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KARMALI ABDULLA v. KARIMJI JIWANJI.

Solicitors for the appellant: Messrs. *Ashurst, Morris, Crisp & Co.*

Solicitors for the first respondent: Messrs. *Latteys & Hart.*

Appeal allowed.

J. V. W.

PRIVY COUNCIL.*

HAMABAI FRAMJEE PETIT, DEFENDANT, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, PLAINTIFF,

AND

MOOSA HAJEE HASSAM, DEFENDANT, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, PLAINTIFF.

P. C.*
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October 28, 29.
November 18.

Two appeals consolidated.

[On appeal from the High Court of Judicature at Bombay.]

Resumption—Resumption for "public purposes" by Government of land granted by East India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officials in Bombay—Construction of lease and sanad—English decision under 43 Eliz., c. 2 as to exemption from rating—Notice of resumption addressed to one party and served on another—Waiver.

In these appeals the Judicial Committee held (affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents, was a "public purpose" within the meaning of a lease of land from the East India Company given in 1854, and a Sanad or Government Permit of land granted in 1839 by the same Company, which made such lands (situate on Malabar Hill, Bombay) liable to resumption for "public purposes" upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants.

Held also (agreeing with the Courts below) that the English decisions which construed the words "public purposes" as used in the Statute 43 Eliz., c. 2

* *Present:*—Lord Dunedin, Lord Shaw and Mr. Ameer Ali.

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with reference to exemptions from rating afforded no help as to the proper construction to be put on the words in the contracts in suit.

The definition of a "public purpose" that "the phrase, whatever else it may mean, must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned," approved by their Lordships of the Judicial Committee.

A notice which though addressed to one of the defendants (a testator who was dead) was served on one of his executors and trustees, also a defendant and accepted and acknowledged by his solicitors who corresponded on the basis of it with the Government as to the resumption, was held to be a valid notice, the irregularity having been thereby waived.

APPEALS 139 and 140 of 1913 from two judgments and decrees (5th September 1911) of the High Court at Bombay, which affirmed on appeal two judgments and decrees (11th April 1910) of a Judge of the same Court sitting in the exercise of the ordinary original jurisdiction of the Court.

The suits giving rise to these two appeals were instituted in the name of the Secretary of State for India in Council (the respondent in the appeals) against the respective appellants to recover possession of land situate at Malabar Hill in the Island of Bombay, and for damages for the wrongful withholding of possession of such land by the appellants respectively.

In appeal 139 the land in suit had been on 18th April 1854 leased by the East India Company, in whom the land was then vested, to one Bachoobai, widow and executrix of Framji Cowasji Banaji deceased, for 99 years, renewable in perpetuity at a small annual rent, and the appellant Hamabai Framji Petit was at the date of the suit in possession thereof under the lease.

The lease contained a provision that "in case the Company their successors or assigns shall for any public purpose be at any time desirous to resume possession of the premises hereby granted or any part or parts

thereof, then . . . . . it shall be lawful for the Company, their successors and assigns", to resume the land after giving six months' notice of their intention to do so, and on paying "for all buildings and improvements of which possession shall be taken according to such just and fair valuation as may be made by a committee to be appointed by Government for that purpose".

In appeal 140, a Sanad or Government Permit, had, on 6th April 1839, been issued to one George King, authorising him to occupy the land in suit, which was to be resumable by Government for "public purposes", subject to the same requirements as to notice, and payment of the value of buildings and improvements as in the other case. In that appeal (140) the suit was brought against Moosa Haji Hassam, Haji Ismail Good Mahomed (both since deceased) and the appellant Haji Sidick Haji Ebrahim, as the surviving executors and trustees of the last will and testament of one Haji Kurrim Mahomed Sulleman, deceased.

Notices of the intention of Government to resume the lands respectively in each case for public purposes were served on the defendants. The notice in appeal 140 while addressed to Haji Kurrim Mahomed Sulleman, who was then dead, was served on the defendant Moosa Haji Hassam, one of his executors and trustees, and was acknowledged by their solicitors who carried on the subsequent correspondence on their behalf with reference to the intended resumption. The defendants in both cases declined the offers of the Government, as to compensation, and refused to give up possession of the lands.

The suits were consequently instituted, that giving rise to Appeal 139 on 18th November 1909, and that in Appeal 140 on 28th November 1908, the "public purpose" for which the land was required was defined by the

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Government to be the "providing accommodation for Government officers".

Both sets of defendants denied in their written statements that "the providing of accommodation for Government officers" was a public purpose within the meaning of the lease and the sanad under which they respectively held possession of the lands in suit; and so far as these appeals are concerned that is the only question for determination material to this report.

The Court of First Instance (Beaman, J.) held on that question that the use and construction of the term "public purposes" in the decisions in England in rating cases were irrelevant and that "what was really intended by the Government of Bombay when it reserved to itself the right of resuming this land, 'for a public purpose', is a question which will have to be considered very much as *res integra*" and he continued :—

"Could this be called a private purpose and is not the true meaning of the words employed by Government, the meaning which Government itself intended that they should bear, that public purposes cover every step which Government takes as Government in the interests of the general public committed to its care? Where, as in the present case, it is not suggested that Government is actuated by any improper or dishonest motive, it might, I think, plausibly be argued that any designed action of Government as Government must by implication be deemed to be for a public purpose * * * * * * * *. The more I have reflected upon what means are available for answering the question what is a public purpose, the more I fall in doubt whether any question really can be made of the positive declaration of a responsible Government that it is taking any given step for a public purpose. Subsequent events might prove that the step has been miscalculated, and the aim of Government frustrated. But so long as Government asserts that what it is doing, is being done for a public purpose, and so long as in the very nature of things it cannot be acting in any private interest, it does appear to me extremely difficult to suggest any adequate reason for a Court to say, what the Government professes to do for a public purpose, it is not really doing for a public but for some non-public purpose. And if we turn to our own statutes, we find a confirmation of this view in the plenary powers conferred by the Land Acquisition Act upon the Government. Its bare declaration that the land is required for a public purpose is sufficient. So, in the present case, it seems to me that the Govern-

ment would have been fully within its powers and beyond the reach of challenge in the Courts had it simply announced that it required this land for a public purpose, without further specifying what that public purpose was. However, it has so announced that purpose and has endeavoured to satisfy the Court that it is a public purpose. Whether it would be so considered in England I do not know, but there are a hundred considerations which would be absent in England but come into forcible play in India. From the earliest days it has always been an accepted principle of Government that its principle officers should be provided with suitable accommodation. Where that suitable accommodation was not forthcoming, as in remote mofussil districts Government have invariably provided the Chief District Officers with suitable residence and at its own cost and a need for this was obvious. To take an extreme case, supposing it were necessary to post the administrative head of a district in a place where there was no residence available, suppose his services were indispensable to the surrounding peoples, would it not then be a public purpose—a purpose in which those usual surrounding peoples would have a vital interest—to provide house accommodation for that administrative officer? And the principle may well be extended though the conditions are altered to the cases of officers stationed in Bombay, for while there is there no dearth of houses, owing to the competition of and the great wealth which the native inhabitants have been enabled to amass under conditions of good Government maintained by those very officers, the rents demanded are so exorbitant that for all the use they are to those officers the houses might as well not exist at all. No parallel to this state of affairs can be found in England or indeed in any country where the governing and the governed are homogeneous. While they are not, I think there may be solid reasons for believing that the status in efficiency of Government itself might be seriously impaired so soon as its officials, owing to the shrinkage of their own salaries and the increase of wealth about them, far from being able to maintain a superior face into an inferior station to the wealthy classes of their fellow subjects. Considerations of this kind might appear so foreign to a purely English lawyer as hardly to be admissible in the judgment of the Court of law. Nevertheless they are considerations, which, no one conversant with the actual facts of Government in India would think of neglecting and I have no doubt that they are considerations very proper to be entertained by a responsible Government in this country, when it is making up its mind whether purpose of this kind can or cannot justly be called a public purpose. In my opinion, the technical defence upon which the defendant has relied, however ingenious it is, is too technical. It rests upon analogies which, if they exist at all, are too faint to be of practical importance. It is drawn from a system of case law in another country in which the conditions are wholly different, a system of case law, too, founded upon a particular statute with the strictly limited application to which no parallel at all exists in India. And failing that defence I can see no reason in principle why I should say that the purpose

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which the Government have in view, is not only nominally but truly and really a public purpose and a purpose of much public concern.

"For these reasons I must decree the plaintiff's suit with all costs : decree in terms of prayer A to the plaint."

An appeal by the defendants was heard by Chandavarkar and Batchelor JJ. who affirmed the decision of Beaman J.

The judgments of the Appellate High Court were as follows :—

"CHANDAVARKAR, J. :—I agree with Beaman J. from whose decree this appeal is preferred, that the English decisions, which were cited before him and which have also been cited before us in support of the appellant's contention as to the meaning of the term 'public purposes,' all turned upon its meaning with reference to the law of rating and cannot be safe guides in the present case, where different considerations have to be taken into account. Those were decisions upon the interpretation of a section in the Poor Relief Act, 1601 (43 Eliz. c. 2), according to which the test for determining whether a particular property is liable to the rate there contemplated is that of beneficial occupation. No doubt in determining what is beneficial occupation the English Courts have gone on to consider whether the occupation is for a public purpose, a term which does not occur in the section of the Statute. But the rule of law to be deduced from them as now prevailing is that there is no beneficial occupation for the purposes of rating, where property is occupied either by the Crown or by the servants of the Crown for Crown purposes, the occupation of the latter being in that event occupation of the Crown itself : *Mersey Docks* v. *Cameron*[1]. And the reason of the rule is that the Crown, being not named in the Statute, is not bound by it. That even upon that test, the decisions are not easy to reconcile with one another or with any logical principle is apparent from the remarks of Sargent C. J. in the judgment of this Court in *The University of Bombay* v. *The Municipal Commissioner for the City of Bombay*[2], of Lord Alverstone C. J. in the English case of *Wixon* v. *Thomas*[3] and of Lord Bramwell in *Coomber* v. *Justices of Berks*[4]. The case of *Wixon* v. *Thomas*[3] is instructive as showing the present tendency of the English Courts towards a more liberal interpretation of the term 'public purposes' even with reference to the law of rating.

(1) (1864) 11 H. L. C. 443 at pp. 503, 504.
(2) (1891) 16 Bom. 217 at p. 228.
(3) [1911] 1 K. B. 43 at p. 52.
(4) (1883) 9 App. Cas. 61 at p. 79.

"In the present case that expression occurs in a perpetual lease granted by the East India Company in 1854 under whom the appellant claims, subject to the condition that the Company should be entitled to resume the land 'for any public purpose'. The case of Government, who claim under the Company, is that the cost of living, including house-rent, having increased in the town and island of Bombay, it has become necessary in the interests of the public administration and the efficiency of the public service to attract the ablest of their officials serving in the Mofussil to this city by providing suitable house accommodation to them on easier terms than those prevailing in respect of house-rent. For that purpose Government desire to resume this and other lands on the strength of the condition as to resumption above-mentioned. Whether it is a public purpose or not must depend on the question whether the proper housing of their officials by Government is for the public benefit or not. The 39th section of the Statute 21 and 22 Vict., c. 106, (1858) by section 1 of which the rule of the East India Company was terminated, enacted that 'all lands, &c., moneys, &c., and other real and personal estate' of the Company 'subject to the debts and liabilities affecting the same' and 'the benefit of all contracts, &c., and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of the Act, except the capital stock of the Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of,' subject to the provisions of that Act, 'for the purposes of the Government of India.' All property belonging to the Company at the time the Act commenced and the benefit of all contracts entered into by the Company and enforceable by it became vested in the Crown for these latter purposes which in essence are public purposes. The Government of India exists for the benefit of His Majesty's Indian subjects and whatever conduces to that benefit must be a public purpose. That benefit can be secured primarily only by an efficient administration, which means an efficient service. Such service must depend on the efficiency of the men who are appointed to carry out the purposes of the Government of India, and who are, therefore, the servants of the Crown. If a state of things comes about which shows that in a City like Bombay the best men available from among these servants are reluctant to serve because of the increasing hardness of life in point of house accommodation and house rents, the Government is entitled to say that it raises a serious question as to the future of the public administration, and that the public benefit must suffer if the best officers available are compelled to serve as servants of the Crown in the City under such hard conditions. It is no reasonable answer to that consideration that the men are bound to serve wherever they are appointed, because Government never engaged to provide them with house accommodation on more or less easy terms. It is true Government are not bound in that respect, but the question is, not one of legal obligation but of general expediency and public

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benefit, and in this connection it is a material circumstance disclosed by the Civil List that it has been in this country customary for Government to provide house allowance to its officials, where that is, in its opinion, necessary in the interests of the public service. In substance there can be no difference between a house allowance and house accommodation.

"There is no definition of 'public purpose' in any of our legislative enactments to afford us a clue to the meaning of the term, save one in the Land Acquisition Act; but that is a partially inclusive not an exhaustive definition. Though the Legislature has not defined it for general purposes, it has given us a sufficient indication in the Land Acquisition Act of what it intended the term should convey, having regard to the constitution and objects of Government in and the special needs of this country. By clause (3) of section 6 of the Act the Legislature has directed that a declaration by Government that a certain land 'is needed for a public purpose' shall be 'conclusive evidence' that it is so needed. What could have been the object of the Legislature in making Government the sole judge of what is a public purpose under the Act but this, that having regard to the conditions in this country, the needs of sound administration and the public weal, it should not be hampered by any refined distinctions and legal subtleties but must be left to interpret the expression 'public purpose' in a wise and reasonably liberal spirit. Though, strictly speaking, this rule of the Legislature does not bind the Court in interpreting the expression where, as in the present case, it occurs in a contract, yet the Court may well take the Legislature as its guide in ascertaining the meaning of the expression. It was conceded by Mr. Setalvad for the appellant that if Government had sought to acquire this very land under the Land Acquisition Act, on the ground that it was needed for building a house for the residence of its servants, he could not have quarrelled with the declaration that the land was needed for a public purpose. In that case he could not have fairly argued that Government were endeavouring to acquire the land merely for a private benefit—the benefit to an individual or individuals—in the guise of a public purpose. If that is so, why should the Court treat this case on different considerations, if on the proved facts it finds that the purpose for which Government claim to resume the land involves, in its opinion, the element of public benefit and therefore of public purose, understanding that expression to mean any object which secures the good of the public by securing the efficiency of those servants of the Crown on whose service the public good materially depends? The Court would under these circumstances defer to the declaration of Government on the analogy of the Land Acquisition Act unless the purpose stated was so flagrant as to involve, on no reasonable consideration, the element of public benefit.

"It was said, however, that this element of public purpose, such as it is, must be held to vanish in view of the fact that the Government intended to

charge rent to the official who would be housed in the building proposed to be erected on this land after resumption. This charging of the rent, it is urged, will bring pecuniary benefit to Government and the building will be occupied by the official who will pay the rent, not solely or exclusively in his capacity as a servant of the Crown. A similar argument was urged in this Court in *The University of Bombay* v. *The Municipal Commissioner for the City of Bombay*[1]. The question there was whether The University of Bombay was an institution for a charitable purpose and therefore entitled to exemption from Municipal taxes. It was argued for the Municipality that the University was not an institution of that character and therefore not entitled to exemption, because it 'obtained an income from the fees paid by the students on the occasions of the Examinations held by the University' and that 'it derived a revenue from the occupation of the buildings.' In the judgment of this Court Sargent C. J. disposed of the argument by pointing out that 'the sole test' under the Bombay Municipal Act was whether the building of the University 'was exclusively occupied for a charitable purpose'; 'and the mere circumstance that small fees are required from the students before examining them which produce a revenue insufficient to defray the expenses of the University in conducting those examinations and keeping up the necessary establishment and which requires to be considerably supplemented by Government cannot, in our opinion, alter the essential character of the purpose for which the buildings are occupied.' So also, in the present case, the sole test, under the lease which we are construing, is, whether the building proposed to be erected on the land in dispute after resumption by Government is for 'any public purpose.' If the element of that purpose exists, the mere fact that Government will charge a moderate rent, not such rent as the letting value of the property will yield in the market, cannot alter the essential character of the building as one used for a public purpose. In this connection it is to be remarked as a circumstance of some importance that the expression used in the lease is not 'a public purpose' but 'any public purpose.' The word 'any' used to qualify the public purpose must have, in my opinion, been used designedly to make clear the intention of the lease that Government should be entitled to resume the land whenever any consideration or need of public benefit of any kind arises, though it may involve at the same time some private benefit.

"In arriving at this conclusion, I have not overlooked the meaning of the expression 'public purpose' given in *Moses* v. *Marsland*[2]. There, relying on the authority of *Josolyne* v. *Meeson*[3], Bruce J. said that 'a place used for public purposes means, not a place used in the public interest but a place to which the public can demand admission or to which they are invited to come.

(1) (1891) 16 Bom. 217. (2) [1901] 1 K. B. 668.
(3) (1885) 53 L. T. 319.

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The learned Judge would appear to have intended that as the colloquial and general meaning independently of its meaning in the particular Statute which he had to construe. Apart from the fact that the decision in *Moses* v. *Marsland*[1] proceeds on the construction of the Statute and on the principle of *ejusdem generis*, and that the observation of Bruce J. is so far an *obiter dictum*, a reference to *Josolyne* v. *Meeson*[2] on which Bruce J. and Phillimore J. relied shows that in this latter case the meaning of the expression 'public purpose' went on its limited construction as used in an English Statute, and on the rule of *ejusdem generis*.

"On these grounds, in my opinion, the decree appealed from must be affirmed with costs."

"Our decision in Appeal No. 24 of 1910 governs also Appeal No. 25 of 1910. In this latter appeal two additional points were sought to be urged by Mr. Setalvad for the appellant at the hearing. The first was that there had been no legal notice of the intention of Government to resume the land, because the actual notice given had been addressed to the lessee after he had died and not to his executors. The executors, however, received the notice, and replied to it, and therefore such irregularity as there was was cured by waiver on their part. The second objection was that Government claimed in the plaint a strip of land belonging to the lessee which was not covered by the grant to him. The Advocate General for Government having explained the facts with reference to this point, Mr. Setalvad admitted that he had urged it under a misapprehension. The decree in this appeal too must be confirmed with costs."

BATCHELOR, J. :—By a lease executed on the 18th April 1854 the East India Company demised the land in suit to the defendant's predecessor-in-title for a term of 99 years at a yearly rent of Rs. 11-2-3, the term being renewable indefinitely on certain prescribed conditions. But the lease contains a clause declaring 'that in case the said Company, their successors or assigns shall for any public purpose be at any time desirous to resume possession of the premises ... then and from thenceforth it shall be lawful to and for the said Company, their successors or assigns into and upon the said hereby demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again repossess and enjoy as in their first and former estate.'

"On the 16th October 1908 the defendant was served with a notice from the Collector of Bombay informing her that the plaintiff, the Secretary of State for India in Council, was desirous to resume possession of the land for a public purpose, and calling upon her to surrender possession on the 18th April 1909, the plaintiff undertaking to pay for all buildings and improvements on the land on a fair valuation. The defendant, however, declined to surrender

(1) [1901] 1 K. B. 668. (2) (1885) 53 L. T. 319.

possession, and this suit is brought to eject her. Mr. Justice Beaman, before whom the suit was tried, decreed in favour of the plaintiff, and against that decree the defendant brings the present appeal.

"The only question raised is whether the purpose of Government in seeking to resume this land is a 'public purpose' within the meaning of that clause in the lease which I have cited; if it is a public purpose then admittedly the suit must be decreed.

"Now upon the question of fact as to what is the purpose of Government there is no dispute. In paragraph 5 of the plaint it is stated compendiously as being 'the purpose of providing accommodation for Government officers.' Stated more fully, the case for the plaintiff is this; owing to certain economic conditions of life in Bombay, notably owing to the heavy house rents there prevailing, Government are embarrassed in their selection of officers to fill public appointments in this City; instead of having the entire *cadre* of their Officers as the field of choice, they are driven to restrict their selection to a smaller group of officers, who, as bachelors or as having private means or otherwise, are enabled to meet the additional expenses incurred by living in Bombay. The purpose now actuating Government is to remove this embarrassment by resuming the land in suit and other land held on similar tenure, and by building on it houses to be leased to their resident officers at rents bearing a reasonable proportion to the officers' salaries.

"The accuracy of this description of the purpose of Government has not been challenged before us, and sufficient proof of it will be found in the evidence of Mr. W. Cameron, the Secretary to Government in the Public Works Department. That gentleman speaking on behalf of Government, says, 'Our selection is much cramped in existing circumstances because good men whom I would like to recommend, are not able to serve here. I have always to consider whether the officer can afford to serve in Bombay. House rent, say Rs. 150 in Poona, would be Rs. 400 in Bombay; and Poona is next (*i.e.*, the next most expensive place) after Bombay.' He clinches this evidence by an instance from his own personal experience, narrating that in 1900 he had to decline an offer to serve in Bombay as he could not afford the extra expense.

"On the question of fact, then, I need not say more. The purpose of Government in attempting to resume this land is as I have described it. The question is: is that a 'public purpose' within the meaning of the lease? I am of opinion that it is, but before explaining the grounds of my opinion it will be convenient to consider certain English decisions which the defendant claims as authorities for the view that the purpose of Government, being as I have described it, is not a 'public purpose.' The decisions referred to are *Gambier* v. *Overseers of Lydford*[1]; *Martin* v. *Assessment Committee of West*

[1] (1854) 3 E. & B. 346.

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Derby[1] ; *Showers* v. *Assessment Committee of Chelmsford Union*[2] ; and *Jones* v. *Mersey Docks*[3]. I have set out these cases *en bloc* because I do not think they demand separate consideration here. I will accept Mr. Setalvad's position that, despite the actual decision in *Jones's case*, the learned Judges' discussions of the phrase 'public purposes' in the earlier cases remain unaffected as indications of the meaning which that phrase was construed to bear ; but even so I cannot bring myself to understand how those discussions can possibly assist the Court in the very different controversy which has now to be determined. Indeed the very reference to these cases is, I cannot but think, an illustration of a practice which in *Quinn* v. *Leathem*[4] elicited from the Earl of Halsbury L. C. the following protests :—'There are,' said His Lordship, 'two observations . . . which I wish to make, and one is . . . that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.' In the case before us I cannot see that there is even an appearance of logical connection between the 'public purposes' of the cases decided under a particular English rating statute and the 'public purposes' of the lease of land in Bombay in 1854. For the only 'public purposes' with which the English Courts were concerned were purposes sufficient to negative such beneficial occupation as would under the statute of Elizabeth attract the liability to rating. So, the only question decided in those cases was the question whether a particular occupation was rateable, and the cases cannot properly be quoted as authority for more than was decided. I could understand the relevance of an appeal to those decisions if the contemplated houses being supposed to be built and the English Statute being supposed to be law in Bombay, the question were whether the houses would be exempt or rateable ; and I am prepared to grant that, on these suppositions, the houses would be rateable. Neither that, however, nor anything like it is, I conceive, the question now before the Court. And if the point need further elaboration, I would adopt the Advocate General's illustrative instance. Under the lease in suit Government, I suppose, could certainly resume the land for the purpose of building , say, a public school, or a Fire Brigade Station ; yet both of these institutions would be rateable under the English statute. It would seem to follow, therefore, that the 'public purposes' of the Indian lease are wider than the 'public purposes' considered in the English cases in contrast with beneficial occupation. I would add that, in seeking to apply the decisions

(1) (1883) 11 Q. B. D. 145.
(2) [1891] 1 Q. B. 339.
(3) (1864) 11 H. L. C. 443.
(4) [1901] A. C. 495 at p. 506.

of the English Courts in such a case as this, there is some danger of overlooking an essential feature of difference, I mean the difference in the position of a Government in England from the position of an Indian Government with its more direct and constant relations with the general community, and its necessarily more active interference in the affairs of the people. On the whole, then, I am unable to recognise that the English decisions quoted can be referred to as guides for the interpretation of the words of the present lease.

"If that is so and if this lease is to be construed from its own language, then I cannot doubt that Beaman, J.'s decision is right. General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that in my opinion, the phrase, whatever else it may mean, must include a purpose, that is an object or aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. That it is so concerned here must, I think, be plain to any one familiar with the relations between an Indian Government and its subjects, the innumerable points at which those relations are close and direct, and the multifariousness of the duties for whose discharge the community looks to Government and the officers of Government. Here, therefore, it is especially necessary in the interests of the public that Government should be able to appoint to posts in the Capital City those officials who, they are satisfied, are most competent to fill such appointments. It is directly to the gain and advantage of the public that, on an appointment falling vacant, the enquiry by Government should be, who is most capable of filling the vacancy, and not, who can best afford the expense of filling it.

"The validity of these considerations is denied by Mr. Setalvad, who replies that they would justify the resumption of the land for the purpose, say, of building a Gymkhana for Government officials in order to preserve their health and efficiency; yet such a purpose, he contends, would certainly not be a public purpose within the lease. To that I can only answer, first, that hypothetical cases are best postponed for decision until they have ceased to be hypothetical; and, secondly, that, assuming the Gymkhana would not be a public purpose, there is surely a rather obvious distinction between a place of recreation and a house to live in, the former may be conducive to good work, but the latter is a condition precedent to all work.

"The same result is reached if we consider that the provision of house accommodation does not, for our present purposes, materially differ from the grant of a Local allowance to cover the heavy charges on acount of rent in Bombay. Yet I cannot see how it could be contended that such an allowance, if made, was not made for a public purpose. Again, on the proved and admitted facts, we have it that there are not now in Bombay enough suitable houses for the number of officials whom it is necessary to post here. Unsuit-

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able houses may exist, but for the purposes of the argument, they are equivalent to no houses, a proposition which I merely state in passing since it has not been suggested before us that the officers of Government should be relegated to such houses as could at present be found for their occupation. The case, therefore, is as if Government were proposing to build for officers necessarily stationed in Bombay houses where no houses existed before, and it seems to me certain that that would be a public purpose. It would be as much a public purpose as the purpose or object of the officers' appointments.

"For these reasons I am of opinion that the decree under appeal is right, and I agree that the appeal should be dismissed with costs.

"I agree also with what my learned colleague has said in decision of the related appeal. The point as to notice is clearly without substance and the other point as to the strip of land was abandoned. No other point was taken before us."

On these appeals

De Gruyther K. C. and *Henry A. Mc.Cardie*, for the appellant in Appeal 139.

De Gruyther K. C. and *Kenworthy Brown*, for the appellants in Appeal 140.

Sir H. Erle Richards K. C. and *G. R. Lowndes*, for the respondents.

For the appellants it was contended that providing house accommodation for Government officials was not a "public purpose" for which the respondent was entitled to obtain resumption of the lands sued for. The Courts below had put a wrong construction on the terms of the lease and sanad under which the appellants held the lands, and had not applied to their interpretation the proper rules of law. A purpose for the benefit of only a certain class of individuals was not a public purpose. The land the respondent was desirous of resuming was not to be used for the good of, nor would it be of any advantage to, the general public. There would be no occupation of the buildings for the purpose of the public business, nor would the officers of Government, to whom they were let, use them in the discharge of their public duties. There

would be a mere residential and domestic occupation for a rental to be paid to Government, and there was nothing to prevent the occupants from subletting. It was only in a remote and indirect manner that the proposed use of the land would benefit the public or be of any advantage to the public service, such as securing more efficient administration : and there was no evidence that such benefit or advantage would accrue from it or constitute the purpose a public purpose. There was moreover no proof that there was any need for the provision of houses for Government officials in Bombay, or that the present accommodation was insufficient or unsuitable for the Government officials. The provisions of the Land Acquisition Act (I of 1894) were wrongly applied by the Courts in India to the appellants' lease and sanad and thereby a construction was put upon them which their terms did not bear, namely, that the mere declaration of Government that the land was wanted for a public purpose was sufficient without more to entitle them to resume the land. The Act was not applicable to the interpretation of the documents in suit. Reference was made to the Land Acquisition Act (I of 1894), section 6, sub-section (3) ; and *Shastri Ramchandra* v. *Ahmedabad Municipality*[1]. In Appeal 140 it was contended that the notice of resumption was not valid.

The respondents were not called upon.

1914 November 18th :—The judgment of their Lordships was delivered by

LORD DUNEDIN :—The same general point is raised in these two appeals.

The first appellant was lessee under the Government as successors of the East India Company under a lease of date 18th April 1854, which lease contained a power

(1) (1900) 24 Bom. 600.

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of resumption in favour of the lessor if "the Company, their successors or assigns, shall, for any public purpose, be at any time desirous to resume possession of the premises granted" . . . upon certain terms as to notice and compensation.

The second appellants are holders of land under Government in virtue of a sanad originally granted to one George King on 6th April 1839, by the said East India Company, which declares the ground given in occupation is to be "at any time resumable by Government for public purposes" upon certain terms as to notice and compensation.

The Government gave notice in both cases to resume for a public purpose. On being challenged as to what that public purpose was, they explained that they wished for the ground in order to erect dwelling houses, which they could offer to Government officials at adequate rents for their private residence. Suitable houses for Government servants are not easily obtainable in Bombay; but it is not said that obtaining quarters of some kind is an impossibility. The whole question, therefore, is: is such a scheme a "public purpose" within meaning of the contracts contained in the lease and the sanad?

The learned Judge of First Instance in the High Court of Judicature at Bombay and the Appeal Court of the same Court have both held that it is. The learned Judges in the Courts below have, in deference to citations made before them, elaborately considered many of the decisions which construed the words "public purposes," as used in the Statute of Elizabeth with reference to exemptions from rating. In the end, however, they came to the conclusion that those decisions afforded no help as to the proper construction to be put on the words of these contracts; and in that conclusion their Lordships unhesitatingly agree.

The argument of the appellants is really rested upon the view that there cannot be a "public purpose" in taking land if that land when taken is not in some way or other made available to the public at large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor J. in the first case, when he says :—

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease ; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. *Primâ facie* the Government are good judges of that. They are not absolute judges. They cannot say : "*Sic volo sic jubeo*," but at least a Court would not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of the learned Judges, who are thoroughly conversant with the conditions of Indian life, say that they are satisfied that the scheme is one which will redound to public benefit by helping the Government to maintain the efficiency of its servants. From such a conclusion their Lordships would be slow to differ, and upon its own statement it commends itself to their judgment.

Their Lordships are therefore of opinion that on the general point the view of the Courts below was right.

A special point was taken in the second case as to sufficiency of notice. It is enough to say that the view of the Courts below was clearly right in this matter.

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Their Lordships will humbly advise His Majesty to dismiss the appeals, but there will be no costs to either party before this Board.

Solicitors for the appellant in Appeal 139 : Messrs. *T. L. Wilson & Co.*

Solicitors for the appellants in Appeal 140 : Messrs. *Latteys and Hart.*

Solicitor for respondent in both appeals : *Solicitor, India Office.*

Appeals dismissed.

J. V. W.

PRIVY COUNCIL.*

P. C.*
1914.
October 29.
November 2, 26.

JEHANGIR DADABHOY (DEFENDANTS 1 AND 2) *v.* KAIKHUSRU KAVASHA (PLAINTIFF) AND OTHERS (DEFENDANTS 3 AND 4).

[On appeal from the High Court of Judicature at Bombay.]

Will—Construction of will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son, if he should have one—Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865), section 111.

A Parsi having two sons P. and J. made a will in 1866 in the following terms :—Clause 2 stated "The said two sons are proprietors half and half alike and in equal (shares) of my whole estate, outstandings, debts, title and interest, and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment. In this my testamentary writing I the testator have appointed my two sons as (my) heirs." Clause 5 said that "P. the elder son being in a confused state of mind," the management of the estate was entrusted to the younger son J. "by his true and pure integrity, and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son P. in such a way as not to injure his (P.'s) rights. At present my elder son P. has no male issue of his body. (He) has only a

* *Present* :—Lord Dunedin, Lord Shaw, Sir John Edge and Mr. Ameer Ali.