

an assignment of the equity of redemption, but was an agreement for the sale to the plaintiff of the entire interest in the properties therein mentioned for Rs. 1,500 and the sum due on the mortgage to Limaye, with a further agreement by the defendant to execute a formal deed of conveyance as soon as the above sums were paid. The defendant No. 1 says: "I have agreed to sell the above-mentioned properties to you on your paying the whole amount (that is to say), on your paying directly to the mortgagee in respect of his mortgage right the amount that may be found due to him and paying me the further sum of Rs. 1,500." There is no sale in terms of the equity of redemption as such, but an agreement to sell complete ownership in the property after the mortgage has been paid off, and the mere fact that the Rs. 1,500 is recited as having been paid, cannot affect the plain meaning of the language of the instrument.

[400] Such being the nature of the document according to its terms, the question is, whether it required registration, having regard to sub-cl. (h) of S. 17 of the Registration Act. This was decided, and in our opinion rightly decided, in the negative with respect to a similar document by Birdwood, J., in *Chunilal Panalal v. Bomanji Mancherji* (1). We must, therefore, hold that the agreements referred to in the judgment of the Court below do not require registration, and must reverse the decree of the Court below and send back the case for a fresh decision. Costs to abide the result.

Decree reversed and case sent back.

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CRIMINAL REFERENCE.

Before Mr. Justice Candy and Mr. Justice Fulton.

*In Re LAKMIA.** [13th July, 1893.]

Bombay District Municipal Act (VI of 1873), s. 84—Non-payment of taxes—Liability to penalty—Offence—Penal Code (XLV of 1860), s. 40—Penalty—Imprisonment in default of payment of penalty.

There is no distinction between the word "penalty" as used in the Bombay District Municipal Act (VI of 1873) and the word "fine" as used in s. 64 of the Indian Penal Code (XLV of 1860). Imprisonment can, therefore, be awarded in default of any penalty inflicted under s. 84 of the Municipal Act.

THIS was a reference by J. Davidson, Esquire, District Magistrate of Kanara, under s. 438 of the Code of Criminal Procedure (Act X of 1882).

One Lakmia was prosecuted by the Municipality of Haliyal for not having paid wheel tax alleged to be due.

The Third Class Magistrate, acting under s. 84 of the Bombay District Municipal Act (VI of 1873) as amended by s. 49, cl. (1) of Bombay Act II of 1884, ordered Lakmia to pay the arrears of the tax, together with a penalty of annas 4 or in default to undergo three days' simple imprisonment.

The District Magistrate, on examining the record of this case, entertained considerable doubts as to the legality of the order of imprisonment

* Criminal Reference, No. 76 of 1893.

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in default of payment of the arrears and penalty. He, therefore, referred the case to the High Court. His reasons were as follow:—
[401] "I do not think that it was intended by the Legislature to render a municipal defaulter liable to imprisonment in a criminal jail. I think that a distinction exists between an offender sentenced to a fine and a municipal defaulter, though also legally an offender, ordered to pay, in addition to his dues, a penalty, and that the order of imprisonment on default is *ultra vires*."

The reference was heard by a Division Bench (CANDY and FULTON, JJ.)

There was no appearance for the Crown or for the accused.

18 B. 401.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

ADVOCATE-GENERAL OF BOMBAY (*Plaintiff*) v. MOULVI ABDUL KADIR JITAKER AND OTHERS (*Defendants*).* [12th, 13th, 15th and 20th February and 6th, 8th, 9th, 10th, 12th and 20th March, 1894.]

Mahomedan law—Mosque—Charity—Suit against directors or Mushavirs of a mosque—Liability of directors—Board of directors not properly constituted under the rules of the mosque—Liability of directors for acts done by Board not properly constituted—Appointment of officers—Management of property—Liability of provisional committee assuming authority to act—Trustees—Limitation—Kazi—Act II of 1864 and Bombay Act IV of 1864—Nazir of mosque, liability of—Parties to suit against trustees of mosque—Practice.

A certain Mahomedan mosque in Bombay, known as the Juma Masjid, was possessed of considerable property. The administration of the mosque and its property was [402] carried on under rules which had been drawn and approved in the year 1834 at a special general meeting of the jamat convened for the purpose in the course of a suit which had been filed in the Supreme Court against the then mushavirs of the mosque. That suit was referred to the Master to make certain enquiries, and in his report these rules were set out in full. His report was confirmed by the Court. The rules provided that the mosque and its property should be managed by the Kazi of Bombay and ten mushavirs, and that a nazir should be appointed by them, and be subject to their control. The rules also prescribed the various duties of the kazi, mushavirs and nazir, and declared that the power of filling up vacancies should be exercised by the kazi and mushavirs collectively or by the kazi and an absolute majority of the mushavirs.

In 1834 and for many years subsequently there was, as there had always been, a "Kazi of Bombay" appointed under a sanad from Government. He held the appointment for life, and the office was not hereditary. In 1866 the then Kazi of Bombay died, but in consequence of the provisions of Act II of 1864 and Bombay Act IV of 1864 the Government made no new appointment, and the office lapsed. One Mahomed Husain Murgay, however, assumed the office and was generally accepted by the community as Kazi of Bombay. He died in 1878, and upon his death, rival claimants sought the office of Kazi of Bombay.

The mushavirs were then advised that they could not select one of the rival kazis to fill the office of Kazi of Bombay under the rules, and they, therefore, continued to manage the mosque without a kazi in violation of the rules of 1834. Two of the mushavirs (now relators) were of opinion that one of the rival applicants for the position should be appointed kazi, and as their wishes were not acceded to, they ceased to attend the board, and as far as possible, while retaining their offices, they thwarted the action of the other mushavirs. Subsequently in 1878 other vacancies occurred in the board. In 1888, the number of mushavirs was reduced to six,

* Suit No. 656 of 1891.