CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR *v.* KALLIANJI GOVINDJI.*

1917.
June 20.

City of Bombay Municipal Act (Bombay Act III of 1888), section 349B†—Height of building—Addition of bath rooms at the top in the rear of the building—Raising the height.

The applicant was convicted of infringing the provisions of section 349 B of the City of Bombay Municipal Act (Bombay Act III of 1888), in that he added small bath rooms to the third and fourth floors of his old residential house, though the additions fell below the original height of the house. The applicant having applied,

---

* Criminal Application for Revision No. 138 of 1917.

† The section runs as follows :—

349B. Subject to the maximum prescribed by section 349A, the height to which a building may be erected or raised shall be regulated by the width of the street on which it abuts, in accordance with the following rules, namely :—

(1) if the width of the street does not exceed twenty-six feet, the building shall not be erected or raised to a height greater than one and one-half times the width of the street ;

(2) if the width of the street exceeds twenty-six feet but does not exceed forty feet, the building shall not be erected or raised to a height greater than forty feet ; and

(3) if the width of the street exceeds forty feet, the building shall not be erected or raised to a height greater than the width of such street ;

(4) where the building abuts upon more than one street, its height shall be regulated by the wider of such streets so far as it abuts upon such wider street and also, to a distance of eighty feet from such wider street, so far as it abuts upon the narrower of such streets ;

Provided that, if the face of the building is set back from the street at any height not exceeding the height specified in sub-section (1), sub-section (2) or sub-section (3), as the case may be, such building may be erected or raised to a height greater than that so specified, but not so that any portion of the building shall intersect any of a series of imaginary straight lines drawn from the line of set-back, in the direction of the portion set back, at an angle of forty-five degrees with the horizontal.

1917.

EMPEROR v. KALLIANJI.

Held, reversing the conviction, that the act of the accused fell outside the purview of section 349B of the Act, because he had neither erected nor altered his building within the meaning of the section.

THIS was an application in revision from conviction and sentence passed by C. H. Setalvad, Acting Chief Presidency Magistrate of Bombay.

The applicant owned an old residential house situated on the Khadak street in the City of Bombay. The extreme width of the street was 16′—2″. Between the applicant's house and the next house on the left there was a sweeper's passage. The applicant's building extended, at the back, further to the left behind the house of his neighbour. The additions complained of consisted in addition of small bath rooms to the second and third floors in that portion of the house which was behind the neighbour's house and over-looked the sweeper's passage. The height of the house was from 40 to 48 feet. The applicant was prosecuted and convicted three or four times for making the additions. He did not contest any of the cases; and he did not remove the additions. He was again prosecuted for failing to remove the additions and thereby continuing to contravene the provisions of section 349B of the City of Bombay Municipal Act (Bombay Act III of 1888). It was contended in defence that no offence was committed because the additions complained of were not made in the front but about 40 or 50 feet inside away from the street, that is, the face of the additions was set back to a considerable distance. The trying Magistrate negatived the contention, convicted the applicant, and sentenced him to pay a fine of Rs. 76.

The applicant applied to the High Court.

Desai, instructed by *Captain and Vaidya*, for the applicant.

Setalvad, instructed by *Crawford & Co.*, for the Municipality.

1917.

EMPEROR v. KALLIANJI.

BATCHELOR, J.:—The applicant before us has been convicted of infringing the provisions of section 349B of the City of Bombay Municipal Act, 1888, and the only question is whether those provisions have or have not been infringed by him.

The facts, which are undisputed, are that the applicant has added small bath rooms to the third and fourth floors of an old residential house in the City. It appears to me that in these circumstances section 349B is of no application. That section regulates the height to which a building may be erected or raised. The word 'building' is explained by an inclusive definition in Clause (*s*) of section 3 of the Act where it is said to include "a house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever." In my opinion where, as here, you have a substantial residential house, the house as a whole must be regarded as the building referred to in section 349B, and it is not possible, without unduly straining the wording of the section, to construe the word 'building' there as denoting some small portion of the whole house, such as an outlying bath room. If that is the true meaning of the word 'building' occurring in the section, then admittedly the applicant has not erected this building at the only material time; for it was erected long before the coming into force of this Act. Indeed it is common ground that the building, as it now stands, could not legitimately be built in its present form. But if the applicant has not erected this house or building within the meaning of the section, neither has he raised it in my opinion. For the bath rooms now added fall below the original height of the house or building. That I take it is the height referred to in the section, and that is unaffected by the addition of the bath rooms. Not only do these bath rooms fall short of the

1917.

EMPEROR v KALLIANJI.

pre-existing height of the house, but in the horizontal plane they also fail to extend so far sideways as to intersect the imaginary 45° line referred to in the proviso to the section. It follows that the accused has neither erected nor raised a building within the meaning of the section; he is, consequently, outside its purview.

On these grounds I am of opinion that the rule must be made absolute, the applicant's conviction and sentence being set aside and the fine, if it has been paid, being refunded to him.

I do not express any opinion as to whether, apart from the inapplicability of the section itself, the applicant could be saved by the terms of the proviso to section 349B. That is a question which in my view it is not necessary to decide, and it is a question upon which at present I feel some doubt.

SHAH, J.:—I am of the same opinion.

Rule made absolute.

R. R.