LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Mosely.

1940
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July 24.

U. C. MITRA
v.
MOHAMED ISMAIL AND ANOTHER.*

Cinema hall, Suit for rent of—Provincial Small Cause Courts Act, s. 15, Sch. II, cl. 8—"House", meaning of—Cinema hall not a house for residential purposes—Extended meaning in certain Statutes—Shops and stalls in Burma—Second Appeal—Civil Procedure Code, s. 102—Burma Courts Act, s. 11 (1) (a).

A cinema hall which cannot be adapted for residential purposes without structural alterations is not a "house" within s. 15 of the Provincial Small Cause Courts Act read with clause 8 of the Second Schedule to the Act. Consequently a second appeal to the High Court would lie in a suit to recover the rent of a cinema hall, though the amount is less than Rs. 500.

Except in cases where the word "house" has expressly been given an extended definition for the purposes of a particular statute a house is ordinarily a structure of a permanent character, structurally severed from other tenements, that is used, or may be used, for the habitation of man. In Burma shops and stalls in the markets have been held to be houses within the meaning of clause 8 of the Second Schedule of the Provincial Small Cause Courts Act, because they are capable of being used for residence, but it does not follow that every building is a house for the purposes of the Act.

Ahmadi Begam v. *Girraj*, I.L.R. 49 All. 134; *Daniel* v. *Coulsting*, 14 L.J. C.P. 70; *Nga Kan* v. *Mi Mya*, (1907-09) 2 U.B.R. (P.S.S.C.) 5, referred to.

J. R. Chowdhury for the appellant. A suit for rent of a cinema hall is not a suit for "house rent" within the meaning of s. 15 and clause 8 of the second schedule of the Provincial Small Cause Courts Act. The word "house" in this Act means a dwelling house and a cinema hall is not built or adapted for residential purposes. It contains machinery and seats arranged for viewing an entertainment; there is no household furniture. Shops and offices in Burma have been held to be "houses" within the Act, but then they are adaptable for the purposes of residence. The

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* Letters Patent Appeal No. 4 of 1940 from the judgment of this Court in Civil Second Appeal No. 174 of 1939.

meaning of the word "house" ought not to be extended to include a cinema hall.

Ahmadi Begam v. *Girraj Khore* (1); *Nga Kan* v. *Mi Mya* (2).

R. K. Roy for the respondents. The premises have been let for a lump sum including the hall, furniture and fittings and outhouses. Side rooms or outhouses of the premises can be used for residential purposes. If shops and offices can be deemed to be within the Act, there is no reason to exclude a cinema hall. The Legislature has not said "dwelling-house" rent. *In re Maung Po Kyun* v. *Ma Shwe* (3).

ROBERTS, C.J.—The plaintiff-appellant as the Receiver of the Apollo Cinema Hall, Yenangyaung, brought this suit against the defendant-respondents for rent of the property which had been demised to them. He was successful in the Township Court, but on appeal to the District Court the decree was reversed. He therefore appealed to the High Court, but the respondents contend that there is no right of second appeal.

By section 102 of the Civil Procedure Code

"No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees."

By section 15 of the Small Cause Courts Act, 1887, read with the Second Schedule to the Act, a Court of Small Causes shall not take cognizance of a suit for the recovery of rent other than house rent.

The amount or value of the subject-matter of the original suit is Rs. 400 only. There is, therefore, no

(1) I.L.R. 49 All. 134. (2) (1907-09) 2 U.B.R. 5.
(3) I.L.R. 13 Ran. 633.

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right of second appeal unless this is a suit for the recovery of rent other than house rent.

It follows that the short question for us is whether the Apollo Cinema Hall is a "house" within the meaning of the Small Cause Courts Act. The learned Judge in second appeal has held that it is and that therefore no right of second appeal exists.

Now there is no definition of the word "house" in the Provincial Small Cause Courts Act. For the purposes of the Court-fees Act there is a definition which includes buildings of every description; for the purposes of the Penal Code house trespass includes criminal trespass "in any building, tent or vessel used as a human dwelling or any building used as a place of worship"; and for the purposes of the Public Health Act, 1875 (in England), the word "house" includes schools, factories and other buildings in which more than twenty persons are employed at one time.

It was necessary to insert these definitions. Except for the purposes of the Penal Code, a sampan which is used as a human dwelling is not a house. Buildings of every description are not necessarily houses, except for the purposes of the Court-fees Act. And in England, for the purposes of the Public Health Act, the question whether a factory is a house depends on the number of persons employed therein. We have to consider the significance of the word "house" in a statute where no definition has been given at all; that is to say, we are thrown back on the significance which has been given to the word by decided cases in this country; and, where authority is lacking here, by decided cases in England where the connotation of the English word has been discussed.

According to good authority a house is a structure of a permanent character, structurally severed from other tenements, that is used, or may be used, for the

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habitation of man. (Stroud's Judicial Dictionary.) It need not actually be used as a dwelling [see *Daniel* v. *Coulsting* (1)] where a building was held to be a "house" though used as a warehouse and saleroom because it had been "calculated for a dwelling house, divided into apartments, and with little trouble might be lived in again."

The test to be applied is the character of the building and the purposes to which it is or can be adapted ; not the name by which it is called. It must be plain that though every house is a building by no means every building can rightly be described as a house.

It is of course true that we use the terms greenhouse, cowhouse, or electrical power-house ; but this is by way of analogy merely ; and a building designed exclusively for public worship and not for residence does not become a house merely because some people call it a house of prayer. Such buildings would only become houses for the purposes of a particular statute if there was a statutory definition expressly including them.

It has been held in *Nga Kan* v. *Mi Mya* (2) that a suit for recovery of rent for the occupation of a stall in a market in this country was a suit for recovery of house rent within the meaning of clause 8 of Schedule II to the Provincial Small Cause Courts Act. Shops and stalls in the markets are houses within the meaning of this clause. As was pointed out in that case, they are capable of being used as a residence by the people of the country.

I agree that the decision in *Ahmadi Begam* v. *Girraj Kishore* (3) was right, but because a shop must

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(1) 14 L.J.C.P. 70. (2) (1907-09) 2 U.B.R. (P.S.S.C.) 5.
(3) (1926) I.L.R. 49 All. 134.

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be considered a house in a country where it is capable of being used as a residence it by no means follows that every building is a house for the purposes of this Act. And the fact that the word " house " has expressly been given an extended definition for the purposes of other statutes in this country or elsewhere seems to me entirely beside the point in dealing with this Act.

The Apollo Cinema Hall is not, so far as I am aware, adapted for residential purposes, nor could it be adapted as such.

Adapted must mean adapted without structural alteration, for the interior of almost any building of sufficient size could be structurally altered so as to make it ultimately fit for residence. And it must mean adapted for normal residential purposes ; the mere fact that a building could be used to shelter refugees from a fire or earthquake in a pressing emergency does not make it a house within the meaning of the clause. Some stress was laid on the fact that there was furniture on the premises ; that is a wide term and may cover all the equipment of a cinema hall including apparatus of various kinds and possibly rows of armchairs clamped to the floor, or benches. There was no evidence of the existence of domestic furniture which would suggest that the hall was or could be used as a residence. Its purpose is not residential ; it is a building to which the public resort from time to time for purposes of entertainment. The fact that the lease describes itself as a lease of a house and machinery and refers to the demised premises as a Talkie House cannot alter the facts.

The word " house " has a much more restricted significance than " building ", but it seems to me, with respect, that the learned Judge in second appeal has treated the matter as though the Act dealt with the recovery of rent other than rent of a building.

This appeal must be allowed and the case must go back to the learned Judge in second appeal with the direction that the suit is a suit for the recovery of rent other than house rent. There is therefore a right of second appeal, and that appeal remains to be determined by him on its merits.

The respondents must pay the costs of this appeal, advocate's fee in this Court three gold mohurs.

MOSELY, J.—I agree.