

of a Mahar Watan is likewise within the jurisdiction of the Civil Courts. It seems to me, therefore, that the suit must be remanded for these two matters to be determined and for disposal in the light of the above remarks under Order XLI, Rule 23, Civil Procedure Code. Costs to be costs in the cause.

HEATON, J. :—I concur.

*Decree reversed. Case remanded.*

R. R.

### ORIGINAL CIVIL

*Before Mr. Justice Kajiji.*

P. W. MONIE, MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY, AND THE MUNICIPAL CORPORATION FOR THE CITY OF BOMBAY, PLAINTIFFS v. THE REV. ROBERT SCOTT, DEFENDANT.

*The City of Bombay Municipal Act (Bombay Act III of 1888), sections 140 (c), 143 (1) (a) and (2) (d)—The Indian Universities Act (VIII of 1904), sections 21 (1) (c) and (f), 25 (1) and 2 (m)—The Code of Civil Procedure (Act V of 1908), section 90 and Order XXXVI—Hostels of a College built in pursuance of the provisions of the Indian Universities Act are exempt from the general tax leviable under the Bombay Municipal Act—Occupation of hostels by resident students is exclusively for charitable purposes—"Charitable purposes" in section 143 of the Bombay Municipal Act include all purposes within the meaning of Statute 43, Eliz. C. IV.—Additional fee paid by resident students is not "rent"—Premises occupied by a Superintendent of a hostel are exempt from a general tax, but not necessarily those occupied by a Professor or Assistant Superintendents—Case stated for opinion of Court can only be re-opened by mutual consent—Practice.*

The plaintiffs, the Municipal Commissioner and the Municipal Corporation for the City of Bombay sued to recover from the defendant, the acting Principal of the Wilson College at Bombay, Municipal property taxes in respect of the buildings known as hostels belonging to that College. The Wilson College was affiliated to the University of Bombay under the Indian Universities Act VIII of 1904. Section 21 (1) of that Act provided that a College applying for affiliation to an University must satisfy the Syndicate of

\* O. C. J. Suit No. 1213 of 1917,

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the University, *inter alia* "(c) that the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the Regulations, for the residence, in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students"; "(f) that due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in or near the College or the place provided for the residence of students." Under section 25 (1) and (2) (m) of the Act the Senate of the Bombay University made the following Regulation viz., "that each College shall provide residential quarters for such a percentage of its students as the Syndicate may from time to time approve." In order to satisfy the requirements of section 21 (1) (c) of the Indian Universities Act and pursuant to the Regulation of the Senate, the Wilson College erected three buildings known as hostels for the use of its students numbering two hundred in all. In addition to the students, an European Professor and an Indian Superintendent resided in the first and second hostels and an European Superintendent and an Assistant Superintendent resided in the third hostel, all of them being on the staff of the College. Resident students of the College paid an additional fee of Rs. 23 for each of the two terms in a year over and above the fees they paid along with non-resident students. Pursuant to section 140 (c) of the City of Bombay Municipal Act, 1888, the Municipal Commissioner caused the three hostels to be assessed for payment of general tax leviable on all buildings in the city. The defendant contended that the hostels must be exempted from the general tax as they were buildings exclusively occupied for charitable purposes within the meaning of section 143 (1) (a) of the City of Bombay Municipal Act and that the additional fee of Rs. 23 paid by the resident students was not "rent" within the meaning of section 143 (2) (d) of that Act. The points of difference between the parties were stated in the form of a case for the opinion of the Court under section 90 and Order XXXVI of the Code of Civil Procedure.

*Held*, (1) that inasmuch as the hostels were erected and maintained by the College as part of the general educational scheme of the country the object of the hostel being the advancement of learning, the portions occupied by the resident students were exempt from taxation as they were exclusively occupied for charitable purposes within the meaning of section 143 (1) (a) of the City of Bombay Municipal Act;

(2) that the extra sum paid by resident students was not paid as "rent" within the meaning of section 143 (2) (d) of the City of Bombay Municipal Act, but was an additional fee paid by them for the advantages derived by them and more attention paid to them for looking after their social, moral and physical welfare than to the non-resident students of the College who paid a less fee;

(3) that the portions occupied by one Superintendent in the first and second hostels and one in the third hostel were exempt from taxation as residence for such members in the hostels was compulsory for the proper discharge of their duties of supervision and physical welfare of students as required by section 21 (c) of the Indian Universities Act ;

(4) that the portions occupied by a Professor and Assistant Superintendent were ordinarily liable for taxation under section 140 (c) of the City of Bombay Municipal Act unless it was shown that the duties of the Professor and Assistant Superintendents were such as to make their presence on the premises absolutely necessary.

*The University of Bombay v. The Municipal Commissioner for the City of Bombay*<sup>(1)</sup> ; *Commissioners for Special Purposes of Income Tax v. Pemsel*<sup>(2)</sup> ; *Bent v. Roberts*<sup>(3)</sup> and *Oxford Rate*<sup>(4)</sup>, referred to.

It is settled practice that where a special case is stated by consent it can only be re-opened by mutual consent.

*Hamilton Fraser & Co. v. Staley, Radford & Co.*<sup>(5)</sup>.

CASE stated for the opinion of the Court under the Civil Procedure Code, section 90 and Order XXXVI :—

The question of rateability or otherwise to the general tax under section 143 of the City of Bombay Municipal Act, 1883, of three hostels erected in close proximity to the Wilson College in Bombay for the accommodation of resident students at that College was for several years controverted between the Municipality on the one hand and the College Authorities on the other. The Municipality contended that as special fees were charged to resident students considerably in excess of those charged to non-residents, the difference (amounting to Rs. 34 per student for each of the two terms in the year) or the greater part of it was in fact in the nature of rent charged to each resident student for the accommodation provided for him in the hostel in which he is located.

(1) (1891) 16 Bom. 217.

(3) (1877) 3 Ex. D. 66.

(2) [1891] A. C. 531 at p. 583.

(4) (1857) 8 El. & Bl. 184.

(5) (1884) Solicitors' Journal, 478.

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It was contended on the other hand on behalf of the College that the said three hostels were exempt from payment of the general tax inasmuch as they were exclusively occupied for charitable purposes and that no rent as such was derived from them within the meaning of sub-section 2 (d) of section 143 and that the fees paid by resident students who occupied them were not in the nature of rent but were part of the payment made for the benefits they received from the College and for the tuition which they shared with non-resident students and the training and discipline which the College provided for those who resided under its guardianship and control, and that the payments of those fees did not confer on students such rights of tenure as the payment of rent could ensure in so far that a student might be dismissed at any time during the currency of the term for which he had paid the fees without receiving any refund.

The plaintiffs, the Municipal Commissioner of Bombay and Municipal Corporation, and the defendant, the Acting Principal of the Wilson College agreed to state the following case for the opinion of the Hon'ble Court under the provisions of section 90 and Order XXXVI of the Code of Civil Procedure, Act V of 1908.

1. The Wilson College, situate at Chowpati in the City of Bombay (hereinafter referred to as "the said College") is, the plaintiffs are informed, vested in the General Trustees of the United Free Church of Scotland and the defendant has been appointed Principal of the said College by the said Trustees, and, in so far as the general management of the said College is concerned, is the sole representative of the said Trustees in India and as such is the person from whom Municipal property taxes in respect of the said College and

the building pertaining thereto in Bombay are, if leviable at all, primarily leviable.

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2. The said College is affiliated to the University of Bombay which University is one of the Universities in India to which the provisions of the Indian Universities Act, VIII of 1904, apply.

3. Section 21 (1) of the Indian Universities Act, 1904, provides that a College applying for affiliation to an University must satisfy the Syndicate of the University (*inter alia*):—

“(c) That the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the Regulations, for the residence, in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students.

(f) That due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in or near the College of the place provided for the residence of students.”

4. Section 25 (1) and (2) (m) provides that the Senate of an University, with the sanction of the Government, may make Regulations to provide for (*inter alia*):—

“(m) the residence and conduct of students.”

The Senate of the University pursuant to the power aforesaid has made a general Regulation as follows:—

“That each College shall provide residential quarters for such a percentage of its students as the Syndicate may from time to time approve.”

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and the said College accordingly in its Report made to the Syndicate each year submits to that body a statement as to its hostels and the number of students for whom residence in hostels has been provided.

5. In order to satisfy the requirements of the provisions of section 21 (1) (c) of the Indian Universities Act, 1904, three buildings, known as "Hostels", have been erected two of which are in the said College compound, and the third in close proximity to the same for the use of students at the said College, the first bearing Ward No. 2446 (3), Street No. 335 B, Queen's Road and capable of accommodating thirty students, the second, bearing Ward No. 2446 (4), Street No. 335 C, Queen's Road, capable of accommodating 126 students. In addition to the students a European Professor, and an Indian Superintendent reside in the first and second hostels above-mentioned and a European Superintendent and an Assistant Superintendent reside in the third hostel above-mentioned and all of which said Superintendents and Assistant Superintendent are on the staff of the said College.

6. At the said College the academic year is divided into two terms and the fees payable by students in respect of each of the said terms are as follows :—

(1) Non-resident students, Rs. 48 and a sum of Rs. 3 as subscription towards the Gymkhana, making a total of Rs. 51.

(2) Resident students, the above-mentioned sum of Rs. 51 plus an additional fee the average amount of which is about Rs. 34, making in all a total of Rs. 85.

7. Section 140 of the City of Bombay Municipal Act, 1888, as amended up to the date hereof (herein after referred to as "the said Act"), deals with levying of

taxes in the City of Bombay and the portions of the said section material to this case are as follows :—

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“140. The following taxes shall be levied on buildings and lands in the City and shall be called ‘property-taxes’, namely :—

(a)

(b)

(c) A general tax of not less than eight and not more than twelve per centum of their rateable value, together with not less than one-eighth and not more than three-quarters per centum of their rateable value added thereto in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under clause (k) of section 61 and Chap. XIV.”

Section 143 of the said Act amended as aforesaid, deals with the exemptions from the “General Tax” the portion of which section material to this case being as follows :—

“143. (1) The general tax shall be levied in respect of all buildings and lands in the city, except—

(a) Buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes ;

(b)

(2) The following buildings and lands or portions thereof shall not be deemed to be exclusively occupied for public worship or for charitable purposes within the meaning of clause (a), namely :—

(c) Those in which any trade or business is carried on ; and

(d) Those in respect of which rent is derived, whether such rent is or is not applied exclusively to religious or charitable purposes.

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(3) Where any portion of any building or land is exempt from the general tax by reason of its being exclusively occupied for public worship or for charitable purposes, such portion shall be deemed to be a separate property for the purpose of municipal taxation."

8. Pursuant to the provisions of the said Act the Municipal Commissioner has caused the said three hostels to be assessed for payment of the general tax as follows :—

"(1) Ward No. 2446 (3), Street No. 335 B, Queen's Road at the rateable value of Rs. 1,080 gross per annum or Rs. 970 net.

(2) Ward No. 2446 (4), Street No. 335 C, Queen's Road at the rateable value of Rs. 1,476 gross per annum or Rs. 1,330 net (which includes Rs. 36 per annum for one room occupied by a peon in the out-house).

(3) Ward No. 2447 (7), Street No. 349, Queen's Road at the rateable value of Rs. 9,786 gross per annum or Rs. 8,810 net."

9. The said assessments as specified in clause 8 hereof remain the same for the current official year 1917-18 and the amount of the general tax is as shown below :—

"(1) Ward No. 2446 (3), Street No. 335 B, Queen's Road at the net rateable value of Rs. 970 per annum, the general tax in respect of the same being Rs. 95-12-6 per annum.

(2) Ward No. 2446 (4), Street No. 335 C, Queen's Road at the net rateable value of Rs. 1,330 per annum, the general tax in respect of the same being Rs. 131-5-4 per annum.

(3) Ward No. 2447 (7), Street No. 349, Queen's Road at the net rateable value of Rs. 8,810 per annum, the general tax in respect of the same being Rs. 869-15-10 per annum.

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10. Demands for the payment of the general tax in respect of the said three hostels have been duly presented from time to time to the authorities in charge of the said College but the said authorities have not paid the same and the total amount claimed by the plaintiffs from the defendant as representing the said College in respect of the general tax on the said three hostels up to the date of these present amounts to the sum of Rs. 4,730-10-5 as per particulars hereto annexed and marked "A".

11. The defendant contends that the said College is exempt under section 143 (1) (a) of the said Act from payment of the general tax in respect of the said three hostels on the ground that the said three hostels are buildings exclusively occupied for charitable purposes and that no rent is derived in respect of the same within the meaning of sub-section (2) (d) of the said section of the said Act; and further that the fees payable by resident students are not in the nature of rent and are not payments for the right of occupancy of certain rooms, but are part of the payment which a student makes for the benefits which he receives from the said College including tuition which he shares with non-resident students and the training and discipline which the said College provides for those who reside under its guardianship and control; and the defendant further contends that the payment of the said fees does not confer on students such rights of tenure as the payment of rent would ensure insofar that a student may be dismissed at any time during the currency of the term for which he has paid his fees without receiving any refund for the period during which he is debarred from occupation of the room which has been assigned to him. The defendant says that in the annual returns submitted to Government the whole of the payments made by resident students are shown as fees and no part thereof is

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shown as rent. The defendant contends that the said hostels are a necessary and integral part of the charity inasmuch as it is inseparable from the College in its working and in its purpose. The defendant further contends that if the said hostels were regarded as a separate institution which they are not, they are maintained because of the great educational benefits they confer upon the students directly and indirectly on the whole community and their maintenance is an additional burden on the College funds which are admittedly charitably employed.

12. The plaintiffs on the other hand contend that the College is not exempt as aforesaid on the ground that the said three hostels are buildings not exclusively occupied for charitable purposes insofar that rent is derived in respect of the same within the meaning of section 143(2) (d) of the said Act. The plaintiffs contend that the additional fees charged to resident students are charged wholly or in part for the accommodation provided for the said students in the said hostels and is rent within the meaning aforesaid.

13. The question for the opinion of this Honourable Court is:—

(a) Is the defendant as representing the said College liable to be rated for the general tax leviable under section 140 (c) of the said Act in respect of the said three hostels or any one or more of them or any part or parts thereof, respectively, and if so which, or is he entitled to exemption from such tax by virtue of the provisions of section 143 of the said Act?

14. It is hereby provided and agreed between the said parties hereto that the liability or otherwise of the defendant as representing the said College, in respect to the payment of the *General Tax* both in future as well as in respect of the payment of the said sum of

Rs. 4,730-10-5 specified in clause 10 hereof shall be determined by the finding of the Court with respect to the aforesaid question as long as the present law remains in force.

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*Campbell* with him *Inverarity*, for the plaintiffs:— Resident students pay fees in excess of those paid by the non-resident students. Although the College authorities do not say expressly what the extra amount is paid for by the resident students and how far it covers, if not exceeds the actual cost, it is obvious that the greater part is paid by the students for the use and occupation of the rooms in the hostels. No doubt the College looks after the social, moral and physical welfare of the resident students. The College, however, never intended since its foundation to charge them for such supervision, which they offered free and voluntarily. The extra charge though not marked as “rent” is in the nature of rent, especially so in this case having regard to its amount which fairly represents rent. The onus will be on the defendant to establish facts warranting statutory exemption: see section 143 (2) (d). Hostels are not “exclusively” occupied for charitable purposes within the meaning of that section, because a Professor and other College officers are given residence. Their residence is for themselves and not for charitable purposes only. The Indian Universities Act, VIII of 1904, does not make residency a part of the scheme of education. The teachers may reside elsewhere: see section 21 (1) (f) of the last mentioned Act. It would be extraordinary to suppose that the College does not charge the resident students anything for the use and occupation of the hostels. In the case of teachers the defendant has failed to state exactly the circumstances in respect of their occupation of a portion of the buildings. Occupation by the teachers not being imperative, the same should be deemed to be a beneficial occupation

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on behalf of themselves : see *The King v. John Catt*<sup>(1)</sup> and *Oxford Rate*<sup>(2)</sup>. The College cannot claim exemption on mere sentiment of generosity as every exemption throws an additional burden on the rate-paying public : see *Commissioners of Inland Revenue v. Forrest*<sup>(3)</sup>. Nor can the College escape liability by merely showing their balance sheets of profit and loss : see *Regina v. Sterry*<sup>(4)</sup>.

*Mirza*, with *Setalvad* for the defendant :—The hostel is a charitable institution, being utilised for the advancement of education, and not for private residence : see *Commissioners for Special Purposes of Income Tax v. Pemsel*<sup>(5)</sup> : see also section 105 Indian Succession Act for enumeration of charitable objects and *Hall v. Derby Sanitary Authority*<sup>(6)</sup> and *The University of Bombay v. The Municipal Commissioner for the City of Bombay*<sup>(7)</sup>. Moreover, the hostel is erected and maintained in pursuance of the Indian Universities Act, 1904, section 21 (1) (c) and (f). As such it is an integral part of the Collegiate educational system. The extra fee of Rs. 23 paid by a student per term is not “rent” within the meaning of section 105 of the Transfer of Property Act. No relation of landlord and tenant is created. The extra fee paid by a student is in return for the facilities afforded to him for his physical, moral and social welfare. The College makes no gain from the hostel fees beyond making the building self-supporting. The residence of a Professor, Superintendent, Assistant Superintendent and peon must equally be regarded as a necessary part in the hostel system : see *Bent v. Roberts*<sup>(8)</sup> and see the judgment of the learned Chief Judge of the Small Causes, Bombay, on points similar to those

<sup>(1)</sup> (1795) 6 Durn. & E. 332.

<sup>(2)</sup> (1857) 8 El. & Bl. 184.

<sup>(3)</sup> (1890) 15 App. Cas. 334 at p. 352.

<sup>(4)</sup> (1840) 12 Ad. & Ell. 84.

<sup>(5)</sup> [1891] A. C. 531 at p. 583.

<sup>(6)</sup> (1885) 16 Q. B. D. 163.

<sup>(7)</sup> (1891) 16 Bom. 217.

<sup>(8)</sup> (1877) 3 Ex. D. 66.

in the present suit in *The Indo-British School v. The Municipal Commissioner of Bombay*<sup>(1)</sup>, and *Nusserwanjee Merwanjee Pandey v. The Municipal Commissioner, Bombay*<sup>(2)</sup>. The tax if levied will ultimately fall on the hostel students and hinder the advancement of education.

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KAJIJI, J.:—This is a case stated for the opinion of the Court under section 90 and Order XXXVI of the Code of Civil Procedure. The plaintiffs, who are the Municipal Commissioner and the Municipal Corporation for the City of Bombay, seek to recover from the defendant, who is the present Acting Principal of the Wilson College, municipal property taxes in respect of the buildings known as Hostels belonging to that College. The Wilson College is affiliated to the University of Bombay. Section 21 (1) of the Indian Universities Act, 1904, provides that a College applying for affiliation to an University must satisfy the Syndicate of the University, *inter alia*, “(c) that the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the Regulations, for the residence, in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students”; “(f) that due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in or near the College or the place provided for the residence of students.”

Under section 25 (1) and (2) (m) the Senate of an University is empowered with the sanction of the

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(1) Court Decisions and Legal Opinions on sections of the City of Bombay Municipal Act, 1912, Case No. 30, p. 112, compiled and printed by the Municipality of Bombay.

(2) *Ibid.* Case No. 31 at p. 116.

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Government to make regulations to provide *inter alia* for the residence and conduct of students, and the Senate of the Bombay University has accordingly made the following regulation, viz., "that each College shall provide residential quarters for such a percentage of its students as the Syndicate may from time to time approve." In order to satisfy the requirements of the provisions of section 21 (1) (c) of the Indian Universities Act, 1904, and pursuant to the above-quoted Regulation, the Wilson College has erected three buildings known as Hostels, two of which are in the College compound and the third in close proximity to the same, for the use of its students. The first is capable of accommodating thirty students, the second, forty-four students and the third, one hundred and twenty-six students. It appears that in addition to the students an European Professor and an Indian Superintendent reside in the first and second Hostels and an European Superintendent and an Assistant Superintendent reside in the third Hostel and that all these are on the staff of the College. In the second Hostel a peon is accommodated in the outer compound. The fees payable by students of the Wilson College in respect of each of the two terms in a year are as follows:—

1. Non-resident students, Rs. 48, and a sum of Rs. 3 as subscription towards the Gymkhana.

2. Resident students, the above sums of Rs. 48 and Rs. 3 and an additional fee—the average amount of which is about Rs. 23. Pursuant to section 140 (c) of the City of Bombay Municipal Act, 1888, the Municipal Commissioner has caused the three Hostels to be assessed for payment of the general tax as set out in paragraphs 8 and 9 of the case.

The defendant contends that the Wilson College is exempt under section 143 (1) (a) and (2) (d) of the City

of Bombay Municipal Act, 1888, from payment of the general tax in respect of the three Hostels. Section 143 (1) (a) and (2) (d) runs as follows :—

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“(1) The general tax shall be levied in respect of all buildings and lands in the city, except—

(a) Buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes ;

(2) The following buildings and lands or portions thereof shall not be deemed to be buildings exclusively occupied for public worship or for charitable purposes within the meaning of clause (a), viz. :—

(d) Those in respect of which rent is derived, whether such rent is or is not applied exclusively to religious or charitable purposes.”

Mr. Campbell for the plaintiffs has very fairly conceded that he is not going to contend that the fees paid by the resident students are rent within the meaning of sub-section (2) (d) of section 143 of the City of Bombay Municipal Act, 1888. The main contention of Mr. Campbell for the plaintiffs is that these three Hostels are not exclusively occupied for charitable purposes.

It seems to me that it would be better and certainly more convenient to divide for the purposes of argument Hostels into portions occupied by students, and portions occupied by the Professor, Superintendents and Assistant Superintendent. The plaintiffs contend that both these portions are rateable for payment of general tax as they are not exclusively occupied for charitable purposes within the meaning of section 143 (1) (a) of the City of Bombay Municipal Act. The onus to prove that they are so occupied is on the defendant. Let us, then, first consider the question of the portion occupied by students. From the statement of the case it appears that the resident students on an average pay Rs. 23 more per term than the non-resident students,

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Then the question arises: Are students tenants of the College? In my opinion they are clearly not; for none of the incidents relating to tenancy exist in a case like this. The students have to observe certain rules framed for regulating their conduct; they are liable to be turned out of their rooms at any time without notice and without refund of fees or part of fees. Certain restrictions are placed even on their user of the rooms in their occupation and it is evident that there would be no discipline if these students were regarded as regular tenants of the College and had their legal rights of tenants. I, therefore, hold that the extra sum paid by resident students is not paid as rent within the meaning of sub-clause (d) of section 143 (2) of the City of Bombay Municipal Act, but is an additional fee paid by them for the advantages derived by them and more attention paid to them for looking after their social, moral and physical welfare than the non-resident students of the College who pay a less fee.

Then the next question for consideration is—is the portion of the Hostels occupied by the students exclusively occupied for charitable purposes within the meaning of section 143 (1) (a)? It must be borne in mind that the words “charitable purposes” must not be taken in their popular sense and as it was held in the case of *The University of Bombay v. The Municipal Commissioner for the City of Bombay*<sup>(1)</sup> the words “charitable purposes” have acquired a technical meaning in the Presidency of Bombay and in that sense they include all purposes within the meaning of Statute 43, Eliz. C. IV. It is not disputed that the College is a charitable institution. Then, is the Hostel an integral part of the College as contended by Mr. Mirza for the defendant? In my opinion the Hostel

<sup>(1)</sup> (1891) 16 Bom, 217.

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cannot be considered a part of the College but must be regarded as a separate institution which every College must erect and maintain; for the Indian Universities Act, 1904, contemplates that the College authorities will provide accommodation in the College itself or in some convenient building near it for the residence of the students who are not living with their parents or guardians and for some members of the teaching staff in or near the College or the place provided for the residence of such students. Therefore, it is incumbent upon every College affiliated to the University to provide quarters for such students. Further, it is admitted that the Syndicate of the University requires the College authorities to submit periodically a statement of students for whom residence is provided in the Hostel. I must, therefore, hold that Hostels are erected and maintained by the College as part of the general educational scheme of the country and the object of the Hostel is the advancement of learning and it, therefore, falls within the general objects which are charitable and which are mentioned by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v. Pemsel*<sup>(1)</sup> and therefore the portions occupied by the resident students are exempt from taxation as they are exclusively occupied for charitable purposes within the meaning of section 143 (1) (a) of the City of Bombay Municipal Act.

Now as to the portion occupied by the Professor and Superintendents. On behalf of the plaintiffs it is contended that this occupation must be held to be a beneficial one and therefore rateable. Bearing in mind the fact that Hostels are provided for residence of students who do not reside with their parents or guardians and that the Indian Universities Act, 1904, section 21 (1) (c)

<sup>(1)</sup> [1891] A. C. 531 at p. 583.

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contemplates that the College authorities will perform the duty of supervising, looking after and taking care of students residing in the Hostel, how can a College discharge the duty imposed upon them by the Legislature except some one or so many of their teaching staff as are necessary, reside in the Hostel? That is why a Superintendent is given quarters in the Hostel for the proper discharge of the duties imposed upon him by the College authorities and as required by the Indian Universities Act. In my opinion it is absolutely necessary for the scheme of education that provision must be made for the residence of necessary members of the teaching staff to reside in the quarters provided for students. Residence for such members is compulsory for the scheme of education for the proper discharge of their duties. Materials and details are necessary to come to a definite conclusion as to whether more than one Superintendent are necessary for the proper supervision and physical welfare of students or that the portions now occupied by a Professor and Superintendents are absolutely necessary for that purpose or that any portion of such quarters is used for any other purpose. These are considerations necessary to determine the question before the Court: *Bent v. Roberts*<sup>(1)</sup> and the case of *Oxford Rate*<sup>(2)</sup>. Mr. Mirza for the defendant offered to adduce evidence by calling the defendant but the plaintiffs' counsel would not agree to this course being adopted and it is settled practice that where a special case is stated by consent it can only be re-opened by mutual consent: *Hamilton, Fraser & Co. v. Staley, Radford & Co*<sup>(3)</sup>.

On the materials before me it appears that in the first Hostel there is accommodation for thirty students and in

<sup>(1)</sup> (1877) 3 Ex. D. 66.

<sup>(2)</sup> (1857) 8 El. & Bl. 184.

<sup>(3)</sup> (1884) Solicitors' Journal, 478.

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the second, for forty-four and that although these are regarded as two buildings it is really one, as there is inter-communication between them, and the third hostel has accommodation for one hundred and twenty-six students. I, therefore, hold, on the materials before me, that the premises occupied by one Superintendent for the first and second Hostels and the premises occupied by one Superintendent in the third Hostel and the portion occupied by the peon in the outer compound are necessary for the discharge of their duties of supervision and physical welfare of students as required by section 21 (1) (c) of the Indian Universities Act and are exempt from taxation, under section 143 (1) (a). As to the portions occupied by the Professor and the other Superintendents or Assistant Superintendents, I have no evidence to show what the terms of their employment are or what their duties are such as to make their presence on the premises absolutely necessary for educational purposes and for the due performance and proper discharge of the duties imposed upon them by the College; and, therefore, the portions occupied by them will, under the circumstances, be liable for taxation, but I will give liberty to the defendant to prove when occasion arises that the terms of their employment and their duties are such as to make their presence on the premises absolutely necessary and that the portions occupied by them are necessary and are exclusively occupied for that purpose.

Therefore, the answer to the question submitted is that the defendant as representing the Wilson College is liable to be rated for the general tax leviable [under] section 140 (c) of the City of Bombay Municipal Act, in respect of the parts of the Hostels occupied by persons other than the students and one Superintendent in the first and second Hostel and one in the third Hostel and the peon. Each party to bear its own costs.

1918.

Solicitors for the plaintiffs : Messrs. *Crawford, Bayley & Co.*

MONIE

v.

SCOTT:

Solicitors for the defendant : Messrs. *Mirza, Mirza & Mangaldas,*

G. G. N.

## CRIMINAL APPELLATE.

*Before Mr. Justice Heaton and Mr. Justice Hayward.*

EMPEROR v. WAMAN DINKAR KELKAR AND ANOTHER.\*

1918.

July 3.

*Criminal Procedure Code (Act V of 1898), section 476—Revenue appeal heard by Assistant Collector—Direction to prosecute a party to the appeal as well as a third person implicated in the offence though not a party, to the appeal—Preliminary inquiry conducted in part by the Assistant Collector and completed by the Criminal Investigation Department—Direction to prosecute need not be a part of the revenue appeal or its continuation.*

Accused No. 1, a Mamlatdar, having decided a revenue case brought by accused No. 2, an Inamdar, against his tenants to recover rent, appeals were preferred from the decision to the Assistant Collector. The appeals were decided on the 18th July 1916 by the Assistant Collector, who having suspected the genuineness of a Kabulayat produced in the case proceeded, on the 28th July 1916, to call for an explanation of the Inamdar and on the 10th October 1916 obtained a report from the Mamlatdar. The Assistant Collector perused the explanation and the report, but as he considered the matter serious and demanding further inquiry, he applied on the 7th March 1917, for assistance of the Criminal Investigation Department from the District Magistrate. The assistance was given and inquiry made by the Police. On receipt of the report from the Police, the Assistant Collector passed, on the 2nd July 1917, an order referring the matter for inquiry to the nearest First Class Magistrate under section 476 of the Criminal Procedure Code. The Magistrate committed the accused to the Sessions Court, where on trial held they were convicted and sentenced. On appeal to the High Court, it was contended, (1) that even if the offence was brought under the notice in the judicial proceedings of the Assistant Collector as regards the Inamdar, it was not brought to his notice as regards the Mamlatdar; (2) that the whole of the preliminary inquiry ought to have been made by the Assistant Collector and that he was *functus officio* as

\* Criminal Appeals Nos. 36 and 37 of 1918.