

1909.

WALBAI
vs.
HEERBAI.

(3) Whether the sum of Rs. 3,247 is sufficient for the betrothal and marriage expenses of Velbai, and if not, what further sum should be allowed ?

(4) Which of the ornaments taken possession of by the Receiver belong to Heerbai, Walbai and Ramji's estate respectively ?

Attorneys for plaintiff: Messrs. *Captain and Vaidya*.

Attorneys for defendants 1 and 3: Messrs: *Bhaisankar, Kanga and Girdharlal*.

Attorneys for defendants 2 and 4: Messrs. *Thakurdas & Co.*

K. McI, K.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1909.

September 23.

SIR CURRIMBOY EBRAHIM AND OTHERS, PLAINTIFFS, v. THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY AND OTHERS, DEFENDANTS.*

City of Bombay Municipal Act (Bom. Act III of 1888), section 251-A, clause (a)—Building—"Directly over or directly under"—Construction.

The words "directly over or directly under" in section 251-A, clause (a), of the City of Bombay Municipal Act (Bom. Act III of 1888) should be understood in the restricted sense of immediately over or immediately under, so that in effect under this section a water-closet may be built so as to be vertically over or under any part of a building provided that a bath-room intervenes.

Where it is not suggested that a word bears any technical sense in the context in which it occurs, the construction must proceed upon the general rule that statutes are presumed to use words in their popular sense.

THIS matter came before the Court as a special case stated under section 527 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiffs were lessees of a plot of land in Wodchouse Road, Bombay, and, being desirous of building thereon, gave notice of their intention to the defendants in pursuance of the provisions

* Original Suit No. 709 of 1909.

of section 337 (1) of the City of Bombay Municipal Act (Bom. Act III of 1888). The plans, however, were not approved by the Executive Engineer on the ground, *inter alia*, that they contravened the provisions of section 251-A (a) of the said Act, in that they contemplated the construction of certain water-closets in such a position as to be directly over or directly under a part of the building other than another privy or water-closet or bathing-place, bath-room or terrace.

To meet this objection fresh plans were prepared and submitted, according to which the water-closets were still vertically in a line with residential parts of the building, but a bath-room, or part of a bath-room, now intervened to prevent them being immediately over or immediately under such parts.

These plans, however, were also disapproved on the same grounds as before, the defendants maintaining that the words "directly over or directly under" in the clause in question meant "in a direct line with, vertically above or below." The plaintiffs on the other hand contended that the words meant "not only in a direct line with, vertically above or below, but also in contact with or directly adjacent to."

As the parties were unable to come to a satisfactory conclusion on the point, they agreed to state a case for the opinion of the High Court, and accordingly after setting out their respective contentions, submitted the following questions:—

(a) What is the proper construction of section 251-A (a) of the City of Bombay Municipal Act (Bom. Act III of 1888)?

(b) Are the plaintiffs entitled, having regard to the provisions of the said section, to erect water-closets in their said building in accordance with the plan in the 5th paragraph hereof referred to?

Jardine with *Shortt* for the plaintiffs.

Robertson with *Strangman*, Advocate-General, for the defendants.

BACHELOR, J.—This is a case stated for the opinion of the Court under Order XXXVI of the Civil Procedure Code, 1908. The plaintiffs are the lessees of a piece of land situate at Wodehouse Bridge Road, and the defendants are the Municipal

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Commissioner for the City of Bombay and the Municipal Corporation of the City.

The plaintiffs, being minded to build residential chambers on their land, notified the defendants of their intention and submitted for approval the requisite plans and specifications. Objection was taken by the Municipality that the construction of some of the water-closets violated the provisions of clause (a) of section 251-A of the City of Bombay Municipal Act, 1888, as amended by Act V of 1905. That clause runs as follows:—

No person shall build a privy or water-closet in such a position or manner as to be directly over or directly under any room or part of a building other than another privy or water-closet or a bathing-place, bath-room or terrace.

In order to meet this objection the plaintiffs made certain alterations in their plans, which, they submitted, were now outside the prohibition contained in the clause, but the defendants maintained their original objection. The question before us is whether that objection is good in law, and the answer turns on the meaning to be given to the word "directly" in the clause. The plaintiffs contend that the words "directly over or directly under" mean not only vertically over or under, but also immediately over or under, so that in effect a water-closet may be built so as to be vertically over or under any part of a building provided that a bath-room intervenes. The defendants, on the other hand, put a wider construction on the clause and submit that the words "directly over or directly under" mean "in a direct line vertically at any height above or any depth below."

The form of the special case, at it is drawn, does not quite correctly follow the requirements of the Order, but any technical difficulty which might have arisen from this circumstance has been removed by the parties who, through their respective counsel, have assured us that neither side has any desire to appeal from our finding, and that the difference between them will be finally settled by the expression of our opinion as to the meaning of the clause. That being so, we proceed to state the reasons for the opinion to which the arguments on either side have led us,

In the first place we must notice Mr. Robertson's argument that whatever may be the true construction of the clause, the proposed water-closets are within the prohibition, inasmuch as the structural alterations proposed do not remove the defendant's objection, but are merely an attempt to evade the provisions of the clause. In explanation of this point it should be stated that the ground floor of the building is to be a restaurant and that, according to the original plans, the bath-room and the water-closet were to be side by side on the first floor immediately over the restaurant. When objection was taken by the Municipality, under the clause cited, the plaintiffs so altered the position of the water-closet as to bring it immediately over the bath-room, which is immediately over the restaurant. The floors of the bath-room and of the water-closet are built of impervious material so that there are now two impervious floors between the water-closet and the restaurant. Mr. Robertson, however, contends that the water-closet ought even now to be regarded as being immediately over the restaurant and not the less so because as he puts it, a small corner of the bath-room intervenes between the water-closet and the restaurant. But we think that this contention must be disallowed. There may, no doubt, be cases where a structural alteration is so slight in effect as to amount to nothing more than a colourable pretence of doing something which the Act requires to be done substantially; but we do not think that this is such a case. As a matter of plain fact, what is now immediately below the water-closet is the bath-room and not the restaurant; and the truth of this description still remains despite the fact that the water-closet is over, not the whole bath-room, but only a four feet high recess in the bath-room. It follows, therefore, that the position of the water-closet does not contravene the provisions of section 251-A (a) if the plaintiffs' view as to the meaning of this clause is to prevail. In our opinion it ought to prevail.

It is plain that by the phrase "directly over" the draftsman of the Act intended to convey one or other of only two possible alternatives, and seeing that a familiar word lay apt for the purpose of expressing either alternative, it may be regretted that both these words were avoided and the equivocal word "directly"

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was employed. Had the meaning intended been as the plaintiffs suggest, one would have expected "immediately"; had the meaning been as the defendants suggest, one would have expected "vertically." But the choice has fallen upon "directly" and we must construe it as best we can. It seems to us that full force is given to the word if we read it as the equivalent of "immediately" which is in accordance with popular modern usage, whereas the more extensive connotation required for the defendant's case would have invited a more precise word and some amplification of the phrase. It is not suggested that the word bears any technical sense in the context in which it occurs, and, therefore, the construction must proceed upon the general rule that statutes are presumed to use words in their popular sense, "*uti loquitur vulgus*," as was said by Dr. Lushington in *The Fusilier*⁽¹⁾. Now whatever may be the interpretation favoured by etymological propriety, we think that current popular usage is against the defendants. If two visitors to a hotel bargained that their rooms should be the one directly over the other, they would hardly be satisfied with rooms which, though in the same vertical line, were three or four storeys apart. In time also, as well as in space, it is clear that "directly," "*uti loquitur vulgus*," has parted with its original signification: we say that we are coming "directly" without reference to the line of our approach and meaning no more than at once or forthwith. It is true, the original precision is retained in scientific or mathematical usage, but with that we are not concerned: the point is that in popular speech this etymological accuracy has been so far lost that we do not think it can be read into "directly" where the word can receive ample interpretation otherwise. Further support for this view may be found by considering the language of the clause without the word "directly"; for, that should suggest the particular *lacuna* which the insertion of the word was intended to supply. If the clause had read "no person shall build a water-closet in such a position or manner as to be over or under any room or part of a building other than another water-closet or a bathing-place," then a bathing-place at the

(1) (1864) 34 L. J. P. M. & A. 25, 27.

western extremity of the first floor might conceivably have justified a water-closet at the eastern extremity of the second floor; for the water-closet would have been, in a sense, over the bathing-place. It appears to us that the addition of the word "directly" is sufficiently accounted for by an intention to prevent such a construction and that the context does not warrant us in ascribing to the draftsman any wider intention.

As to the argument which was sought to be based on substantial considerations affecting the public health, we think that it is exposed to a two-fold answer: first, that, if effect were to be given to the defendant's contention, the Act would apparently be restrictive beyond all reasonable need, and, secondly and principally, that the Commissioner must be presumed to have entertained no such apprehension in this case, for, had he done so, he would have exercised his wide powers of prohibition under section 246-A of the Act instead of limiting himself to a technical and manifestly doubtful objection under section 251-A (a).

For these reasons we return the following answers to the two questions put in the case.

(a) The words "directly over or directly under" in clause (a) of section 251-A should be understood in the restricted sense contended for by the plaintiffs, and (b) in the affirmative.

There will be a decree accordingly.

Attorneys for plaintiffs: Messrs. *Thakurdas & Co.*

Attorneys for defendants: Messrs. *Crawford, Brown & Co.*

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