



Health and Safety Executive		Operational Circular	
		OC 183/2	
Review Date	13/09/2001	Open Government Status	Fully Open
Version No & Date	1: 13/09/1991	Author Unit/Section	FOD FSU

Target Audience:
All HSE Inspectors

ABSTRACT OF DECIDED CASE...

Dexter v Tenby Electrical Accessories Limited...

Queen's Bench Division held that a factory occupier had a duty under Factories Act 1961 s.29(1) to ensure the safety of the workplace of a contractor's employee who was working in the factory and obeying his employer's instructions....

Issues: (1) "has to work"....

(2) Factory occupier's duty in relation to contractor's employees....

Act: Factories Act, 1961 s.29(1)....

Circumstances: Mr Duffy, an employee of a contractor, was carrying out work on a roof at the factory occupied by the defendant Tenby Electrical Accessories Ltd. He fell through the roof sustaining minor injury....

Mr Robinson, a senior supervisor employed by the contractor had discussed with the factory occupier's moulding shop manager how the work was to be carried out. Mr Robinson and Mr Carter, another employee of the contractor, decided that the vast majority of the work could be completed from inside the factory, but that a small amount of it, in particular installation of a Tri-link upon each of 4 fans, needed to be carried out on the roof itself. During this work Mr Duffy fell through the roof....

The factory inspector prosecuted alleging that there had been a contravention by the occupier of Factories Act, 1961 s.29(1)....

In the magistrates' court at the end of the prosecution case, counsel for the factory occupier conceded that the roof was unsafe and that it would have been reasonably practicable to have rendered the roof safe with the provision of crawling boards and scaffolding or some similar means, but submitted that there was no case to answer as evidence had not been called that the roof was a place where Mr Duffy had to work....

The magistrates found that Mr Duffy at all times was acting under the direct orders of his immediate supervisor, Mr Carter, that the factory occupier did not exercise any

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influence on the way in which the work was carried out and took no responsibility for it, and that the occupier's moulding shop manager assumed that the work would be carried out from within the factory. The justices upheld the defence submission that the roof was not a place where Mr Duffy had to work. The prosecutor appealed. ___

Held: Queen's Bench Division. ___

Appeal allowed. Mr Justice Tudor Evans following the binding decision of **Kendrick v Cozens and Sutcliffe Ltd** [1968] 4 KIR 469, CA, held that as Mr Duffy was ordered to work on the roof by his employer, he had to work there and it was therefore the duty of the occupier under s.29 to make the place safe. ___

Mr Justice Tudor Evans cited Lord Caldecote CJ in **Meigh v Wickenden** [1942] 2 KB 160, [1942] 2 All ER 68: ___

"The occupier's responsibility under the Act does not depend on proof of personal blame or even on knowledge of the contravention". ___

He also cited Lord Wright in **Smith v Cammell Laird and Company Ltd** [1940] AC 246: ___

"The liabilities imposed by the Factory Act, are absolute and do not depend on negligence. They are in most cases imposed on the "occupier" of the factory or workshop, whether or not he is actually in fault, though in some events he may either have a right over against a natural wrongdoer or a right of exoneration. This may appear somewhat out of the course of the common law, but the statute is remedial. It is for the protection of work people, and that object can best, perhaps can only, be secured by fixing liability on a single person and by defining the obligation in absolute and mandatory terms". ___

He concluded that the judgement of Diplock LJ in **Taylor v Coalite Oils and Chemicals Ltd** [1967] 3 KIR 315 referring to **McWilliams v Sir William Arrol and Company Ltd** [1961] SC 134 where an occupier was held not liable, because there had been no reasonably foreseeable cause of injury to anyone working (from a nail embedded in a piece of wood left by a contractor), did not "impugn the principle that an occupier is responsible for statutory compliance throughout his factory and is liable for breaches of the Act even if he has no personal blame". ___

Lord Justice Lloyd considered that the meaning given by Winn LJ to the words "has ... to work" in **Kendrick v Cozens and Sutcliffe Ltd** [1968] 4 KIR 469, CA, was too narrow and restrictive, but nonetheless found that the occupier was liable because the workman was obeying the reasonable orders of his employer as distinct from the occupier. ___

Type of case: Criminal: Departmental. ___

Reference: Unreported. Transcript by Marten Walsh Cherer Ltd CO 1525/89. ___

___ LIBCAT: This item will have an entry on the HSE Database (LIBCAT). ...

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13 September 1991

(1606/FI/1989'A')

Disc No:FOD1C/Editors/J356/12.7.91/DS/DH

(New Disc Ref: J:\Editors\CA1\J356JI91.sam)___

ASI headings___

Court decisions: decided cases.

