

## REVISIONAL CRIMINAL.

*Before Mr. Justice West and Mr. Justice Nánábhái Haridás.*

EMPRESS *v.* SADA'NAND SHRIKRISHNAJI.

*Bombay Municipal Act III of 1872, Sec. 220, as amended by Bombay Act IV of 1878—Houses—City of Bombay—Ridge ventilation—Notice.*

1883  
November 28.

The Municipal Commissioner for the city of Bombay issued a notice requiring the owner of a range of buildings to put it in a proper state by providing ridge ventilation within seven days, which the owner did not comply with.

*Held* that section 220 of Bombay Municipal Act III of 1872 as amended by Bombay Act IV of 1878 does not empower the Municipal Commissioner to direct structural alterations, that the notice requiring ridge ventilation to be provided was illegal, and the owner by refusing to comply with it committed no offence.

THIS was an application for the reversal of the conviction and sentence recorded by Dosábhái Frámji, C.S.I., Presidency Magistrate of Bombay.

The facts, in so far as they can be gathered from the proceedings in absence of a written judgment by the Magistrate, are as follows:—

The applicant Sadánand Shrikrishnáji is the owner of a range of rooms 29 in number. Each room is 13 feet by 7-7. There is a door in front in the middle of each room, and a window, 2 feet 10 inches wide and 18 inches high, at the back. The rooms are let out to tenants, some of whom have shut up the windows by means of wooden boards. The rooms first came into the possession of the applicant in 1876. At the beginning of the present year, 1883, the Health Officer of the Municipality inspected the rooms, and was of opinion that they were insufficiently ventilated, and unwholesome. Accordingly on the 16th of May, 1883, the following notice was issued to the owner by the Municipal Commissioner of Bombay:—

“ To SADA'NAND SHRIKRISHNA'JI, Esq.

“ Under the provisions of section 220 of Bombay Act III of 1872 and of the schedule attached to Bombay Act IV of 1878 I hereby give you notice that your chawl situated at No. 4, Breach Candy Road, Bombay, is in an unwholesome state from want of sufficient light, air and ventilation, and I hereby require you to put the said

\* Criminal Application for Revision, No. 244 of 1883.

1888

EMPRESS

SADA NAND  
SHRIKRISHN  
NAJI.

chawl in a proper state by providing ridge ventilation; and take notice that, if you do not comply with the requisition contained in this notice within 7 days from the date hereof, you will be liable to a penalty of Rs. 50 and to a further penalty of Rs. 5 for every day after conviction during which this notice is not complied with."

Sadánand not complying with the notice was prosecuted before the Presidency Magistrate, who, after recording evidence, made the following order:—

"Defendant is fined Rs. 50, and further to pay a fine of rupee one per day till the rooms are put in a wholesome state."

Against this order Sadánand applied to the High Court.

*Lang* for the applicant.—The conviction and sentence are both illegal. The notice which the accused is convicted of having disobeyed purports to have been issued under the authority of section 220 of Bombay Act III of 1872. The section does not apply to alterations in structure, but to nuisances which can be removed within twenty-four hours. The notice requires ridge ventilation to be provided, and gives seven days' time to do it in, and is bad on both those grounds. The order of the Magistrate is not in conformity with the requisition in the notice.

*Jardine* for the Municipal Commissioner.—This is not an appeal, but an application for revision. The Magistrate's order implies a finding of fact which must be accepted by this Court. The words "complied with the requisition" in section 220 should be construed to mean "complied with the requisition as far as possible". So construed it is sufficient under the section to begin to comply with the requisition within twenty-four hours. Next, the word 'unwholesome' in the section means insalubrious or injurious—that is, from any cause such as insufficient ventilation, and should not be restricted to filth or nuisance. An overcrowded house is included in this sense. If structural alterations are not contemplated by section 220, no other section of the Act provides for them. The notice to the accused perhaps indicates too much, but is not on that account bad.

The judgment of the Court was delivered by

WEST, J.—We think that section 220 of the Bombay Municipal Act III of 1872 would be unduly extended if it were so construed as to enforce structural alterations. As amended by Bombay Act IV of 1878, it runs thus:—"Whoever, being the owner or occupier of any house, building, or land, whether tenantable or otherwise, suffers the same to be in a filthy or unwholesome state, or, in the opinion of the Commissioner, a nuisance to those in the neighbourhood, or overgrown with rank and noisome vegetation, and who shall not, within 24 hours after notice in writing by the Commissioner to cleanse, clear, or otherwise put the same in a proper state, have complied with the requisition contained in such notice, shall be liable," &c. It is obvious that most occupiers of the less wholesome houses in Bombay would be quite incapable of effecting structural alterations. Supposing tenants, for instance, paying Rs. 2 per month were asked by the Commissioner to make such alterations, they could not of course comply with the demand, specially within the twenty-four hours contemplated by the section. We must, therefore, suppose that something less exacting and more practicable for the tenants, and therefore also for the landlords (there being no difference made by the section in their position), was meant by the use of the expression "filthy or unwholesome state". When a person is asked to cleanse, clear, or otherwise put a building which is in a filthy or unwholesome state in a proper state, what is meant is that he is to remove the objectionable accidents, such as filth and nuisance, leaving the essence of the building the same as before. Without proper safeguards, unlimited licence is not to be given to a Commissioner to command or effect alterations in a structure, and we can well understand that the Legislature refrained from giving this power when conferring the power of causing nuisances to be removed. We are therefore of opinion that the Legislature in enacting section 220 could not have intended, and did not intend, to invest the Municipal Commissioner with the power of directing structural alterations. As regards the question of notice, we think that when a notice is required by law, it cannot prescribe something which the law itself does not contemplate or involve. Mr. Jardine, on behalf of the Commissioner, argues that the notice errs only by excessive indication; but the section appears

1883

---

 EMPRESS  
 v.  
 SADANAND  
 SHRIKRISHN  
 NAJI.

1883  
 EMPRESS  
 v.  
 SADA NAND  
 SHIRKRISH-  
 NAJI.

to leave it to the owner or occupier to adopt such measures as he pleases to carry out the demand of the Commissioner. It is not open to the Commissioner to prescribe his own measures and deprive the owner or occupier of his option. If this were not so, the Commissioner might order expensive painting, or papering, or other costly alterations beyond the means of the person concerned, and beyond the intentions of the Legislature. We hold, therefore, that it was not competent to the Commissioner to require ridge ventilation in the notice; and as the notice was thus framed, no offence was committed by failing to do what it did not call on the owner to do. We accordingly reverse the order of the Presidency Magistrate, and direct the fine paid by the accused to be refunded to him.

*Sentence reversed, and fine ordered to be refunded.*

## ORIGINAL CIVIL.

*Before Mr. Justice Scott.*

1883  
 February 10,  
 16, 17, 19, 20,  
 22.

MOOLJI LILLA AND DHURMA LILLA, PLAINTIFFS, v. GOKULDA'S VULLA, RANCHORDA'S DÁRSI AND DAYAL DÁRSI, DEFENDANTS.\*

*Hindu law—Joint family—Joint property—Presumption that family is joint—Separation—Onus of proof—Nature of evidence required to prove separation.*

The presumption of Hindu law is that every family is joint, and that all property possessed by the family is joint. A member of an undivided family may, however, acquire separate property, but the burden of proof lies upon him to prove the independent character of the acquisition. The essence of his exclusive title is that the separate property was acquired by his sole agency without employing what is common to the family.

If the property is separate the presumption operates no longer, and each member is separate owner of what he possesses. Even in the case of a separate family blood relationship within certain degrees imposes a moral duty, though not a legal duty, towards dependent relatives. The support on a liberal scale of poor relatives and even payment of their marriage expenses are not in themselves without other evidence proof of a joint family.

SUIT for partition. The plaintiff alleged that one Bhimji Parpia died intestate many years ago, leaving three sons, *viz.*, Dársi

\*Suit No. 182 of 1881.