

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899.

January 12.

THE MUNICIPALITY OF BOMBAY v. AHMEDBHROY HABIBBHROY.*
Municipality—Bombay Municipal Act (Bom. Act III of 1888), Sec. 249—"Employed"—Meaning of the word—Discretion vested in the Municipal Commissioner.

The word "employed" in section 249 of the Bombay Municipal Act (Bom. Act III of 1888) refers to employment of any kind or for any length of time.

REFERENCE by Khán Bahádur P. H. Dastur, Third Presidency Magistrate, under section 432 of the Criminal Procedure Code (Act V of 1898).

The material portion of the reference was as follows :—

"Mr. Ahmedbhoy Habibbhoy is the mortgagee in possession of premises situate at Colaba and used as godowns for the storage of cotton. Formerly there was a mill in this building, and it had some privies attached thereto for the use of the mill hands. Subsequently, however, when the premises were destroyed by fire and rebuilt as godowns, these privies were closed and have always remained so up to this day. On the 17th September, 1898, the Municipal Commissioner gave Mr. Ahmedbhoy a notice, under section 249 of the City of Bombay Municipal Act, to repair the existing privies so as to make them available for the use of persons employed upon the premises. This has not been done. And Mr. Ahmedbhoy is, therefore, charged under section 471 of the Municipal Act for failure to comply with the said notice.

"The evidence in the case shows that these buildings consist of two blocks, the new and the old, each containing several compartments let out to merchants separately for the storage of their cotton. No men are employed there permanently or for the whole day; but whenever cotton is to be moved in or out of

* Criminal Reference, No. 128 of 1898.

(1) Section 249 provides as follows :—"Where it appears to the Commissioner that any premises are intended to be used as a market, railway station, dock, wharf or other place of public resort or as a place in which persons exceeding twenty in number are employed in any manufacture, trade or business, or as workmen or labourers, the Commissioner may, by written notice, require the owner or occupier of the said premises to construct a sufficient number of water closets or latrines, or privies and urinals, for the separate use of each sex."

the godowns, some labourers and cartmen are engaged for the work and remain on the premises only as long as is necessary to finish their work. This naturally depends upon the quantity of cotton to be weighed and the number of bales to be delivered, but it does not seem that any batch of labourers has remained in the building longer than a few hours at a time.

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“The number of men employed in the godown is very fluctuating. Sometimes there are as many as 51, 68, 72, and 91 persons engaged in work, while on other days there are none at all, or only a very few—1, 6, 7 and 9.

“This being the case, the question is, whether the Municipal Commissioner can compel the owner of the premises to provide privy accommodation in the building?

“It is urged on behalf of the defence that the words ‘are employed’ in section 249 of the Municipal Act refer to a permanent and regular employment of the men and not to a temporary and occasional employment, as is admittedly the case here. I have, however, given my reasons in the judgment for holding the contrary opinion, and think that the section applies to all premises where more than twenty persons are engaged in any kind of work or for any length of time. If there is a discretion in the matter, it is with the Municipal Commissioner and not with this Court. Mr. Ahmedbhoj was, therefore, bound to comply with the notice.

“As, however, an authoritative decision in this matter is very desirable, I beg to refer for the opinion of the High Court the following point:—

“What is the meaning of the words ‘are employed’ appearing in the section?”

The reference was heard by a Division Bench (Parsons and Ranade, JJ.).

Branson for Ahmedbhoj Habibbhoj.

There was no appearance for the Municipality.

PARSONS, J.:—The Magistrate has asked of this Court the following question:—“What is the meaning of the words ‘are employed’ appearing in section 249 of the Bombay Municipal

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Act?" He thinks that the words refer to employment of any kind or for any length of time. I agree with him. It is the obvious meaning of these words in the section, the object of which was to empower the Municipal Commissioner to require privy accommodation to be provided for places in which persons exceeding twenty in number are employed as workmen or labourers. Neither the kind or duration of the employment is defined, and they, therefore, are immaterial. The number only of the employes is stated, and it alone will be the test of application. The Magistrate is, therefore, right in his opinion that the section applies to all premises. Where more than twenty persons are employed as workmen or labourers in any kind of work, or for any length of time, it is not for the Court to lay down nice distinctions as to the number of hours in the day or of days in the year which constitute employment necessitating privy accommodation. The Legislature has left that to the discretion of the Municipal Commissioner, and has empowered him, whenever he finds that persons exceeding twenty in number are employed as workmen or labourers on any premises, to require the owner thereof to provide necessary accommodation for them. At the same time, as the reference is rather vague and does not include what seems to be the real dispute in the case, I will express the further opinion that it would be a perfect answer to the requisition were the owner on its receipt to close the premises or to cease employing therein more than twenty workmen or labourers. The case has not been argued before us on behalf of the Municipality, and I reserve to myself the right of reconsideration, but, as at present advised, I think the owner would only be guilty of an offence under the section if after such requisition he failed to comply with it, and if more than twenty such persons were found to be employed without the required accommodation being provided for them. There are no materials before me to show how far this opinion applies to the present case.

RANADE, J. :—The point referred for the opinion of this Court relates to the construction of section 249 of the Bombay Act III of 1888, which empowers the Commissioner to require the owners of places in which persons exceeding twenty in number are employed as labourers or workmen in any manufacture, trade

or business, to provide privies. The word "employed" used in this section is obviously used in its ordinary sense, *i.e.*, caused to be engaged in doing some service. There is nothing in the section which shows that the words were intended to signify the nature of the employment, as being from day to day, or occasional, or regular all the year round. The same word occurs in the two following sections in connection with buildings in which any person, may be, or may be intended to be, employed in any manufacture, trade or business without any limit as to numbers. Actual employment is not essential in these two sections, and it is enough if the building is intended for such employment. In section 249 actual employment in numbers exceeding twenty is an essential condition to empower the Municipal Commissioner to require the owner to provide for the convenience of persons so employed. The real difficulty in the application of the section lies in the fact that the number of persons employed in the building in dispute varies at different periods from five to fifty. The section, however, gives a discretion on this point to the Commissioner, and is not, like section 248, imperative in its direction. That discretion has to be carefully exercised by him, but the discretion is his, and cannot be called in question in a court of law. Mr. Scott, in his edition of the Act, refers to the case of *Hargreaves v. Taylor*⁽¹⁾, when this last position was laid down in respect of a corresponding provision of the English Act. We think the Magistrate has correctly construed the section.

(1) (1863) 3 B. and S., 613.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

NARAYAN (ORIGINAL APPLICANT), APPELLANT, *v.* RASULKHAN
(ORIGINAL OPPONENT), RESPONDENT.*

1899.

January 17.

Limitation—Limitation Act (XIV of 1877), Sec. 14—Decree—Execution by Collector—Application to Collector to set aside sale—Civil Procedure Code (Act XIV of 1882), Secs. 244, 310A, 311 and 320.

A decree passed against the applicant Narayan was transferred for execution to the Collector under section 320 of the Civil Procedure Code (Act XIV of 1882). On

* Second Appeal, No. 513 of 1898.