrate came to certain conclusions, all of which are set out in detail in the case stated, and I do not propose to set them out at this stage in this judgment. Suffice it to say that the question on which the opinion of the High Court is desired by the Director of Public Prosecutions is whether or not the Court (meaning the learned senior resident magistrate) was wrong in finding that regulation 19 of the Factories (Safety) Regulations did not apply to the circumstances of the present case.

In his address, Mr Thistlethwaite expressed the view that in order to obtain a judgment in his favour, he had to satisfy me on the following three points:

(1) that the machine in question was a source of danger to persons within the meaning of regulation 19;

(2) that the respondent failed to provide efficient guards to protect persons from the dangerous parts of this machinery; and

(3) that a greaser or lubricator comes within the ambit of the word 'person' in regulation 19, so as to derive the protection offered by regulation 19. Regulation 19 of the Factories (Safety) Regulations is in the following terms:

'In every factory efficient guards shall be provided and maintained to such parts of machinery and electrical apparatus as may be a source of danger to persons.'

[1] On the question of whether the machine was a source of danger within the meaning of regulation 19, I was referred to the judgment of Lord Reid in the case of *John Summers and Sons Ltd v Frost* [1955] 1 All ER 870 at page 883, quoting from the judgment of Lord

Cooper in an earlier case of *Mitchell v North British Rubber Co. Ltd* 1954 SC (J.) 69, at page 73:

' The necessary and sufficient condition for the emergence of the duty to fence imposed by s. 14 of the Factories Act is that some part of some machinery should be "dangerous". The question is not whether the occupiers of the factory knew that it was dangerous; nor whether a factory inspector had so reported; nor whether previous accidents had occurred; nor whether the victims of these accidents had, or had not, been contributorily negligent. The test is objective and impersonal. Is the part such in its character, and so circumstanced in its position, exposure, method of operation and the like, that in the ordinary course of human affairs danger may reasonably be anticipated from its use unfenced, not only to the prudent, alert and skilled operative intent upon his task, but also to the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part?'

On this point I have noted in particular the magistrate's finding (viii) *supra*, and the evidence of the respondent himself, where he states, referring to this machine:

' It was a source of danger to my knowledge', and:
' I have seen greaser greasing them on left and have told him not to grease to right as he would get caught. Two bearings can hardly be reached without being caught.'

There is no doubt at all in my mind that the answer to the first point posed by Mr Thistlethwaite must be in the affirmative.
[2] Dealing now with the second point, we have first of all the very definite finding of fact by the learned magistrate in paragraph (vii) *supra*. In any event, Mr Thistlethwaite conceded that in fact this machine was completely housed and fenced as found by the learned magistrate and had a guard within the meaning of regulation 19. His contention was that the guard was not an 'efficient' guard, and after quoting the Concise Oxford Dictionary's definition of the word 'efficient', he referred me to the judgment of Hilbery, J, in the case of *Charles v Smith and Sons (England) Ltd* [1954] 1 WLR 451, at page 455 where he said:

' It is not enough to provide something which will act as a guard if let alone and not made use of in the way in which a part of it is patently intended to be made use of. Section 14 requires machinery to be securely fenced, and it is not sufficient that that machinery is provided with a means of achieving security. This box achieved security so long as the perspex cover was left shut. If the handle on the perspex cover was used and the perspex cover lifted, then it ceased to be any guard for a person who, for any reason, put his hand inside the box.'

The learned magistrate was of the opinion that the words 'efficient guards' used in regulation 19 of the Factories (Safety) Regulations, were equated with the words 'securely fenced' which appear in the British Legislation and for the construction thereof a statement in Redgrave's *Factories, Truck, and Show Acts,* 19th Edition, at page 34, should be adopted, namely:

' The part is, it is submitted, securely fenced if the fencing, though it has not prevented the accident under consideration, was such fencing as removed the possibility of injury to anyone acting in a way a human being might be reasonably expected to act in circumstances that might reasonably be expected to occur.'

This statement arises from an observation of Du Parcq, J, in his judgment in the case of *Walker v Bletchley Flettons Ltd* [1937] 1 All ER 170, at page 175, where he stated:

' I think if I were to venture to expand a little what was said by Wills, J, I would say, and I think I am saying nothing inconsistent with what that learned judge said, that a part of machinery is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur.'

It is of course true that the above observation must be read in conjunction with what the Lord Justice - Clerk (Lord Cooper) said in *Mitchell v North British Rubber Co. Ltd.* which I have already quoted earlier on in this judgment.
In *Smith v Chesterfield and District Co - operative Society Ltd*, an English Court of Appeal case with Lord Goddard, CJ, Jenkins and Morris, L.JJ. [1953] 1 All ER at page 447, it was held [quoting the Headnote]: 'that, while the question of whether a machine was securely fenced was one which fell to be decided on the facts of the particular case under

consideration, it must also be decided according to the right principle of law, and the ground on which Oliver, J, had come to his decision placed too limited a duty on the defendants under section 14 (1); the conduct of the plaintiff, unreasonable as it was, was reasonably foreseeable by the defendants, and, as the guard which was provided was such that the plaintiff could put her hand beneath it and so come into contact with the rollers, the rollers of the machine were not securely fenced within the meaning of section 14 (1), and, therefore, the defendants were in breach of their duty under that subsection'. In this case the before-mentioned dictum of Du Parcq, J, in *Walker v Bletchley Flettons Ltd,* was applied.
Finally, I shall quote from paragraph 4 at page 38 of the 19th Edition of Redgrave's *Factories, Truck, and Shops Acts,* which reads as follows:

' It is not to be concluded from the foregoing that if the operator or person employed has been careless and if his carelessness was the proximate cause of the accident that there has been no breach of the Statute (*see Blenkinsop v Ogden* (1898) 1 QB 783; 24 Digest 943, 299, *Atkinson v London and North Eastern Railway Co.* (1926) 1 KB 313, Digest Supp.). It is not to be so concluded, firstly, because some sorts of carelessness are foreseeable and should be foreseen and guarded against. That is clear from the qualifications in the test of Du Parcq, J but, secondly, it is not to be so concluded because of the conduct of the individual who is injured is not the criterion to be applied. The duty is owed to every person employed or working in the factory (*see Butler v Glacier Metal Co. Ltd* mentioned in note *(a)* to s. 13, post), and it is by reference to that whole class that the foreseeability test is to be applied in determining whether there was a duty to fence and whether the duty was disregarded.'

In my opinion, this present case can easily be distinguished from all the other cases I have quoted or referred to. The learned magistrate found that the machine in question was completely housed, being encased with an aperture a point 3 to 4 feet from the ground to allow inspection and lubrication of the machine. Inspection and lubrication are essentially matters which must be provided for, and whilst it is clearly impossible to devise an entirely infallible method, it seems to me that the guards provided to this brick - making machine were as effective as could possibly be provided. I agree with the comment of the learned magistrate when he says:

' It is not reasonable to expect that a human being, being one trained in a particular task, will incur obvious risk of serious injuries in defiance of specific instructions.'

[3] On the third and last point put forward by Mr Thistlethwaite, namely that a greaser or lubricator comes within the ambit of the word 'person' in regulation 19, so as to derive the protection offered by regulation 19; the magistrate on this point made the following finding:

' The prosecution alleges that the true meaning of regulation 19 is that a machine is proved to be dangerous if in fact an accident occurs such as the present one even though the injured person was acting contrary to instructions and that the position of a greaser lubricating a machine is no different to any other person. This last contention is clearly not so as regulation 22 expressly provides the safety precautions which must be enforced in respect of a greaser. Regulation 21 clearly implies that it is not an offence to permit a person to be in close proximity to moving machinery so long as that person was not wearing loose clothing. This would apply to those inspecting lubricating or repairing machinery when in motion.'

I have already quoted regulation 19 of the Factories (Safety) Regulations. Regulation 21 provides as follows:

' No person in close proximity to moving machinery shall wear or be permitted to wear loose outer clothing.'

Regulation 22 states:

' The repairing, adjusting, cleaning or lubricating of machinery in motion shall only be undertaken by a competent person over the apparent age of eighteen years.'

Mr Thistlethwaite's contention is that regulation 19 applies to all persons, including a greaser over eighteen years of age and a person wearing loose clothing, whilst the

magistrate concluded that a greaser or a person wearing loose clothing was specifically provided for by regulations 21 and 22.
[3] It has been said that it is an elementary rule that in construing an Act, construction must be made of all the parts together, and not of one part only by itself.
On page 28 of the 11th Edition of *Maxwell on Interpretation of Statutes* it is stated:

' Perhaps as a general proposition the words of a statute should be construed in accordance with the dictum of Lord Watson, who says with regard to deeds, in an unrecorded case' " the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with the other provisions. If that interpretation does no violence to the meaning of which they are naturally susceptible.'

Paragraph 127 of Volume 17 of *Halsbury's Laws of England,* 3rd Edition at page 76 states as follows:
' *Unfenced machinery.* In determining whether any part of machinery is in such position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced no account need be taken of any prescribed person carrying out, while the part is in motion, an examination thereof or any lubrication or adjustment shown by the examination to be immediately necessary, if it is an examination, lubrication or adjustment which must be done while the part is in motion.'

[4] In his judgment at page 1 of the record commencing at line 15, the learned magistrate observed:

' In this case the Court must construe regulation 19 and in so - doing adopts the statement of Lord Esher, M.R, in *Tuck & Sons v Priester* (1887) 19 QB D. 629 at page 638 where he stated:
"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for the construction of penal sections."

[5] I have given my most careful consideration to this case, and in particular, to the arguments which have been presented to me by learned counsel on both sides. After such consideration I find I am satisfied that the learned magistrate was correct in holding that regulation 19 of the Factories (Safety) Regulations did not apply in the circumstances of the present case.
Appeal dismissed.