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nothing under his will, and—the parties being Cutchi Memons—the disinheriting clause is valid.

No other point is mentioned, and the result is that the suit must be dismissed with costs. The defendant's costs, if not recovered from the plaintiff, may be recovered from the estate.

Suit dismissed.

Attorneys for the plaintiff:—*Messrs. Captain & Vaidya.*

Attorneys for the defendants:—*Messrs. Thakurdas & Co.*

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Russell and Mr. Justice Batty.

THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY
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April 21.

The City of Bombay Municipal Act (Bomb. Act III of 1888), section 3, clauses (w), (x) and (y),† section 461—Building Bye-laws Nos. 40, 42‡—Street—Construction.

The owner of a large plot of ground abutting on a highway divided the plot into 19 small plots and sold them to different purchasers. These plots were

* Criminal Reference No. 7 of 1906.

† The City of Bombay Municipal Act (Bombay Act III of 1888), section 3, clauses (w), (x) and (y) run as follows:—

(w) "Street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and, when there is a footway as well as a carriageway in any street, the said term includes both;

(x) "public street" means any street heretofore levelled, paved, metalled, channelled, sewerred or repaired by the Corporation and any street which becomes a public street under any of the provisions of this Act.

(y) "private street" means a street which is not a public street.

‡ *Building Bye-laws Nos. 40 and 42* are as follows:—

40. In every case—

Where a person who shall erect a building, shall at any reasonable time during the progress or after the completion of the erection of such building, receive from the Engineer notice in writing specifying any matters in respect of which the erection of such building may be in contravention of any bye-law relating to new

mapped out as abutting on the sides of two parallel roads which were marked out as proposed roads. Each of the purchasers of the plots entered into a covenant with the owner to keep open that portion of the proposed road which stood in front of his plot and to prepare so much of the road. The question arose whether the proposed road was a street within the meaning of the City of Bombay Municipal Act (Bombay Act III of 1888) :—

Held, that the proposed road would constitute a street within the meaning of the City of Bombay Municipal Act (Bombay Act III of 1888).

THIS was a reference made by Chunilal H. Setalwad, Acting Fourth Presidency Magistrate of Bombay, under section 432 of the Criminal Procedure Code (Act V of 1898).

The reference was in these terms :

“One Tribhovandas Mangaldas was the owner of a large plot of land opening or abutting on its south side on the Girgaon Back Road. About two years ago he divided this large plot of land into 19 small plots in three rows and sold them to different purchasers. He expressly covenanted with each of the purchasers that in front of each plot an open space should be left unbuilt upon or unblocked in any way in order to enable the owners of the other plots and their tenants to have access to their property. Exhibit 1 is the conveyance and exactly similar conveyances are made with the purchasers of other plots. A reference to the plan attached with Exhibit No. 1 will show that a road of 16 feet width (marked proposed road on the plan) was left between two

buildings and requiring such person, within a reasonable time which shall be specified in such notice, to cause anything done contrary to any such bye-law to be amended, or to do anything which by such bye-law may be required to be done, but which has been omitted to be done.

Such person shall, within the time specified in such notice, comply with the several requirements thereof, so far as such requirements relate to matters in respect of which the erection of such building may be in contravention of any such bye-law.

Such person, within a reasonable time after the completion of any work which may have been executed in accordance with such requirement, shall deliver or send or cause to be delivered or sent to the Engineer, at his office, notice in writing of the completion of such work.

42. Every person who shall commit any breach of any of the foregoing bye-laws shall be punishable with fine which may extend to twenty rupees, and in the case of a continuing breach, with fine which may extend to ten rupees for every day after conviction for the first breach or after receipt of written notice from the Commissioner to discontinue the breach, during which the breach continues.

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rows of plots. The defendant's plot is No. 15 on this plan and the place in front of it is marked red. Most of these plots, including the defendant's plot, have been built upon. Thus there is a road of 16 feet width having rows of buildings on either side and which are occupied by the owners of these buildings and their tenants who make use of this road. There is a road nearly parallel to this road of the same nature and similarly made and there are cross roads between these two. The length of the road in question is about 260 feet. At the south end it joins the Girgaon Back Road. At the north end of it there is a wall and there is no passage on that side. It is an admitted fact that on the original large plot the public had no right of access and now these new roads that are made are meant only for the use of the owners of the building on either side of them and their tenants; the public at large have no right of access to them.

"The said Mathurabai on being desirous of building a house on her plot submitted plans and specifications to the Municipal Commissioner on the 6th April 1905 as required by section 337 of the Bombay Municipal Act. The Municipal Commissioner while disposing of the plans and specification took among others the following objection, 'the building will be more than one and a half times the width of the street it abuts on.'

"Notwithstanding this intimation of disapproval the defendant continued the erection of her building and erected the same to a height of 32 feet, 9 inches. So a requisition under Bye-law 40, dated 16th October 1905, was served upon the defendant calling upon her to amend the work done by her. This requisition being ignored the present prosecution was commenced.

"The point of law that arises under the above circumstances is:—

"Whether the road like the 16 feet wide road marked 'proposed road' on the plan attached to Exhibit No. 1 and also on the block plan on which the defendant's building abuts, which has buildings on either side of it but over which the public have or had no right of passage or access is a 'street' within the meaning of the Bombay Municipal Act.

"A number of authorities have been cited on both sides which appear in the notes of proceedings. It is contended on behalf of

the prosecution that section 3 (*w*) of the Bombay Municipal Act III of 1888, is not an exhaustive definition of the word 'street' but it is an extension of its ordinary, popular and natural meaning, and that the ordinary, popular and natural meaning implies a way or space having houses more or less contiguous on both sides, and that therefore the road in question is within the meaning of the section. It is contended on behalf of the defence that 'street' conveys an idea that the public ought to have a right of access and which right can be acquired either by dedication or prescription; which is not the case here. It is also contended that the words 'over which the public have a right of passage, &c.,' show that the legislature intended to refer to streets over which the public had a right of way inasmuch as even the extended meaning of the word is qualified by such a proviso.

"I submit that the road in question is a 'street' within the meaning of the Bombay Municipal Act. The word 'street' is to be taken in its ordinary, popular and natural sense as denoting a roadway having or intended to have buildings on either side, at all events on one side.

"The fact that under section 3 (*w*), which is an interpretation clause, street *includes* highway, &c., which would not ordinarily be described as streets does not prevent the word from having its ordinary, popular and natural sense. (*Pound v. Plumstead Board of Works*, L. R. 7 Q. B., pages 192—195.) The language of the definition in section 3, clause (*w*) is made to include certain other things but it does not exclude that which independently of such enactment would be a street. Then the question practically resolves itself into what the ordinary, popular and natural meaning of the word 'street' is. I submit that it is not confined to streets over which the public have acquired a right to pass or repass either by dedication or prescription. (*Vestry of St. Mary, Islington v. Barrett*, L. R. 9 Q. B. 283, 284; and *Midland Railway Company v. Watton*, L. R. 17 Q. B. D., pages 39, 40 and 42.)

"In this case there is a large block of land in the middle of the town. It is laid out in rows of houses with "ways" between them opening direct into a public street at one end. The owners

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and occupiers of these houses are taking advantage of the public roads and facilities afforded by Municipal Government. I submit that the 'ways' which provide access to these houses to and from the public road are private streets. They are certainly 'ways' in a city bounded on each side by houses and as such come within the definition of 'street' in the Imperial Dictionary, quoted with approval by Jessel M. R. in *Taylor v. Corporation of Oldham*, L. R. 4 Ch. D., page 408. This view is also supported by a reference to Stroud's Judicial Dictionary. In *George Robinson v. The Local Board for the District of Barton Eccles*, L. R. 7 App. Cas. at page 801, Earl of Selborne, L. C., said: 'In the natural and popular sense of the word street I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous)'. Obvious mischief, I. submit, would be occasioned if such 'ways' were not held to be streets.

‘*Kalidas v. The Municipality of Dhandhuka*, I L. R. 6 Bom., p. 686, and *Re Gulabdas Bhaidas*, I. L. R. 20 Bom., which have been decided upon the definition of street in the District Municipal Act VI of 1873, and which have been cited by the defence seem to create some doubt and difficulty, but at the same time I submit that they are distinguishable.”

At the commencement of the arguments, Mr. Justice Russell suggested that the question was not clearly framed by the Magistrate. His Lordship therefore formulated the question as follows:—

“Whether the vacant space in front of Mathurabai's house when and if laid out as a means of passage with houses on both or either side of it and if used as such by the occupiers of such houses and not by the public generally will constitute a 'street' within the meaning of the City of Bombay Municipal Act, 1888.”

Raikes (acting Advocate General) instructed by *Unwalla and Phirozshah*, for the defendant:—We contend that the road marked “proposed road” is not a “street” within the meaning of the City of Bombay Municipal Act (Bombay Act III of 1888). The earliest meaning of the word “street” refers to the surface of the ground being prepared in a particular manner and the word has not lost that meaning. Speaking from a historical point of

view, the word "street" in the very first instance means a made road. Here the "proposed road" will not be a street unless it is made into a road. The mere fact that there are houses and there is a space between them will not make it a street.

The next point and the real point to consider is whether 'street' in the ordinary sense of the term does not connote the place to which the public have access. The "road" in this case does not come within the definition of the word "street" as given in section 3 (w) of the City of Bombay Municipal Act (Bombay Act III of 1888). Everything which is included in the definition of "street" is a place "over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years."

Counsel cited *Pound v. Plumstead Board of Works*⁽¹⁾; *Vestry of St. Mary, Islington, v Barrett*⁽²⁾; *Taylor v. Corporation of Oldham*⁽³⁾; *Midland Railway Company v. Watton*⁽⁴⁾; *Robinson v. Local Board of Barton-Eccles*⁽⁵⁾; *Arter v. Vestry of Hammer-smith*⁽⁶⁾; *Queen v. Fullford*⁽⁷⁾; *Hall v. Corporation of Bootle*⁽⁸⁾; *Galloway v. Mayor and Commonalty of London*⁽⁹⁾; *Bourke v. Davis*⁽¹⁰⁾.

It comes down to this. What is a street? According to the ordinary connotation of the term, one of the things which the street connotes is the place to which the public have access, and this ingredient is absent in the present case.

Lowndes (instructed by *Crawford, Brown and Co.*) for the Municipal Commissioner:—The definition of the term "street" in the City of Bombay Municipal Act (Bombay Act III of 1888) is not exhaustive. It runs:—street "includes," etc. The fact that the term "includes" some things does not at all touch the ordinary meaning which the term bears. It is made to 'include' in Acts of Legislature only for convenience of expression. The Act defines "street," "public street" and "private street" side by side. In the first the term "includes" is used: whereas in the two latter terms the word "means" is used.

(1) (1871) L. R. 7 Q. B. 183, 192.

(2) (1874) L. R. 9 Q. B. 278.

(3) (1876) 4 Ch. D. 395, 408.

(4) (1886) 17 Q. B. D. 30.

(5) (1883) 8 App. Cas. 798.

(6) [1897] 1 Q. B. 646.

(7) (1864) 33 L. J. M. C. 122.

(8) (1881) 44 L. T. (N. S.) 1879.

(9) (1866) L. R. 1 H. L. 34, 55.

(10) (1889) 44 Ch. D. 110.

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What is the ordinary meaning that is assigned to the word "street"? It is a road public or private having houses continuous or discontinuous on one or both sides. In the common use 'street' means a little bit of ground in front of one's house. It does not necessarily imply publicity: and it is immaterial whether it is public or private. Ordinarily, it means a roadway within town limits having houses at least on one side and it is immaterial whether it is public or private. Is there, then, anything in the City of Bombay Municipal Act, 1888, which says that the ordinary meaning should not be attached to the term "street"?

Raikes was heard in reply.

RUSSELL, J.:—This is a special case stated by the Acting Fourth Presidency Magistrate, Bombay, but inasmuch as the question as put by him did not exactly meet the case, the following question was formulated by the Court with the consent of the parties, *viz.*—

"Whether the vacant space in front of Mathoorabai's house when, and if, laid out as a means of passage with houses on both sides and when, and if, used as such by the occupiers of such house, and not by the public generally, will constitute a street within the meaning of the Bombay Municipal Act." (Bombay Act III of 1888).

The facts stated shortly are as follows:—

The Municipal Commissioner for Bombay laid a complaint against defendant Mathoorabai for an offence punishable under the Building bye-laws No. 42, she being the purchaser of a plot No. 15, from one Tribhovandas Mangaldas. It appears that this Tribhovandas owned a large plot of ground abutting on the south side of the Girgaum Back Road and about two years ago he divided this plot into 19 small plots and sold them to different purchasers. Each purchaser entered into a covenant in similar terms, *mutatis mutandis*, as Mathoorabai. She was the purchaser of plot No. 15, and covenanted with the vendor as follows:—

"And the purchaser doth hereby for the benefit of the owners and occupiers of all the other plots specified on the

said plan hereto annexed, covenant with the said vendor that she, the purchaser, shall not build upon or block in any way whatever and leave open to the sky such portion of the said piece of land as is marked as the "proposed road" on the said plan hereto annexed, and which contains by admeasurement 54 square yards and 66 hundredths of a square yard but shall use the same as a road only and shall at her own expense prepare and pave and metal and otherwise keep the same in proper repair and order and shall allow the owners and occupiers for the time being of the other plots specified on the said plan and their agents and servants and all and every other persons or person for the benefit and advantage of such owners and occupiers full and free right and liberty from time to time and at all times hereafter at his and their will and pleasure by night and by day and for all purposes to go, return, pass and repass with or without horses, carts, wagons and other carriages laden or unladen and also to drive cattle and other beasts in, through, along and over the said road to and from the said plot No. 15." The words above set out "and all and every other persons or person for the benefit and advantage of such owners and occupiers" give at all events a limited right of access to the public over the road marked, although we are told that the "proposed road" is to be, it appears, *a cul de sac*.

Mathoorabai being desirous of building a house on her plot No. 15, submitted plans and specifications to the Municipal Commissioner in April 1905. The Municipal Commissioner while disposing of the plans and specifications took amongst others the following objection:—

"That the building will be more than one and a half times the width of the street it abuts on".

The proposed street or road was to run in front of Mathoorabai's house and was to have houses on either side of it. But the public were to have no right of access over the said street or road. Notwithstanding the intimation of disapproval by the Municipal Commissioner, Mathoorabai continued her house and erected it to the height of 32 feet 9 inches; the width of the proposed road being 16 feet, this height was obviously more than one and half times the width of the street.

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Section 3 [clauses (w), (x) and (y)] of Bombay Act III of 1888 provides as follows:—

“(w) ‘Street’ includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and, when there is a footway as well as carriage-way in any street, the said term includes both.”

“(x) ‘Public street’ means any street heretofore levelled, paved, metalled, channelled, sewered or repaired by the Corporation, and any street which becomes a public street under any of the provisions of this Act.”

“(y) ‘Private street’ means a street which is not a public street.”

The main question argued by Mr. Raikes was that inasmuch as the public had and were to have no right of access over the “proposed road or street”, it did not fall within the definition of “street” as above set forth.

Mr. Lowndes for the Municipality contended on the other hand that the word “street” was not defined by clause (w) but “included (as was shown by the use of the word ‘includes’) any high-way and any cause-way,” etc., etc. The Act moreover had defined “public street” and “private street” in clauses (x) and (y) by using the word “means,” for these clauses say “public street” means* * * * and “private street” means. * * *

Now, firstly it is to be observed that “includes” is a phrase of extension, and not of restrictive definition. It is not equivalent to “means”, *The Queen v. Kershaw* ⁽¹⁾; *The Queen v. Hermann* ⁽²⁾. But as said by Lord Watson:—“‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things

(1) (1856) 6 E. & B. 999 at p. 1007.

(2) (1879) 48 L. J. M. C. 106; 4 Q. B. D. 284.

which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions." *Dilworth v. Commissioner of Stamps*⁽¹⁾. The draftsman of the Bombay Municipal Act was fully aware of the difference between "include" and "mean", and we are of opinion that he used the word "include" in the above clause (*vo*) in order to enlarge the meaning of the word "street" which, having before him the example of various Judges in England, he was careful not to define. From this it follows that the word "street" must receive the ordinary common sense interpretation which (if we may use a colloquial expression) would be put upon it by "the man in the street".

Before however dealing with the numerous cases which were cited to us as to the meaning to be put on the word, we would point out that if the argument of the Advocate General were to prevail, the definition of "private street" would appear to be a contradiction in terms. For if "street" must in this Act always be associated with "publicity" then no street could be private.

That this is the right construction to be put upon the word "street" by itself, appears from the following cases:—In *Robinson v. Local Board of Barton-Eccles*,⁽²⁾ the Earl of Selborne L. C., at page 801 in dealing with the words in the statute "includes" and "shall apply to and include", says as follows:—"An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." Again he says (page 801) "In the natural and popular sense of the word 'street' . . . I should certainly understand a road-way with buildings on each

⁽¹⁾ [1899] A. C. 99 at pp. 105--106.

⁽²⁾ (1883) 8 App. Cas. 793.

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side (it is not necessary to say how far they must, or may be continuous or discontinuous)". Again Jessel M. R. in *Taylor v. Corporation of Oldham*,⁽¹⁾ says:—"The definition of a 'street' is thus laid down in the Imperial Dictionary: 'A street is properly a paved way or road; but in usage, any way or road in a city, having houses on one or both sides.' Now, tried by that test, this is a street: it has houses on both sides of it, and therefore, in common parlance, it is a street. It is really a street. Supposing that were wrong, I find 'street' is to include 'road' and this certainly is a road". Again in *Robinson v. Local Board of Barton-Eccles*, cited *supra*, Lord Blackburn says, page 809, that "street" in the ordinary and popular sense of the word, was a high-way with houses on each side. But in the case of *Corporation of Portsmouth v. Smith*,⁽²⁾ it was held by Brett M. R. that the word "street" when popularly used meant a thoroughfare bounded on one or both sides by houses. That case was affirmed in the *Mayor, etc., of Portsmouth v. Smith*⁽³⁾, in which Lord Blackburn delivered the first opinion. He did not take objection to the definition above given by Brett M. R. With regard to the remark of Brett M. R. above quoted it may be said that "road-way" ought to have been the word he should have used instead of "thoroughfare," for a *cul-de-sac* is a "street" and may be a "public street". See *Souch v. East London Railway Company*⁽⁴⁾ and *Davis v. Board of Works for Greenwich District*⁽⁵⁾.

With regard to the Bombay cases which were cited, *viz.*, *Kalidas v. The Municipality of Dhandhuka*,⁽⁶⁾ it need only be remarked (1) that the court there in question was not used as a thoroughfare but only as a means of access to the houses which surrounded it by persons who had business with the householders, (2) no reference was made to the definition of "street" in the Bombay District Municipal Act VI of 1873 which "shall include . . . any court, . . . whether a thoroughfare or not". Similar remarks apply to *In re Gulabdas Bhaidas*,⁽⁷⁾ while in the case of *The Ahmedabad Municipality v. Manilal Udenath*,⁽⁸⁾ in the issue sent down involved the question what con-

(1) (1876) 4 Ch. D. 395 at p. 408.

(5) [1895] 2 Q. B. 219.

(2) (1883) 13 Q. B. D. 184.

(6) (1882) 6 Bom. 686.

(3) (1885) 10 App. Cas. 364.

(7) (1894) 20 Bom. 83.

(4) (1873) L. R. 16 Eq. 108.

(8) (1894) 20 Bom. 146.

stitutes a "public street" within the contemplation of Bombay Act VI of 1873; and "public street" had not been defined in that Act as it has been in the Bombay Municipal Act, 1888.

That being so, we have come to the conclusion that the question we have to decide as formulated by us, must be answered in the affirmative. We would moreover wish to cite the very apposite passage in *Taylor v. Corporation of Oldham*,⁽¹⁾ at page 408. Jessel M. R. says as follows:—"The owners of these private courts and alleys are, of all people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the Legislature intended to except such places as these from the operation of the Act? I should say if the Act were passed for anybody, it must have been meant to include those owners, who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the Legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys, over which the public have no strict rights whatever, but which are intended to be used for the dwellings of the poor, and are unprovided with what, according to modern science, is known to be absolutely necessary for their well-being."

We have no evidence before us of the class of persons who are to occupy Mathoorabai's house, but whether they be poor or well-to-do, they are equally entitled to what in Bombay is "absolutely necessary for their well-being," namely, light and air, as for many purposes the Bombay City Municipal Act is a Public Health Act.

The case accordingly will be remanded to the Magistrate to be dealt with by him according to the law in the light of the above judgment.

BATTY, J.—I have nothing to add.

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(1) (1876) 4 Ch. D. 395, p. 408.

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