

[ORIGINAL CIVIL JURISDICTION.]

1872.
May 27.

THE JUSTICES OF THE PEACE FOR THE CITY
OF BOMBAY *Plaintiffs.*
THE GREAT INDIAN PENINSULA RAILWAY
COMPANY. *Defendants.*

Rates—Municipal ground rates—Railway Company's liability to pay rates—Principle of rating—Owner—Occupier—Act II. of 1865 (Bombay)—Act IV. of 1867 (Bombay).

The Great Indian Peninsula Railway Company, which, under an agreement with Government, holds the land, upon which their Railway is constructed, free of rent for 99 years, are occupiers only, and not owners, of such land within the meaning of Section 2 of Bombay Act II. of 1865, and are therefore not liable to be rated as owners of the ground used by them for the purposes of the railway within the City of Bombay.

Principles upon which railway companies are liable to be rated considered and laid down.

THIS was a special case stated, under Sec. 328 of Act VIII. of 1859, for the opinion of the High Court. The material portions of the case stated that :—

By an indenture of agreement, bearing date the 17th day of August A.D. 1849, and made between the East India Company of the one part and the Great Indian Peninsula Railway Company of the other part, wherein, amongst other things, it was stated that the said Railway Company had contracted, to make, maintain, and work a railway from Bombay to Callian, and to pay into the Treasury of the East India Company the sum of £500,000, to be, from time to time, drawn out for the purposes of the said railway, and that it had been agreed that the said railway, when finished, should be leased to the said Railway Company for the term of 99 years, subject to any breaches by the said Railway Company of certain conditions imposed on them in the said Indenture of agreement, the said East India Company covenanted, to obtain possession and to make over to the Railway Company

1872.
 THE JUSTICES OF THE
 PEACE FOR
 THE CITY OF
 BOMBAY
 v.
 THE GREAT
 INDIAN PEN-
 INSULAR
 RAILWAY
 COMPANY.

free from all charges the land required for the said railway, for the said term of ninety-nine years, subject as aforesaid.

Since the making of such Indenture of agreement, the capital of the Railway Company has been increased, and by successive agreements made between the Government of India and the said Railway Company, like powers, as in the first-mentioned agreement, were granted to the said Railway Company, to extend the said railway from Callian aforesaid to other places in the Mofussil.

The Railway Company have since extended their line of railway, one terminus of which is at Boree Bunder in the Island of Bombay, the other termini being at different places in the Mofussil, to wit, Sholápur, Nágpur and Khundwah, and the Railway Company, since such first-mentioned agreement, have been, and now are, in possession and exclusive occupation of the same, as well as of sidings, stations, offices, store-rooms, goods-warehouses and other conveniences situated both in Bombay and various other places along the said railway between Bombay and the various termini in the Mofussil before mentioned.

In the year 1855, the assessing officer, under and by virtue of the Stat. 33 Geo. III., Chap. 52, Sec. 158, assessed the said Railway Company at the sum of Rs 3,750 in respect of houses, buildings and ground owned and occupied by them within the City and Town of Bombay, and from that time to the year 1870 inclusive, each and every year was the said Company duly assessed. The assessment for the present year (1869) was made under the provisions contained in Act II. of 1865 and Act IV. of 1867.

The said Railway Company have always maintained that the ground occupied by their railway within the city of Bombay, has no assessable value, as they are not the owners of the same nor have they any title thereto; but on the contrary, that the same is owned by and vested in the Government of India, as appears from the letters which passed between the Solicitor of both the Government and the Railway Company.

The following questions were submitted to the court for its opinion :—

1st.—Is the G. I. P. Railway Company liable to be rated as owners for the ground used by them for the purposes of the railway within the city of Bombay ?

2nd.—If so, upon what principle is the assessment to be made ?

3rd.—The Railway Company admitting that they are liable to be rated as occupiers of land, upon what principle are they to be rated as such ?

The case came on for argument before Couch, C.J., and Westropp, J. *

Atkinson, Serjeant, *McCulloch*, and *Green* for the plaintiffs.

Marriott and *Latham* for the defendants.

Cur. adv. vult.

27th May—WESTROPP, C.J. (after reading the special case as stated above, proceeded) :—This special case, as I have stated it, is the amended case which was filed in March 1870, and not the case originally presented, and which was of a much more extended nature.

This case, it will be observed, has no reference to stations, houses, buildings, &c. Upon those the Railway Company have, for several years past, paid rates. It relates to ground only.

As to the first question, I have come to the conclusion that the Railway Company are not liable to be rated as “ owners,” in respect of the ground used by them for the purposes of the Railway.

The indenture of agreement of the 17th August 1849 appears to me to vest in them a right to occupy the land for ninety-nine years, determinable under the circumstances set forth in that indenture. The occupation is only for certain purposes, the absolute dominion over the land not being given to the Railway Company.

* After the arguments of the case had been heard and before the judgment was delivered, Couch, C.J., was appointed to the Chief Justiceship of Bengal, and Westropp, J., was appointed Chief Justice at Bombay.

1872.

THE JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY
v.
THE GREAT INDIAN PENINSULA RAILWAY COMPANY.

1872.

THE JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY

v.

THE GREAT INDIAN PENINSULA RAILWAY COMPANY.

Such was the nature of the transaction that there has not been any rent reserved to Government, but if rent had been reserved, Government, in whom the reversion is vested, would alone have been entitled to receive it.

It was not, I think, intended that the definition of "owner," contained in Section 2 of the Act, should have been applied to one who himself is a lessee, or who holds, as the Railway Company does here, under an agreement to grant him a right of occupancy for specific purposes for a term of years, and who sublets to another. This remark is made by me with reference to the words in the definition, "or who would receive the same if such land or premises were let to a tenant."

There would be some difficulty in contending that the Railway Company has any right to sublet; but, even if it had, I do not think that a party who sublets was intended to be included in the definition of "owner."

In fact we find that Sec. 48 draws clearly a distinction between owners and tenants who sublet, applying to the party alone who makes the first letting, the term "owner," and to his lessee who sublets, the term "tenant"; and albeit that Sec. 48 deals with houses and buildings only, the argument as to the proper use of the term "owner" is not thereby weakened. The true mode of construction of enactments is, if it be reasonably possible, to give to a word the same construction throughout the enactment, unless there be something in the context repugnant to that construction. I see nothing in the context to render it imperative upon the court to hold that the term "owner" in Sec. 2 of the Act necessarily includes a lessee. The definition of owner in that section is perhaps not a very happy one, but the legislature itself by Secs. 47 * and 48 has greatly aided that definition, and showed that the rent spoken of in Sec. 2 means rent receivable, or which might be

* NOTE :—Sec. 47 has been repealed and a somewhat similar enactment substituted for it—Bombay Act IV. of 1867, Sec. 1, which does not alter the argument,

receivable, under an original letting, and not a subletting ; otherwise, indeed, every temporary occupier who sublets would become an owner and liable to be rated in that capacity—a result which it would not be reasonable to hold as within the intention of the legislature without some more clear declaration of it than can be discovered in the Act.

1872.
 THE JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY
 v.
 THE GREAT INDIAN PENINSULA RAILWAY COMPANY.

Government appears to me to be the owner of the land, but I am not in anywise called upon, on the present occasion, to determine what its liability may be, and I do not intend to offer any opinion upon that point. I hold that the Railway Company are not owners within the scope of the Act.

2. The Railway Company admits its liability as “occupiers.”

The principle, upon which the Railway Company is liable to be rated as occupiers, is to take the gross earnings of the portion of the line which is within the city (Island) of Bombay and to make therefrom the following deductions :—

1. The expenses of working that portion of the line ;
2. The repairs of rolling stock, &c., used on that portion of the line ;
3. An allowance for renewal of it ;
4. An allowance for a compensation fund ;
5. Interest upon the capital necessary for working that portion of the line ;
6. Tenant’s profit on that capital.

A deduction in respect of income-tax has also been claimed on behalf of the Railway Company, and in support of that claim *Reg. v. The Great Western Railway Company* (a) has been cited. But that case has been, in that respect, overruled by *Reg. v. The Southampton Dock Company* (b), upon satisfactory grounds. I must hold that income-tax is not a proper deduction.

(a) 6 Q. B. 179, 205.

(b) 14 Q. B. 587, 611.

1872.
 THE JUSTICES OF THE
 PEACE FOR
 THE CITY OF
 BOMBAY
 v.
 THE GREAT
 INDIAN PEN-
 INSULA
 RAILWAY
 COMPANY.

If an allowance be made for depreciation of rolling stock, the fact of such an allowance having been made should be taken into consideration in fixing the rate of tenant's profit.

The letter of the 23rd March 1870, appended to the amended special case and marked A, appears to have erroneously adopted the now exploded mileage principle. The principle to be adopted here is that which, in England, is known as the parochial principle.

The figures in this case will, according to the terms arranged between the parties, be worked out by their mutual referee, Mr. Ormiston, upon the principles laid down in this decision.

The parties will, up to this stage, bear their own costs respectively.

[APPELLATE CIVIL JURISDICTION.]

June 17.

Special Appeal No. 118 of 1870.

THE GOVERNMENT OF BOMBAY *Appellant.*
 GOSVA'MI SHRI GIRDHARLA'LJI *Respondent.*

Reg. V. of 1827 Sec. I., Cl. I.—Allowance not incidental to hereditary Office—Prescriptive right.

In considering with reference to prescription whether an allowance (not being incidental to an hereditary office) is or is not immoveable property, the High Court has generally followed the test :—“ Is or is not the allowance a charge upon land or other immoveable property ?”

Where an allowance by Government is neither incidental to an hereditary office nor a charge upon immoveable property and is not supported by a grant from Government, the enjoyment of it for thirty years does not create a prescriptive title to its continuance under Regulation V. of 1872, Section I., Cl. I.

THIS was a special appeal from the decision of the District Judge at Súrat, in Appeal Suit No. 138 of 1869, confirming the decree of S. H. Phillpots, the Assistant Judge.

The appeal was argued before LLOYD and MELVILL, JJ.