SULLIVAN v. NORTON.

maxim quoted in Court that "all men are equal in the eye of the law" though it undoubtedly is true, absolutely true in one sense, is after all but a maxim, and such maxims are from the nature of the case capable of misleading and of being misapplied unless applied with reservation and nice discrimination; and this particular maxim is in my opinion by no means of itself conclusive in respect of the proposition put forward by the learned Advocate-General.

I would refer to one instance only in which the maxim is not and cannot be adhered to to the letter an instance of every-day occurrence: when there is a question as to the probable truth or untruth of a particular statement, and a statement in one sense has been made by a person of hitherto high accredited probity and truth, and of position such as presumably to place him above temptation to speak untruly, and a contradictory statement on the other side by one whose character is not above suspicion and whose circumstances might lay him open to temptation, a Judge who on these grounds accepted the statement of the former in preference to that of the latter would not, I presume, be obnoxious to a charge of having violated the legal maxim above enunciated.

Again, having regard to probabilities, experience shows that there is at least equal truth in the proposition *nemo repente fuit turpissimus*: men of good character do not as a rule at one bound become absolutely depraved. To the extent that under instructions counsel might suggest the possibility of such a change, I am willing to accept the applicability of the maxim, but not further, in this particular case.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.*

1886. April 21. Sept. 7.

### THE SECRETARY OF STATE FOR INDIA and THE MUNICIPAL COMMISSIONERS OF THE CITY OF MADRAS.*

*City of Madras Municipal Act, s. 123—Tax on buildings—Hospital built by Government—Standard of hypothetical rent.*

Under s. 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be expected to let from month to month or from

* Referred Cases 2 and 3 of 1886.

year to year is for the purpose of assessment to house-tax under the Act, to be deemed to be the annual value of such building. The Lying-in Hospital at Madras, built and supported by Government, having been assessed by the President of the Municipality as on a rental of Rs. 1,000 a month, the Magistrates on appeal reduced the assessment, finding, that Rs. 7,920 per annum would be a reasonable rent, having regard to the letting value of the buildings in the neighbourhood, but, at the request of the Municipality, referred the following questions to the High Court:

Whether (as contended by Government) the property in question should be valued and assessed on the rent which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay; or

Whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand, and below which sum he would not be willing to let.

*Held*, that the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct.

CASE stated and referred to the High Court under s. 193 of the City of Madras Municipal Act.

The facts are set out in the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.).

The Acting Advocate-General (Mr. *Shephard*) for the Secretary of State.

Mr. *Wedderburn* for the Municipality.

The following authorities were referred to in argument:—*Rosher's Parochial Assessments Act*, pp. 83, 86, 87, 91, 99, 100, 101, 106, 122, 133; *The Queen* v. *London and North-western Railway Co.*; (1) *Mersey Docks* v. *Liverpool*; (2) *Brown on Rating*, pp. 26, 27, 30.

It was contended by the Acting Advocate-General that if a lease of the Lying-in Hospital were put up to auction, Government could secure it for a sum just in excess of that which would be offered by persons who might require the building for ordinary purposes, *i.e.*, purposes other than that for which the building was specially built and adapted, and that such sum was the amount at which the building should be assessed.

For the Municipality it was urged that as in the hypothetical market there was one person who required the building for a special purpose and no other suitable building, the hypothetical

(1) L.R., 9 Q.B., 134. (2) L.R., 9 Q.B., 96

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landlord might reasonably demand and could obtain a higher rent than would be offered if the auction were without reserve.

JUDGMENT:— This is a case referred to this Court for decision under s. 193 of Madras Act I of 1884. The buildings which compose the Lying-in Hospital in the town of Madras were valued at Rs. 12,000 per annum, and the Superintendent's residence at Rs. 1,248 per annum, for the purpose of calculating the tax due upon them under s. 119. The Government preferred an appeal against this valuation to the President of the Municipality under s. 190, on the ground that it was not in accordance with the provisions of s. 123. The President, however, confirmed the valuation.

Again the Government appealed from his decision to the Magistrates under s. 192. Mr. Chisholm, the Government Architect, originally valued all the buildings, including the Superintendent's residence at Rs. 10,488 per annum. He stated in his evidence before the Magistrates that, if the special character of the buildings alone were considered, Rs. 1,000 per mensem would be a fair rent for Government to pay for the Hospital, including the Superintendent's residence and Apothecary's quarters, which, he said, would fetch Rs. 190 a month, and that, ordinarily, a fair rental for Government in such circumstances to pay would be Rs. 833 a month. It was contended for the Municipality that though the Government might have much difficulty in obtaining tenants for these buildings if they were to let them, yet the present value of the buildings to the hypothetical tenant was the true test of ratable value, and that the consideration of what the Government might get, if they rented the buildings to others who might not require them for use as a hospital, was immaterial.

The Lying-in Hospital must, for the purpose of this reference, be taken to be a building occupied by the owner himself. Admitting the principle that the value to the owner, whether he occupies the building himself or lets it to a tenant, is to be measured by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Act as the standard, the Magistrates came to the conclusion that such amount could be pretty accurately calculated only by considering the letting value of other buildings in the same locality, that is, by considering the demand for the Lying-in Hospital in the open market. In this view, and also taking into consideration the value of the premises

to the present tenant, the Magistrates reduced the rateable value (excluding the Superintendent's residence and the Apothecary's quarters as to which the parties were not at issue) to Rs. 660 per mensem, or Rs. 7,920 per annum. But, at the request of the respondent's solicitor, they referred for our decision the following question:—

Whether the property in question should be valued and assessed on the rent which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay; or, whether it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let.

Our decision must depend on the provisions of section 123 of Madras Act I of 1884, which provides that "the gross annual rent at which a building or land might reasonably be expected to let from month to month or from year to year shall for the purposes of assessment under this Act be deemed to be the annual value of such buildings or land." The letting value from year to year is the standard prescribed also in the Parochial Assessments Act (6 and 7, Will. IV, cap. 96,) and the words used in it are that the rates are to be made upon an "estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year," &c. The intention of the Legislature in referring to a tenancy from month to month or from year to year was evidently to establish in regard to all buildings a uniform rule for assessing the value of the occupation. The standard of value is certainly, as observed by the Magistrates, the value of the property to the owner, which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Legislature. Having regard to the course of decisions under the English Statute, there are several matters which ought to be kept in view in fixing the rateable value. The standard value is the rent which the building would be worth to a hypothetical tenant on the terms laid down by the Statute. The terms on which any particular property is in fact let are therefore immaterial, and the tenancy from month to month or year to year is prescribed as the standard by which all buildings should be valued in order that their assessments

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might be equal. Again, the standard value is the value which the building possesses at the time the assessment is made. Hence the value of the property in the past or future is immaterial. The present value is not the value of any exceptional year but the value which under present circumstances the building would be worth to let in an average year or taking one year with another. Neither exceptional repairs nor exceptional profits made in a particular year are to be considered. In letting a building from year to year, the rent would ordinarily be regulated by two matters as observed by Blackburn, J., in *The Queen* v. *London and North-western Railway Co.*;(1) on the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more; on the other hand, by the nature of the property, such as local situation, or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him; for, while he would not be willing to give more than he expects to gain by the occupation, he would not give even that if he could get a similar building at a lower price. Further, in rating property, it must generally be assumed that the hypothetical tenant would be in the same position and use the building in the same way as the party rated, for, the object is to ascertain its intrinsic value to the owner in its present condition. In *The Queen* v. *The School Board for London*(2) it was contended, *inter alia*, for the respondent, before a Divisional Court of Queen's Bench, that the rent which the School Board might be supposed to be willing to give for the school premises if the Board were in the market anxious to rent premises suitable for use as school, was a fair test of rateable value. On the other hand, it was urged for the appellant—1st, that the School Board owning the premises should not be supposed to be in the market anxious to rent premises, but should be excluded from the number of hypothetical tenants who might be supposed to be willing to rent the school premises, and 2ndly, that the only true indication of rateable value was the rent for which the premises could in their present condition be let to a hypothetical tenant from year to year, supposing they were not used for Board Schools but were applied to any other use or purpose for which they could be made available by a tenant. The respondent's contention was allowed and the appellant's objections were overruled. Cave, J.,

(1) L.R., 9 Q.B., 134. (2) 55 L.J. (Q.B.D.), 53.

said: "when you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the use for which they are built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they are built. If they cannot be let for the use for which they are built, then, no doubt, you may go and see what you can do with them for some other purpose and the best subsidiary purpose you could put them to. But, as long as they can be let for the purpose for which they are built, it seems to be idle to say "well if this man were not occupying them, they could not be let to anybody else."

The Court of appeal confirmed the decision (the case is not yet reported). Lord Esher, M. R., observed: "In this case there was no tenant as the Board were owners and occupiers. All possible tenants must be looked at. In estimating the rent, no tenant was excluded and the actual occupier might be included, and the owner, if he was occupier, as to whom it might be considered what rent he might be reasonably expected to pay. The School Board might be tenants, and therefore the rent they would be willing to pay might be considered."

Lord Justice Brown says: "the test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant. In estimating that, in the present case, the rent for which the premises might be reasonably expected to let to the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable?"

Having these principles in view, we are of opinion that the Lying-in Hospital should not be valued at the rent which it would fetch if it were offered in the open market without reserve. Admittedly there is but one building in Madras specially eligible for use as a Lying-in Hospital, and it is occupied by the owner. If the owner, the only person likely to require the premises, were excluded from the market, then the hypothetical tenant would take advantage of the absence of demand for it and pay no more than those who require it for use other than as a hospital would choose to pay. No prudent landlord, who is aware of the fact that only one person requires the building for use as a hospital, would offer it in the open market without reserve.

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Nor can any reserve rent which the landlord may arbitrarily demand be taken to represent the standard value. If such demand is far in excess of the special convenience or benefit which the hypothetical tenant can expect to derive from the occupation, the tenant would prefer to rent less suitable buildings and adapt them to his requirements, though at some expense, or to forego the special convenience if it is not indispensable.

The standard value is then what a tenant requiring the building for use as a hospital would consider it reasonable to pay from year to year rather than resort to renting a less suitable building and adapting it to his requirements at his expense. In this sense, the standard value is the higher reserve rent which the owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.*

1886. April 13, 15.

KRISHNA AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS IN APPEAL NO. 127,

THE COLLECTOR OF SALEM (DEFENDANT NO. 1), APPELLANT IN APPEAL NO. 130,

and

MEKAMPERUMA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

*Regulation X of* 1831, *ss.* 1, 2, 3—*Regulation V of* 1804, *s.* 14 (4), *s.* 20—*Sale for arrears of revenue of mitta held by tenants in common during minority of some of the owners—Minority no bar to sale—Civil Procedure Code, s.* 32.

A mitta held by tenants in common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors.

In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Regulation X of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority and set aside the sale so far as their interests were concerned:

*Held*, on appeal, that, the minors not being sole proprietors, their estate was not one of which the Court of Wards could assume the management and, therefore, s. 2, of Regulation X of 1831, did not affect the sale.

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* Appeals 127 and 130 of 1885.