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HAYWARD, J. :—I agree that the claim for possession and rent of the house did arise under the mortgage and that the sale of the house was voidable as contrary to Order XXXIV, Rule 14 of the Schedule to the Civil Procedure Code. I also agree that the suit brought by the mortgagors to set aside the sale by the mortgagees was, notwithstanding the fact that the suit affected the interests of the auction-purchasers, a matter between the parties to be decided under section 47 of the Code of Civil Procedure in view of the decision of the Privy Council in *Prosunno Coomar Sanyal* v. *Kasi Das Sanyal*[1]. It seems to me further impossible in view of that finding to hold that the suit did not fall within, and was not barred by, the wide words of Article 166 of the Schedule to the Limitation Act.

Decree affirmed.

R. R.

[1] (1892) L. R. 19 I. A. 166.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Kajiji.

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April 22.

EMPEROR *v.* RAM GOPAL RUPJI.*

Bombay Rent (War Restrictions No. 2) Act (Bombay Act VII of 1918) section 7 (1) †—Standard rent—Additional charge for supplying light—Recovery of rent in excess of standard rent.

* Criminal Application for Revision No. 39 of 1920.

† The section runs as follows :—

"Whoever knowingly receives whether directly or indirectly on account of the rent of any small premises of which the standard rent has been fixed any sum in excess of such standard rent shall on conviction by a Magistrate be punishable, in the case of a first offence, with fine which may extend to one thousand rupees or, in the case of a second or subsequent offence in regard to the same or any other small premises of which the standard rent has been fixed, with fine which may extend to two thousand rupees.

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Before the year 1916, the accused charged his tenant at Rs. 12 a month as rent. He next put in electric lights in the passages and recovered Rs. 2 extra every month for the light from the tenant. The Controller of Rents fixed the standard rent at Rs. 12 and allowed the statutory increase of Rs. 1-3-2. Thereafter the accused charged Rs. 13-3-2 as rent and levied Re. 0-4-0 extra for the light. He was, on these facts, convicted of an offence punishable under section 7 (1) of the Bombay Rent (War Restrictions No. 2) Act, 1918:—

Held, setting aside the conviction, that by recovering four annas extra for the light the accused did not recover anything more than the standard rent, for the supplying of the electric light on the passages of the building was a matter of arrangement or contract between the tenant and his landlord and did not necessarily form a part of the rent.

THIS was an application in revision against conviction and sentence passed by B. N. Athavale, acting Fourth Presidency Magistrate of Bombay.

The accused owned a house in Bombay. He had let rooms in the house to several tenants. The complainant was one of his tenants, and used to pay a monthly rent of Rs. 12 for his room, before the year 1916. Later, the accused fitted electric lights in the passages of the house, and charged the complainant Rs. 2 per month for the lights.

On the 17th June 1919, the Controller of Rents fixed the rent at Rs. 12 and allowed the ten per cent. increase at Rs. 1-3-2.

Thereafter, the accused recovered Rs. 13-3-2 as rent and Re. 0-4-0 as charges for the lights.

He was, on these facts, convicted of an offence punishable under section 7 (1) of the Bombay Rent (War Restriction No. 2) Act, 1918, and sentenced to pay a fine of Rs. 200.

The accused applied to the High Court.

S. A. Shete, for the accused.

SHAH, J.:—The petitioner in this case was charged with having committed an offence punishable under section 7, sub-section 1, of the Bombay Rent (War

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Restrictions No. 2) Act, 1918, by charging Rs. 13-7-2 on account of rent for October 1919, whereas according to the standard rent fixed under the Act in June 1919 he was entitled to charge Rs. 13-3-2 as rent. The bill showed that he charged Rs. 13-3-2 for the rent and four annas extra for the electric light which was supplied on the passages in the building of which the premises in question formed a part. The learned Magistrate, who tried the case, came to the conclusion that in fixing the standard rent the Controller must have taken into account the charges for the electric light thus supplied and that by charging four annas more for the light he indirectly received on account of rent four annas more than the standard rent which he was allowed to recover and by doing so he committed an offence punishable under section 7 (1) of that Act.

In coming to this conclusion the learned Magistrate seems to have ignored the letter (Exhibit 1) which the present petitioner wrote to the Deputy Rent Controller on the 15th of July 1919 in which he pointed out that the rent fixed by him did not include the charge for electric lighting and that he should be allowed to recover in all from his various tenants Rs. 8 in addition to the rent fixed or permitted to stop the lighting. The reply to that letter was that the Controller had no power to determine the charges for electric lights and could not therefore issue orders on the subject. In spite of this the petitioner was prosecuted for having charged rent in excess of the standard rent fixed and the Magistrate presumed that the Controller must have taken the fact of electric light being supplied to the tenants on the passage of the premises into consideration in fixing the standard rent. I do not think that in face of the reply of the Deputy Rent Controller such a presumption could be made. But apart from the presumption it is clear from the definition of the

standard rent given in the principal Act (Bombay Act II of 1918) that the standard rent means in relation to any premises the rent at which the premises were let on the 1st day of January 1916 with the addition of 10 per cent. of such rent. The standard rent fixed in the present case is exactly the sum of Rs. 12 which was the rent at which the premises in question were let on the 1st day of January 1916 with the 10 per cent. added thereto. It is clear that the Controller fixed the rent according to the definition in the present case at Rs. 13-3-2. The supplying of the electric light on the passages of the building of which the premises in question form part is a matter of arrangement or contract between the tenant and the landlord. It does not necessarily form a part of the rent, and in the present case there is nothing to show that it did form part of the standard rent. The electric light on the passages came to be supplied after January 1916, and the petitioner had commenced to charge Rs. 14 as rent instead of Rs. 12, until the standard rent was fixed. But that circumstance does not alter the meaning of "standard rent", nor does it indicate that the Controller could have included the charges for electric light in the standard rent. The sum which the present petitioner is said to have charged in this case represents a fair amount for the light supplied. Whether the Act is effective to prevent any profiteering by the landlord in respect of the supply of electric lights is a question, upon which it is not necessary for me to express any opinion in this case. But, having regard to the proved facts in this case, it is quite clear that the petitioner has not received anything as rent in excess of the standard rent and that the sum of four annas charged for the supply of electric light has nothing to do with the standard rent. He has, therefore, committed no offence whatever.

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I would, therefore, set aside the conviction and sentence and direct the fine, if paid, to be refunded.

KAJIJI, J.:—I agree. I think the learned Magistrate was clearly in error when he says in his judgment that the Deputy Controller of Rents increased and decided the standard rent to be Rs. 13-3-2 when the rent of the premises in question before the 1st of January 1916 was Rs. 12. He is clearly in error, because the Controller never took into account the charge made for the supply of electric light; for on calculation it is clear that Rs. 1-3-2 is exactly 10 per cent. over Rs. 12, when our attention is drawn to Exhibit 1, viz., the letter of landlord to the Deputy Controller and the reply on its reverse which clearly show that he never took into account the supply of electric light to the premises. On that how can the learned Magistrate say that the Deputy Controller took into account, when he increased the rent to Rs. 13-3-2, the supply of electric light, and I think it cannot be said that under section 7 of the second Act the landlord is indirectly trying to recov more rent, because the rent recovered is Rs. 13-3-2 which has been fixed by the Deputy Controller, and, speaking for myself, I should certainly say that he would be trying to recover indirectly more rent if he charged by way of electric light or under any other heading in his rent-bill a sum which would be by far in excess of the actual cost, viz., for light if he charged anything like Rs. 10, 12 from each tenant. Then perhaps it may be argued that the landlord is indirectly trying to recover more rent than that fixed by the Deputy Controller. In this case nothing of that kind has been done. He charges only Rs. 8 in all. Ordinarily, if one can take judicial notice, the cost of supplying electric light comes to Rs. 5 at least. Rs. 5 is the minimum charge and in the charges the landlord charges in all

Rs. 8. One cannot, therefore, say that under section 7 he was indirectly trying to recover more rent than was allowed by the Act. The conviction is bad and must be set aside and the fine refunded.

Rule made absolute.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Shah, and Mr. Justice Kajiji.

EMPEROR *v.* HAJI ABOO*.

1920.

May 5.

Bombay District Municipal Act (Bombay Act III of 1901), section 142 (1)†— Unwholesome meat, sale of—Destruction of meat—Power of District Municipality—Vendor cannot be convicted under the section.

* Criminal Reference No. 9 of 1920.

† The material portion of the section runs as follows :—

142. (1) The president, vice-president or any councillor or officer authorised by the Municipality in this behalf—

(*a*) may at all reasonable times enter into any place for the purpose of inspecting, and may inspect, any animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter or other articles intended for human food or drink or for medicine, whether exposed or hawked about for sale, or deposited in, or brought to any place for the purpose of sale or of preparation for sale, or may enter into and inspect any place used as a slaughter-house, and may examine anything which may be therein ; and

(*b*) in case any such animal , carcasses, or other articles before mentioned appear to be diseased or unsound or unwholesome or unfit for human food or drink or medicine may seize the same.

Any article which is of a perishable nature may, under the orders of the president, vice-president or chairman of the managing committee or of a committee appointed under section 29 to exercise all or any of the powers vested in the Municipality under this sub-chapter, if in his opinion it is diseased, unsound, unwholesome or unfit for food, drink and medicine, forthwith be destroyed.