1911.

BAI MAHAKORE v. BAI MANGLA.

by any act of his to annul the relations of depositor and depositee. Therefore I think the Subordinate Judge was substantially right in his conclusions, though he referred to the matter as a gift. Damodardas conferred on Harkore a right to the money though he did not actually give her money. This right he by his own acts and words made perfect by those means which in the circumstances were appropriate to the purpose.

Therefore I would confirm the decree of the lower Court with costs.

Decree confirmed.

R. R.

CRIMINAL APPELLATE.

Before Sir Basil Scott, Kt., Chief Justice, on reference from Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911.

April 12.

EMPEROR *v.* B. H. DESOUZA.*

Bombay District Municipal Act (Bombay Act III of 1901), sections 3 (7), 96†—Notice of new buildings—Reconstructing side wall of a house on its old foundation not necessarily new building—Building, interpretation of.

The accused owned a house, one of the side walls of which had fallen down. He rebuilt it on its old foundation, without having previously obtained

* Criminal Appeal No. 472 of 1910.

† The Bombay District Municipal Act, sections 3 (7) and 96, so far as they are material to this report, run as follows:—

Section 3 (7).—'Building' shall include any hut, shed, or other enclosure, whether used as a human dwelling or otherwise, and shall include also walls, verandahs, fixed platforms, plinths, door-steps and the like.

Section 96.—Before beginning to erect any building, or to alter externally or add to any existing building, or to re-construct any projecting portion of a building in respect of which the Municipality is empowered by section 92 to enforce a removal or set-back, the person intending so to build, alter, or add shall give to the Municipality notice thereof in writing.

Notice of new buildings.

* * * * * * *

1911.

EMPEROR v. B. H. DESOUZA.

permission of the Municipality. He was thereupon charged, under section 96 of the Bombay District Municipal Act (Bombay Act III of 1901), for having erected a building without permission of the Municipality :—

Held, that the accused committed no offence under section 96, for it could not be said as a matter of law that the material re-construction of a small wall must constitute the "erection of a building".

Emperor v. *Kalekhan Sardarkhan*[1], distinguished.

Per Curiam.—It is recognized in England to be a rule with regard to the effect of interpretation-clauses of a comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should.

The Queen v. *The Justices of Cambridgeshire*[2]; *Mews* v. *Jacobs*[3]; and *Mayor &c. of Portsmouth* v. *Smith*[4], followed.

THIS was an appeal by the Government of Bombay, from an order of acquittal passed by G. R. Dabholkar, First Class Magistrate of Bandra.

The accused owned a house within the municipal limits of Bandra. One of the side walls of the house had fallen down. He re-constructed the wall on its old foundation, without having

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EXPLANATION.—The expression 'to erect a building' throughout this chapter includes—

(*a*) any material alteration, enlargement or re-construction of any building,

(*b*) the conversion into a place for human habitation of any building not originally constructed for human habitation,

(*c*) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(*d*) the conversion of two or more places of human habitation into a greater number of such places,

(*e*) such alterations of the internal arrangements of a building as affect its drainage, ventilation or other sanitary arrangements, or its security or stability, and

(*f*) the addition of any rooms, buildings or other structures to any building, and a building so altered, enlarged, re-constructed, converted, or added to, is, throughout this chapter, included under the expression "a new building."

(1) (1910) 35 Bom. 236.
(2) (1838) 7 Ad. & E. 480.
(3) (1875) L. R. 7 H. L. 481.
(4) (1885) 10 App. Cas. 364.

1911.

EMPEROR v. B. H. DESOUZA.

previously obtained permission of the Municipality. Upon these facts, he was charged with the offence made punishable under section 96 of the Bombay District Municipal Act (Bombay Act III of 1901). The Magistrate acquitted him on the ground that the accused was not erecting a building so as to come within the section.

The Government of Bombay appealed against the order of acquittal.

G. S. Rao, Government Pleader, for the Crown.

Nilkantha Atmaram, for the accused.

The appeal was heard by Chandavarkar and Heaton, JJ., but their Lordships, having differed in opinion, delivered the following judgments :

CHANDAVARKAR, J. :—I regret I have to differ from my learned colleague in this case. With all respect I find I cannot agree with him in holding that the question arising here for our decision is one of fact. In my opinion the facts found by the learned Magistrate are as alleged by the complainant. So the Magistrate states in his judgment and the only question is, whether upon those facts, the act of the accused is of such a nature as to make it punishable under section 96 of the Bombay District Municipal Act.

The fact found by the Magistrate is that the accused reconstructed the south wall of his house on the old foundation. That is the only fact. The case is thus on all fours with *Emperor* v. *Kalekhan Sardarkhan*[1], and I entirely concur in its conclusion of law and interpretation of the material sections of the Act. In my opinion, a wall such as this expressly falls under the Act within the definition of building; and its reconstruction amounts to erecting a building of which notice must be given as required by the Act. I would allow the appeal and convict the accused. But as my learned colleague and I differ, the case must be submitted to the learned Chief

(1) (1910) 12 Bom. L. R. 1060.

1911.

EMPEROR v. B. H. DESOUZA.

Justice for the purpose of reference, according to law, to a third Judge.

HEATON, J. :—B. H. DeSouza was prosecuted under section 96 of the District Municipal Act (Bombay Act III of 1901) for beginning to erect a building without giving the required notice. He was acquitted and the Government of Bombay have appealed against the acquittal.

The facts are that he rebuilt the entire southern wall of his house except the foundations. He also repaired two other walls, but those repairs were not taken by the Government Pleader as affecting the case. He relied exclusively, and it seems to me rightly, on the rebuilding of the southern wall.

By the explanation to section 96 "to erect a building" includes "any material alteration, enlargement, or re-construction of any building." There has not been a material alteration or enlargement but there has been re-construction of the southern wall of the house. Is that a re-construction of a building? The Government Pleader argues that it is because by the defining section of the Act "building shall include any hut, etc., and shall include also walls, verandahs, fixed platforms, plinths, door-steps and the like." This may mean that any wall or door-step, etc., is in itself a building; or that a building includes all its walls, door-steps, etc. If the former interpretation be taken, then the southern wall of DeSouza's house is a building and it has been re-constructed. This is the case argued by the Government Pleader. If the latter interpretation is taken, then the southern wall of the house is only a part of the building; the building is the whole house.

If we were dealing with a wall standing by itself we should be dealing with a building. But where we have a complex building such as a house, it seems to me that the "building" meant by section 96 is the whole house and not a selected portion of that whole such as the southern wall.

My reasons for so thinking are these: sections 92 to 98 of the Act deal with "powers to regulate building, etc." These sections deal with buildings, parts of buildings, external walls of buildings, projecting portions of a building, and in section 98

1911.

EMPEROR v. B. H. DESOUZA.

the plinth is referred to, clearly, as a part of a building. The explanation to section 96 from (*b*) to (*d*) and (*f*) clearly contemplates complex buildings as entities. The scheme of these sections, it seems to me, contemplates a "building" ordinarily as a complex structure made up of walls, etc. I do not say that it does not contemplate simple structures also, such as an isolated wall. But when we have a complex structure such as a house, the building as contemplated by section 96 is the whole house and a single wall of the house is not by itself a building but only a part of a building.

Therefore, I think that this appeal on the ground on which it is argued must fail, for the argument is that there has been re-construction of a building, not merely of a part of a building.

At the same time I do not wish to be understood to say that the re-construction of a wall cannot be a re-construction, within the meaning of section 96, of that building of which it forms a part. It may be the section intended to leave it to be determined as a question of fact in the particular case, whether the re-construction of any particular wall or portions of a building is substantially a re-construction of the building. It may mean this. If it does, then it is a question of fact whether there has or has not been substantially a re-construction of the building. The Magistrate has found in this case that there has not been a re-construction. The materials on the record do not enable me to say that he is wrong.

Therefore I would dismiss the appeal.

Owing to this difference in opinion, the case was heard by Scott, C. J.

G. S. Rao, Government Pleader, for the Crown.

Ratanlal Ranchhoddas, for the accused.

SCOTT, C. J. :—The question referred to me may be formulated thus: Whether the re-construction of a wall upon its own foundation is necessarily the 'erection of a building' within section 96 of the District Municipal Act? According to the explanation appended to that section the expression 'to erect a building' throughout Chapter IX includes any material altera-

tion, enlargement, or re-construction of any building. Whether the re-construction of a wall of whatever importance forming part of a house is necessarily the 'erection of a building', depends upon whether the interpretation-clause, section 3 (7), is to be taken as substituting impliedly for the word 'building' wherever it occurs in the Act not merely all erections falling within the ordinary comprehension of the term 'building' but also all other things included within the definition. It is recognised in England to be a rule with regard to the effect of interpretation-clauses of a comprehensive nature such as we have here that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should (see the judgment of Lord Denman in *The Queen* v. *The Justices of Cambridgeshire*[1], of Lord Selborne in *Meux* v. *Jacobs*[2], and of Lord Watson in the *Mayor &c. of Portsmouth* v. *Smith*[3]).

In the present case the only complaint is that a small wall was built on an old foundation without the permission of the Municipality. The Magistrate has held that in erecting this wall the accused was not 'erecting any building' within section 96, and this conclusion must, I think, be accepted unless it can be said as a matter of law that the material re-construction of a small wall must constitute the 'erection of a building'.

For the reasons above stated I do not think that the Court is precluded from giving to the word 'building' in that section its ordinary meaning, a meaning which the neighbouring sections indicate as the sense in which the Legislature was using that expression in the group of sections of which section 96 forms part. It is possible that the re-erection of a wall may (under certain circumstances) amount to the material re-construction of a building under section 96, but I do not think it necessarily does. In *Emperor* v. *Kalekhan Sardarkhan*[4], referred to by Chandavarkar, J., the applicant had treated the re-erection

(1) (1838) 7 Ad. & E. 480 at p. 491.
(2) (1875) L. R. 7 H. L. 481 at p. 493.
(3) (1885) 10 App. Cas. 364 at p. 375.
(4) (1910) 35 Bom. 236.

1911.

EMPEROR v. B. H. DESOUZA.

of his wall as falling within the section and had applied for leave to re-erect it but did not wait to see if the permission would be granted or refused and there was no appearance on behalf of the accused. In the present case the wall is a small wall and has all along been regarded by the applicant as not a building within the section 96. I concur with Mr. Justice Heaton in thinking that the application should be dismissed.

Application dismissed.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton; again, before Mr. Justice Chandavarkar and Mr. Justice Hayward.

EMPEROR *v.* KESHAVLAL VIRCHAND.*

1911.
April 10.
June 29.

Practice—Sentence—Magistrate passing non-appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act V of 1898), section 413.

The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision :—

Held, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal; for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal.

When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the ground that the sentence appealed from was not appealable. In revision :—

Held, that when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under section 413 of the Criminal Procedure Code, whether that sentence was passed legally or illegally.

* Criminal Applications for Revision, Nos. 19 and 113 of 1911.