the present suit. This view is also in accordance with that taken by Mr. Justice Divatia in *Rama Maruti* v. *Mallappa Krishna.*[1]

The plaintiff's claim must consequently fail. I, therefore, agree with my learned brother that the appeal should be dismissed with costs.

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RANGAPPA KELVADEPPA v. RINDAWA VASAN-GOWDA

Chainani J.

Appeal dismissed.

M. W. P.

APPELLATE CRIMINAL

FULL BENCH

The Hon'ble Mr. M. C. Chagla, Chief Justice, Mr. Justice Dixit, and Mr. Justice Shah.

TOLARAM RELUMAL AND ANOTHER *v.* STATE OF BOMBAY.*

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Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), ss. 18 (1), 5 (8), 6—Receipt of premium by landlord in consideration of agreement to grant lease—Liability of landlord for penalty under s. 18—"In respect of," meaning of—Some connection between grant of lease and receipt of premium sufficient—Penal statute—Rules of construction.

Where a landlord receives a premium in consideration of an agreement to grant a lease in future of certain premises under construction, the lease to come into force on the completion of the premises, the receipt of the premium, though not simultaneous with the grant of the lease, is still *in respect of* the grant of a lease within the meaning of s. 18 (*1*) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and the landlord is liable to be convicted under the section.

The expression "in respect of" has the widest connotation; it means in its plain meaning "connected with or attributable to." Therefore, it is not necessary that the receipt of the premium should be simultaneous with the grant of the lease. So long as some connection is established between the grant of the lease and the receipt of the premium by the landlord, the provisions of the section would be satisfied. Such a nexus is present in a case where the landlord accepts a premium for the purpose of granting a lease in future.

If two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than one which imposes a penalty. The principle of construing a statute in order to suppress a mischief and to advance the object of the legislation does not apply to a penal statute. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. A penal statute must be construed according to its plain, natural and grammatical meaning.

* Criminal Appeal No. 592 of 1952.

[1] (1942) 44 Bom. L. R. 678.

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Howell v. *Falmouth Boat Construction*,[1] and *Nokes* v. *Doncaster Amalgamated Collieries Ltd.*,[2] referred to.

CRIMINAL APPEAL from the order of conviction and sentence passed by M. J. Gordhandas, Esquire, Presidency Magistrate, 19th Court, Bombay.

Tolaram Relumal and Radhakisan Tolaram (accused Nos. 1 and 2 respectively) were the owners of Jai Hind Mansion situated at Bombay. On November 23, 1950, while the building was still under construction, the two accused through one Mathuradas (accused No. 3) received Rs. 2,400 as premium and Rs. 75 as deposit for one month's rent from Shankar Das Gupta (complainant) in respect of block No. 15 in the building which was intended to be leased to the complainant after the building was completed. A receipt for Rs. 75 was issued to the complainant "subject to the existing laws of Rent Controller in force" and it was orally agreed between the parties that the block should be leased to the complainant when it was ready for occupation.

Upon these facts the accused were charged with having committed an offence under s. 18 (*1*) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, while one Roshanlal (accused No. 4) who had assisted the first three accused in receiving the said amount from the complainant, was charged with abetting the commission of the offence.

The learned Magistrate found accused Nos. 1, 2 and 3 guilty of the offence. He, therefore, sentenced accused Nos. 1 and 2 each to two months' R. I. and a fine of Rs. 1,200, in default to suffer six weeks' R. I. Accused No. 3 was sentenced to one day's S. I. and a fine of Rs. 100, in default to suffer one month's R. I. Accused No. 4 was acquitted.

Accused Nos. 1 and 2 appealed to the High Court.

The appeal was heard on October 8, 1952, by a Bench consisting of Gajendragadkar and Chainani JJ. when their Lordships referred the matter to a Full Bench. The referring judgment ran as follows:—

Gajendragadkar J.—This is an appeal against the order passed by the Presidency Magistrate, 19th Court, convicting the two appellants of the offence under s. 18 (*1*) of Bombay Act LVII of 1947 and sentencing them each to rigorous imprisonment for two months and a fine of Rs. 1,200 in default rigorous imprisonment for six weeks. The prosecution case was that the two appellants were the owners of Jai Hind Mansion situated

[1] [1951] 2 All. E. R. 278. [2] [1940] A. C. 1014.

at Sitaldevi, Bombay, and on November 23, 1950 as such owners they received through Mathurdas from the complainant Shankar Das Gupta Rs. 2,400 as premium as a condition for the grant of the lease of Block No. 15 in the said premises. The two landlords and Mathurdas were, therefore, charged with having committed an offence under s. 18 (*1*) of Bombay Act LVII of 1947, while Roshanlal, who had assisted the three accused in receiving the said amount from the complainant, was charged with the commission of the said offence under s. 18 (*1*) read with s. 109 of the Indian Penal Code. The learned Magistrate has found that the charge against accused Nos. 1 to 3 has been proved, but not against accused No. 4. That is why he has convicted accused Nos. 1 to 3 and has acquitted accused No. 4.

At the hearing of this appeal Mr. Lulla has, no doubt, challenged the findings of fact recorded by the learned Magistrate against his clients. But during the course of his arguments he contended that even if it is held that his clients had accepted Rs. 2,400 from the complainant as alleged by the prosecution, they cannot be said to have committed the offence under s. 18 (1) of Bombay Act LVII of 1947. His argument is that though they may have received Rs. 2,400 from the complainant, the said amount cannot, in law, be held to be a premium in respect of the grant of a lease. Mr. Lulla has fairly invited our attention to the fact that the point of law which he thus seeks to raise before us is covered by two decisions of this Court in *Mahadeo Shridhar Chandankar* v. *The State*[1] and *Jedhasing J. Uttamsingh* v. *S. M. Bhatt.*[2]. Both these judgments have been delivered by Bavdekar J. and my brother Chainani, and Mr. Lulla's contention is that at the time when these judgments were delivered some aspects of the question were not placed before the learned Judges and some decisions which have taken a contrary view were not cited before them. The learned Government Pleader then suggested that the point sought to be raised by Mr. Lulla was of some importance and if we felt that the two decisions which are against Mr. Lulla's contention should be reconsidered, it would be better if we refer this point to a larger Bench. That is why we propose to indicate the rival contentions urged before us and refer the matter to a Full Bench.

In dealing with the point as to whether the appellants could be said to have received the amount in question in respect of the grant of a lease, it is necessary to mention some facts which are proved in this case. At the time when the complainant is alleged to have paid Rs. 2,400 to the landlords, the building Jai Hind Mansion had not been completed. Block No. 15 in this building which was intended to be leased to the complainant is situated at the south-west corner on the second floor of this building. It consists of two rooms, one small room, a bath room and a latrine. As the panchanama Exhibit K shows,

"The windows and doors of the flat are not closed up and not painted. The wall is plastered as also the flooring ready for occupation. The

[1] (1950) Cri. Rev. Appn. No. 1178 of 1949, decided by Bavdekar and Chainani JJ., on Jan. 25, 1950 (Unrep.).

[2] (1951) Cri. Rev. Appn. Nos. 46, 47 and 48 of 1951 decided by Bavdekar and Chainani JJ., on March 29, 1951 (Unrep.).

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galleries are being constructed. The electric fittings are on, but the latrine and water connections are not on. The stair-case of the building is nearing completion, and the outer portion of the building is being plastered and the building constructed up to three floors above the ground floor."

In his statement before the learned Magistrate accused No. 1 had contended that the premises were still under construction and that there could be no letting of such premises. The complainant himself admitted that the construction of the premises had not been completed in that the doors and windows were not there at the time when he paid the amount. He has further admitted that he "was not put in possession because the rooms were not ready". There is no doubt that the electric and water connections had not been obtained and the doors and windows had not been fixed up. It is true that on the date in question, besides Rs. 2,400 which the complainant is alleged to have paid to the landlords, he also paid Rs. 75 as deposit of one month's rent and obtained a receipt for the same. The receipt purports to say that it was issued "subject to the existing laws of Rent Control in force". We, therefore, hold that after this deposit was made the complainant did not seek to obtain and the landlords did not offer to give possession of the flat in question because it was agreed between them that the possession should be given after the building had been properly completed. We may, however, assume that the question as to whether the landlords are guilty under s. 18 (*1*) must at this stage be considered on the basis that the landlords received Rs. 2,400 as premium and that they were paid Rs. 75 as a deposit for the rent of the flat in question and it was agreed between the parties that the landlords should deliver possession of the flat after the building was completed. The question which thus arises is whether in respect of an incomplete building the landlords can be said to have granted a lease to the complainant within the meaning of s. 18 (*1*) of Bombay Act LVII of 1947.

Section 18 (*1*) provides that:

"If any landlord either himself or through any person acting or purporting to act on his behalf.....receives any fine, premium or other like sum or deposit or any consideration other than the standard rent..... in respect of the grant, renewal or continuance of a lease of any premises"

such landlord or person shall be punished in the manner indicated in the section. In other words, the money must be received by the landlord in respect of the grant of a lease. The section refers to "the grant, renewal or continuance of a lease." *Prima facie,* the grant of a lease must be a grant *in presenti;* it would not cover an executory agreement to grant a lease. The words "renewal or continuance of a lease" clearly suggest that it must be a renewal or continuance of a subsisting lease. In the context, grant of tenancy means the grant of new and initial tenancy; renewal of tenancy means the grant of tenancy after its termination; and continuance seems to contemplate continuance of a tenancy which is existing. Whether or not there is a grant of a lease would always depend upon the intention of the parties. When the agreement is reduced to writing, the intention is to be gathered from

the words used in the agreement. If the words clearly indicate a present demise, it amounts to a grant of a lease even though the leasehold interest may commence at some future date. Section 5 of the Transfer of Property Act speaks of a transfer either in present or in future; but in a case where the transfer of leasehold interest has to operate as from a future date, the words used in the document must clearly indicate that they create an immediate right in the party to become a tenant as from the said future date. If all the terms of the tenancy are agreed and the right is created in favour of the tenant *in presenti* the mere fact that the parties contemplate to execute a formal rent note in future would not make the agreement between the parties executory. Therefore, in dealing with documents relating to leases it is always a matter of construction of the words used with a view to find the real intention of the parties. In the present case no document has been executed, but on the oral evidence it is evident that the landlord was not liable to give and the tenant was not entitled to obtain possession of the premises until the construction of the building was completed and the flats had become ready for occupation. In such a case it would appear that the relationship of landlord and tenant between the parties cannot be said to arise *in presenti*. While dealing with s. 105 of the Transfer of Property Act the commentator in Mulla's book observes:

"...in spite of words of present demise the instrument will be construed as executory if the terms are not settled, or if before granting the lease the lessor has to do work of completion, or improvement." (Third Edn. p. 642.)

The principles which apply to a written instrument would apply with equal force to an agreement which is proved by oral evidence. Section 18 refers to the party who receives the payment as a landlord and the person who makes the payment as the tenant. If the possession of the flat was not intended to be given to the complainant until it was completed and became ready for occupation, it would be difficult to hold that the relationship of landlord and tenant came into existence between the accused and the complainant on the date when the money was paid. Section 5 (*3*) defines "landlord" as meaning "any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises." Now, in respect of the premises in question the accused would not receive and would not be entitled to receive the rent unless and until they gave possession to the complainant. Similarly, the complainant would not be a tenant within the meaning of s. 5 (*11*) because until he went into possession of the flat he cannot be described as a person by whom or on whose account rent is payable for the said premises. Section 18 (*1*) incidentally refers to the standard rent because if the landlord receives any amount other than the standard rent he renders himself liable to be punished under the said section. And the expression "standard rent" also seems to suggest that the premises in respect of which the said expression is used must have been actually let to the tenant. It has been argued by the learned Government Pleader that the words "in respect of" are wide enough to include even an executory agreement of lease. He contends that the words "in respect of" have been deliberately used by the Legislature with the object of covering even an executory agreement of lease. His argument is that if it was intended to apply the provisions of s. 18 (*1*) merely to the

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grant of a lease *in presenti*, Legislature would have said "for the grant of a lease"; the object of using the words "in respect of" is to make the scope of s. 18 (*1*) wide enough to include not only the actual grant, renewal or continuance of a lease, but even the executory agreements in respect of them. In support of this contention he has invited our attention to the decisions in *Seaford Court Estates Ld.* v. *Asher*,[1] and *Asher* v. *Seaford Court Estates Ld.*[2] We are prepared to assume that the expression "in respect of" means "attributable to", and in that sense is wider than the word "for". But we do not see how the use of this expression would cover the case of an executory agreement of lease; if the prohibited payment is made not directly for the grant of a lease but indirectly, the use of the words "in respect of" would cover that payment. In other words, if some connection could be established between the prohibited payment and the grant, renewal or continuance of a lease, it would fall within the mischief of s. 18 (*1*) in spite of the fact that the connection between the two is not direct or immediate. But the payment must be for the grant of a lease, and, in the context, the grant of the lease must be the grant of the lease *in presenti*.

The position with regard to the rules of construction in such cases is not in doubt, though the application of these rules frequently presents difficulties. The first rule of interpretation is that we must give the words used in the section their plain, literal and grammatical meaning. If the words used are capable of only one construction, Courts must adopt that construction and the argument that such a construction would be inconsistent with the hypothetical intention or object of Legislature is in such cases irrelevant. The other rule of construction is that if the words used are capable of two constructions, it would be legitimate to adopt such a construction as would be consistent with and as would give effect to the intention of the Legislature. In such cases the question of the intention and object of the Legislature is relevant. This rule, however, is usually inapplicable when we are dealing with criminal statutes. In interpreting sections which create penalties, the ordinary rule is that if the words used in the section are capable of two constructions we must adopt the construction which does not involve the imposition of the penalty. The principle that in construing statutes Courts must assist the suppression of the mischief and advance the remedy has to be applied with caution in dealing with penal statutes. At this stage I may conveniently refer to some of the English decisions which have been cited before us.

In *Nokes* v. *Doncaster Amalgamated Collieries, Ld.*[3] the House of Lords had to consider s. 154 of the Companies Act, which was capable of two constructions. Their decision was that when there is an amalgamation of two companies, a contract of service existing at the date of the amalgamation between a workman and the transferor company does not automatically become a contract of service between the workman and the transferee company. While dissenting from the contrary view which had been previously taken by the Court of Appeal, Viscount Simon L. C. observed that "if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we

[1] [1949] 2 K. B. 481 at p. 496. [2] [1950] A. C. 508.
[3] [1940] A. C. 1014.

should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result". The learned Government Pleader has strongly relied upon this passage.

In *London and North Eastern Ry. Co.* v. *Berriman*,[1] the House of Lords had to consider r. 9 of the Prevention of Accidents Rules, 1902. The particular words in r. 9 which had to be construed were: "for the purpose of relying or repairing the permanent way". The workman whose claim had given rise to this point was working in a group of four persons whose duty was to look after the apparatus connecting signal boxes with signals and points in a particular area. This work included the routine oiling of the apparatus. And the question which arose for decision was whether this routine work could be said to be included in the word "repairing". Lord Macmillan held that it was not included in the said word, and in coming to this conclusion he observed:

"...it must be borne in mind that while the statute and rule have the beneficent purpose of providing protection for workmen, their contravention involves penal consequences under s. 11 of the Act. Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

The same view was again expressed in *Howell* v. *Falmouth Boat construction*.[2] In this case the word "licence" as used in Reg. 55 (*1*) of the Defence (General) Regulations, 1939, and the order of 1940 had to be considered, and the question was whether the word "licence" means a licence in writing. Lord Simonds came to the conclusion that on the true construction of the relevant order the word "Licence" must mean "Licence in writing", and he added:

"If, having given the matter the best consideration I could, I remained in doubt. I should think it proper to apply to this case also the principle applied in *London and North Eastern Ry. Co.* v. *Berriman*.[1]

And he summed up the rule in the phrase that "a man should not be put in peril on an ambiguity". With respect, we would like to add that it would be impossible to express this view more briefly and more eloquently. Mr. Lulla has naturally relied on this view. It is clear that s. 18 (*1*) imposes a penalty on the landlord and is thus a penal provision. Mr. Lulla's contention is that the words "grant of a lease" should be construed as meaning the grant of a lease *in presenti*, even though the said words were capable of the construction for which the learned Government Pleader has contended.

The legal position with regard to an agreement of lease in respect of an incomplete building was considered by Mr. Justice Pratt in *Sir Mahomed Yusuf* v. *Secretary of State*.[3] In this case correspondence had taken place between the first defendant, who was constructing a building called the Sutar Chawl, and the Presidency Post Master, who was looking for premises for a new post office for the Jumma Masjid branch, and the point which arose for decision was whether the said

[1] [1946] A. C. 278 at p. 295. [2] [1951] 2 All. E. R. 278.
[3] (1920) 45 Bom. 8.

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correspondence amounted to an agreement of lease within the meaning of s. 17 of the Indian Registration Act. Section 2 (7) of the Registration Act defines a lease as including an agreement of lease, and s. 17 (1) (d) requires that leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, must be registered. The correspondence between the parties showed that the building had not been completed, but it was expected that the place would be ready for occupation by April 1, 1915. By this day, however, some of the work had yet to be done. The counters were not varnished, the shelves were not put up and the electric lights were not installed. Even so, the Post Office went into occupation on April 1, 1915, and by reason of such occupation the relationship of landlord and tenant did arise between the parties as from that date. Mr. Justice Pratt held that the correspondence between the parties which had otherwise settled all the terms for the creation of tenancy was an executory agreement and it did not amount to an agreement of lease within the meaning of s. 17 of the Registration Act. The learned Judge referred to *Gore* v. *Lloyd*,[1] and *Pinero* v. *Judson*,[2] and he held that the correspondence which showed that some work had yet to be done by the owner of the property was not an agreement of demise but an agreement to demise at a future date on the performance of certain conditions. On that view it was held that s. 49 of the Registration Act did not come into operation and the correspondence was admissible in evidence. This decision was challenged in appeal. At the time when the appeal was argued the question as to the admissibility of the correspondence was covered by a decision of the Privy Council in *Hemanta Kumari Debi* v. *Midnapur Zamindari Company*,[3] which had been delivered in the meanwhile. This decision of the Privy Council supported Mr. Justice Pratt's conclusion. Therefore, when the appeal was argued it was conceded by the appellant that so far as Indian Courts were concerned the question must be deemed to have been settled by the decision of the Privy Council. It would, therefore, be useful to refer at this stage to the decision of the Privy Council in *Hemanta Kumari Debi's* case

The question which the Privy Council had to consider was similar to the one which had been raised before Mr. Justice Pratt. It was about the admissibility of a petition which had set out the terms of an agreement in compromise of a suit between the parties. This agreement provided that the plaintiff would grant to the defendants a lease of a certain land upon specified terms if she succeeded in another suit which she had brought to recover the said land. And the argument was that this petition was an agreement of lease which had to be registered under s. 17 (1) (d) and since it had not been so registered it was inadmissible in evidence. In repelling this argument Lord Buckmaster observed that the said agreement was (p. 245):

"an agreement that, upon the happening of a contingent event at a date which was indeterminate and, having regard to the slow progress of Indian litigation, might be far distant, a lease would be

[1] (1844) 12 M. & W. 463 at p. 478.

[2] (1829) 6 Bing. 206 at p. 210.

[3] (1919) L. R. 46 I. A. 240.

granted. Until the happening of that event it was impossible to determine whether there would be any lease or not. Such an agreement does not, in their Lordship's opinion, satisfy the meaning of the phrase "agreement to lease", which, in the context where it occurs and in the statute in which it is found, must in their opinion relate to some document that creates a present and immediate interest in the land."

Mr. Lulla has strongly relied upon these observations and he has contended that this view had not been cited before Mr. Justice Bavdekar and my brother Chainani when they decided the two criminal revision applications to which I have already referred.

In this connection the learned Government Pleader has invited our attention to a decision of the Madras High Court in *Mopurappa* v. *Ramaswami Gramani.*[1] In this case the Court was dealing with an oral agreement made on July 13, 1931, by which A had agreed to give to B a lease of property for three years commencing from October 1, 1931, at a fixed monthly rent. At the time when the agreement was made B was in possession of the said property under a previous tenancy agreement which was to terminate on September 30, 1931. When the second agreement was entered into two months' rent was also paid by B in advance and all the terms had been finally settled. However, the parties had further agreed that a formal deed should be executed at a later date and this deed was ultimately not executed. The question which arose for decision was whether the oral agreement of July 13, 1931, amounted to a present transfer of an interest in immoveable property within the meaning of s. 105 of the Transfer of Property Act, and if yes, whether it was necessary that it should be evidenced by a registered instrument under s. 107 of the said Act. It was held that the agreement did amount to a transfer and had to be by a registered instrument. It would be noticed that this case is clearly distinguishable on the facts. On July 13, all terms of tenancy had been agreed upon and it was found that a present transfer of the interest in immoveable property had taken place. Such a transfer does amount to the creation of tenancy rights within the meaning of s. 105 of the Transfer of Property Act. It may, however, be pointed out that Chief Justice Beasley has, at page 765, cited the observations of Baron Alderson in *Gore* v. *Lloyd,*[2] and has in fact applied the tests laid down in these observations. The agreement with which Baron Alderson was dealing was an agreement that there shall be under certain circumstances at some future time, if certain things be done, a demise, and the conclusion reached was that it was not a demise *in presenti.* As I have already indicated Mr. Justice Pratt had based his conclusion principally upon the decision in *Gore* v. *Lloyd.*

At this stage I may conveniently refer to the statement of the law on this subject in Halsbury:

"An instrument is usually construed as a lease if it contains words of present demise; and although it is called an agreement, and contains a stipulation for the subsequent granting of a formal lease, it is construed as a lease if the essential terms are fixed; especially if possession is to be taken under it, and if the covenants which would be

[1] (1933) 57 Mad. 760. [2] (1844) 12 M. & W. 463.

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inserted in the lease are to be binding at once. It is construed as an executory agreement, notwithstanding that it contains words of present demise,.....where certain things have to be done by the lessor before the lease is granted, such as the completion, or repair, or improvement of the premises, or by the lessee, such as the obtaining of sureties." (Halsbury's Laws of England, Second Edition, Vol. 20, pp. 37-39).

It would thus appear that in dealing with the question as to whether a grant of lease has been made or not one important test would be whether a present right is created in favour of the tenant; if such a right is created, it would not materially affect the relationship between the parties if the tenant is to take possession on some specified future date. It may be possible that even in regard to an incomplete building such a right may be created. Owing to the scarcity of living room a tenant may choose to get into occupation of an incomplete flat and if the agreement between him and his landlord is that he gets into occupation even though the building is incomplete, the relationship of landlord and tenant may arise between them as from the time that he enters into occupation. As I have already mentioned, it would always be a question of the intention of the parties. The word "premises" as defined in Bombay Act LVII of 1947 may be wide enough to include an incomplete building. There can be incomplete buildings in different ways. The whole structures may be ready, but additional amenities may not have been introduced in the building, such as fittings of gas or even electricity; and as I have just mentioned a tenant may be willing to get into the building without such additional amenities. But in the present case the work which still remained to be done was so important that both the parties agreed that the complainant should get into possession after the said work was completed. In such a case unless the building is completed the tenant has no right which can be enforced in a court of law. If the landlord finds it impossible for any reason to complete the building, what is the right which an intending tenant can enforce against him. Therefore, in our opinion, there is considerable force in the contention urged by Mr. Lulla that in the present case even if it be held that the accused had received Rs. 2,400, in the circumstances to which I have already referred that would not bring them within the mischief of s. 18 (*1*), because there has been no grant of a lease at all. There is only an agreement that the landlord would lease to the complainant a particular flat after the building has been fully and properly completed. It does appear that s. 18 (*1*) does not bring within its mischief executory agreements of this kind.

A contrary view has, however, been taken by Bavdekar J. and my brother Chainani. In *Mahadeo Shridhar Chandankar* v. *The State*, my brother Chainani, who delivered the Judgment of the Bench, has relied upon the principle that the Court should adopt such a construction of the words in s. 18 as would suppress the mischief and advance the remedy. He also referred to the very wide definition of the word "premises" contained in the Act and he held that the payment made by the complainant to the accused did come within the mischief of s. 18 (*1*), even though the agreement between the parties was that the lease was to commence after the building was ready for occupation. In

the other group of criminal revision applications which was heard by Bavdekar J. and my brother Chainani, the Judgment was delivered by Mr. Justice Bavdekar, who in substance has affirmed the view which had been taken by him and my brother Chainani on the earlier occasion. My brother Chainani agrees that the points which have been urged before us by Mr. Lulla were not then placed before them and the contention of Mr. Lulla that the earlier view should be reconsidered should not be summarily rejected. It may be pointed out that this Court had acting on similar considerations construed the word "relinquishment" occurring in s. 19 of the same Act liberally and in non-technical sense. But the Supreme Court has recently reversed the said view (*W. H. King* v. *Republic of India*).[1] We would, therefore, refer to a Full Bench the following question:

"If as owners of an incomplete building the appellants accepted Rs. 2,400 from the complainant in respect of an agreement between them that the appellants were bound to give and the complainant was entitled to take possession of flat No. 15 in the said building as soon as the said building was completed on the agreed rent of Rs. 75 per month, did the acceptance of Rs. 2,400 by the appellants fall within the mischief of s. 18 of Bombay Act LVII of 1947?"

If this question is answered by the Full Bench in favour of the accused, their appeal will have to be allowed without considering any further facts. If, however, the Full Bench decides this issue against the accused, the appeal will have to go back before a Division Bench doing criminal work and the other points which Mr. Lulla wants to raise against the judgment of the learned Magistrate will have to be considered.

The reference was heard by a full bench consisting of Chagla C. J. and Dixit and Shah JJ. on January 27, 1953.

B. H. Lulla, and *N. B. Lulla,* for the accused.

H. M. Choksi, Government Pleader, for the State.

B. H. Lulla. There are three ingredients of s. 18 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, viz. (1) grant of a lease, (2) existence of premises. and (3) existence of a landlord. None of these three ingredients were present on the date of the offence.

Firstly, the payment of premium must be contemporaneous with the lease. The section refers to receipt of premium in respect of the grant of a lease. There must be simultaneous demise with the receipt of the premium. Mere contract to grant a lease is not within the contemplation of the section. And that is so for obvious reasons. I may not be the owner of the building when it will have been completed or the building may not be completed at all, and the receipt of the pre-

[1] (1952) 54 Bom. L. R. 435.

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mium by me for merely agreeing to grant a lease, if and when the building is completed, has no relationship to the actual lease that I may grant on the completion of the building. Unless the grant is *in presenti* the receipt of the premium is not in respect thereof. The material words of the section are "in respect thereof" and they connote close connection between the two transactions. The two transactions must take place simultaneously. The Legislature is dealing with actual leases and not contracts.

[Dixit J. "In respect thereof" means "in connection with". Is not taking of premium connected with the intended grant of the lease ?]

There can be no connection with a thing which is not in existence at all. The immediate object of receiving the premium is the agreement to grant a lease. The lease itself may or may not come into force. At the most it can be said that the distant object of the parties was to grant a lease, but the section is not concerned with that remote object.

[C. J. The provisions of the section will be satisfied if there is some nexus between taking of premium and the grant of the lease.]

This is a penal section and it must be construed very strictly. The Legislature has intentionally used the words "grant of a lease" and not "agreement to grant a lease". Sub-s. (*3*) was added subsequently to guard against a laccuna regarding agreements made before 1940, but that amendment is not intended to include agreement to grant lease within the mischief of sub-s. (*1*).

[C. J. Sub-s. (*3*) provides only an exception. Every other payment than the one mentioned in it comes within the mischief of the section. The governing words are to be found in sub-s. (*1*), and those words, viz. "in respect thereof" aim even at an agreement of lease in future.]

Those words make it necessary that the action of the landlord should be immediately connected with his granting of the lease.

This argument is re-inforced by what is contained in s. 6. According to that section, Part II of the Act in which s. 18 is to be found applies only to premises let. "Let" I submit is used in the sense of actually let.

[C. J. The words "actually" are not there in the section.]

The section refers to premises let and not to those which are intended to be let. The Legislature had advisedly refrained from using the words "intended to be let" which it has used in the Bombay Land Requisition Act, 1948 [Refers to s. 4 (*3*) of that Act and *The State of Bombay* v. *Virendra* (1950) 52 Bom. L. R. 627, 635]. The Legislature is thinking here of the actual demise. In s. 5 (*8*) where premises are defined, the word in reference to a building means any building or part of it separately let. Again turning to the preamble of the Act, the Act is intended to consolidate the law relating to the control of rents and repairs of premises. This can only be after the premises are constructed and let out. First there must be premises, then those premises must be let, and the receipt of premium must be in respect of that letting.

Lastly, I submit that the receipt of premium must be by a landlord. The word "landlord" which is defined in s. 5 (*3*) means a person receiving or entitled to receive a rent. Rs. 75 were received by me not as rent paid in advance but merely by way of deposit. The expression "rent paid in advance" has been construed in In re *Chief Controlling Revenue Authority* (1951) 53 Bom. L. R. 1006, 1008. I may not remain the landlord of the building when it is completed, and in that event I shall not be entitled to receive any rent. Nobody is entitled to receive rent of a building which is yet to be completed. I had no capacity of a landlord at the date of the offence.

H. M. Choksi. The intention of the Legislature is to stop the evil of premium in all forms and at all stages of construction of buildings. That is why sub-s. (*3*) emphasises the fact that payments other those mentioned therein will fall within the mischief of the section.

[C. J. Sub-s. (*3*) cannot import what is not there in sub-s. (*1*)].

The words "in respect thereof" in sub-s. (*1*) are of very wide import. They are wider than words such as "for" or "as a condition of" or "in consideration of". In respect of is a very comprehensive expression, and it equivalent to "attributable to". See *Asher* v. *Seaford Court Estates Ltd.* (1950) A. C. 508, 526.

There can be a present demise even if the leasehold interest is to commence in future. See Mulla's Transfer of Property Act (3rd ed.) p. 642. Sub-s. (*3*) re-inforces the argument that a lease includes an agreement to lease.

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B. H. Lulla, in reply. If a penal statute is capable of two interpretations, then the Court will lean in favour of one which exempts the subject from penalty. The Court will not give wider interpretation to the words beyond their plain meaning.

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Chagla C. J. The two accused were convicted by the learned Presidency Magistrate, 19th Court, for having committed an offence under s. 18 (*1*) of Bombay Act LVII of 1947 and sentenced to two months' rigorous imprisonment and a fine of Rs. 1,200 and in default rigorous imprisonment for six weeks. The two accused preferred an appeal to this Court and the appeal came before the Criminal Bench and that Bench has referred a question of law that arises out of this appeal to a full bench.

The facts briefly are that the two accused on November 23, 1950, received a deposit of Rs. 75 from a prospective tenant and the tenant also paid, according to the case of the prosecution, a sum of Rs. 2,400 as premium. The premises which were to be demised to the tenant consisted of a flat on the third floor of the building, and the Division Bench has found as a fact that this flat was not ready for occupation. Further, when the deposit was made and when, as alleged by the prosecution, the premium was paid, the tenant did not seek to obtain possession and the landlords did not offer to give possession of the flat in question because it was agreed between them that the possession should be given after the building had been properly completed.

The question that has been submitted to us is whether

"if as owners of an incomplete building the appellants accepted Rs. 2,400 from the complainant in respect of an agreement between them that the appellants were bound to give and the complainant was entitled to take possession of flat No. 15 in the said building as soon as the said building was completed on the agreed rent of Rs. 75 per month, did the acceptance of Rs. 2,400 by the appellants fall within the mischief of s. 18 of Bombay Act LVII of 1947?"

In the first place, it is necessary to consider whether this agreement entered into constituted a lease as defined by law. It is not disputed that the agreement is an oral agreement, and turning to s. 107 of the Transfer of Property Act it is clear that where you have an oral agreement, delivery of possession is necessary before a lease could be made. Therefore the interesting question which has been discussed in the referring judgment as to whether the agreement arrived at between the

landlord and the tenant in the case before us constituted a present demise or not, in our opinion, with respect to the learned Judges, does not arise for consideration in this appeal. Once we have the admitted fact that there was an oral agreement between the landlord and the tenant, unless delivery of possession was given to the tenant there could be no lease, and it is again an admitted fact that no delivery of possession was given to the tenant. Indeed, under the circumstances of the case, no delivery of possession could be given because the premises were not ready for occupation or enjoyment. Therefore, what the landlord received as a premium was not for the grant of a lease because there being no lease it could not be said that the landlord received the sum of Rs. 2,400 in consideration of granting a lease to the tenant. But the question still remains as to whether looking to the language used by the Legislature in s. 18, the act of the landlord comes within the mischief, even though he may have received the consideration for an executory agreement or for a contract to grant a lease in future. There can be no doubt that although this oral agreement does not constitute a lease, it does constitute an agreement to grant a lease in future.

Now, turning to s. 18—and I am setting out only the relevant part of it, if any landlord receives any premium in respect of the grant of a lease for any premises, he shall be liable to the penalty set out in that section. What the Legislature has penalised is the receipt of a premium by the landlord and the Legislature has also required a nexus between the receipt by the landlord of a premium and the grant of a lease of any premises. Therefore, a receipt alone by a landlord would not constitute an offence, but that receipt must be connected with the grant of the lease of any premises. Unless that connection is established no offence would be committed. The contention of Mr. Lulla on behalf of the accused is that the receipt of the premium must be simultaneous with the grant of the lease. If the lease comes into existence at a future date, then the receipt of a premium according to him is not in respect of the grant of a lease. Therefore the key words according to us in this section are "in respect of". It is relevant to observe that the Legislature has advisedly not used the expression "for" or "in consideration of" or "as a condition of" the grant of a lease. It has used an expression which has the widest connotation and the expression used is "in respect of". "In respect of" means in its plain meaning "connected with or attributable to," and therefore it is not necessary that there

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must be a simultaneous receipt by the landlord with the grant of the lease. So long as some connection is established between the grant of the lease and the receipt of the premium by the landlord, the provisions of the section would be satisfied. In our opinion it is impossible to contend that in the present case there was no connection whatever between the landlord receiving the premium and his granting the lease of the premises. It is true that when he received the premium he did not grant a lease. It is true that all that he did when he received the premium was to enter into a contract with his tenant to grant a lease in future. But the object of the landlord in receiving the premium and the object of the tenant in paying the premium was undoubtedly on the part of the landlord the letting of the premises and on the part of the tenant the securing of the premises. Therefore the object of both the landlord and the tenant was the grant of the lease of the premises concerned and that object was achieved partly and to start with by an oral agreement being arrived at between the landlord and the tenant with regard to the granting of this lease, the lease being completed when delivery of possession of the premises would be given. Therefore, in our opinion, on the facts of this case it is not possible to contend that the payment or the premium received by the landlord was unconnected with the grant of a lease of any premises. The fact that no grant was made at the time when the premium was received, the fact that there was merely an agreement to grant a lease, the fact that the lease would come into existence only at a future date, are irrelevant facts so long as the connection between the receiving of the premium and the granting of the lease is established.

It has been contended by Mr. Lulla that in this particular case not only the grant of the lease is in future, but there is a possibility of the lease never coming into existence. Mr. Lulla says that if there was a certainty even at a future date of the lease coming into existence, then it may be said that the receipt of a premium by the landlord is in respect of the grant of the lease. In our opinion the point of time with which we are concerned is the point when the landlord received the premium. If at that point of time the receipt was in respect of the grant of a lease, it is immaterial whether in fact at a subsequent date the lease came into existence or not.

It is further contended by Mr. Lulla that the lease must be of premises as defined by the Act. In the first place, reliance is placed on s. 6 which provides that in areas specified in

Schedule I, this part (and s. 18 finds a place in that part) shall apply to premises let for residence, education, business, trade or storage, and the argument is based on the expression "premises let" that the premises referred to in s. 18 must be premises which are actually let, and as these premises were not actually let, no offence is committed in respect of premises which were to be let at a future date. In our opinion, the object of s. 6 was to indicate and specify the premises which were let for a particular purpose, viz., residence, education, business, trade or storage. The Legislature was more emphasising the purpose for which the premises were let rather than the fact that the premises were let and were not to be let in future. We must really look at the definition of premises in order to appreciate the argument of Mr. Lulla that the premises referred to in s. 18 are not the premises defined, and what is relied upon is the second definition of "premises", viz., any building or part of a building let separately, and Mr. Lulla again emphasises the fact that in order to constitute "premises" within the meaning of the statute, part of the building with which we are concerned in this case must be actually let and unless it is actually let the Act does not apply to any building. Even assuming that Mr. Lulla is right in the interpretation he wants us to put upon the definition of "premises", it is clear that when the contract to grant a lease results in the actual lease, the lease would operate upon the premises as defined. What we are concerned with is grant of a lease of any premises and the lease which ultimately comes into existence must relate to the premises as defined, and there can be no doubt in this case that although the building was not let at the date when the agreement was entered into, as obviously it could not be, when the lease operated upon the building it would be a building as defined by the Act. Therefore, in our opinion, there is no substance in the contention put forward that the premises in respect of which the offence was committed are not premises as defined by the Act.

Then Mr. Lulla has strongly urged upon us not to depart from the well accepted canon of construction of penal statutes. Mr. Lulla is perfectly right when he argues that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that provision which exempts the subject from penalty rather than one which imposes a penalty. It is also correct that the principle of construing a statute in order to suppress a mischief and to advance

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the object of the legislation does not apply to a penal statute. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. A penal statute must be construed according to its plain, natural and grammatical meaning. No authority is really required for this proposition, but the matter has been very succinctly and clearly stated by Lord Simonds in *Howell* v. *Falmouth Boat Construction*,[1] that a man should not be put in peril on an ambiguity; and Lord Simonds relied in this case on the observations of Lord Macmillan in *London and North Eastern Rly. Co.* v. *Barriman*,[2] (p. 295):

"...it must be borne in mind that while the statute and rule have the beneficent purpose of providing protection for workmen, their contravention involves penal consequences under s. 11 of the Act. Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

The principle laid down by Lord Simon in *Nokes* v. *Doncaster Amalgamated Collieries Ltd.*[3] is (p. 1022):

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

This canon of construction may well apply to legislation which does not impose penalties, but the more correct test to apply where a Court is construing a penal statute is the test laid down by Lord Macmillan. But even applying that test and not stretching the language used by the legislation beyond its fair and ordinary meaning, we are of opinion that the very comprehensive expression, viz. "in respect of," used by the Legislature can only lead to one conclusion that the Legislature wanted the penal consequences of s. 18 to apply to any nexus between the receipt by a landlord of a premium and the grant of the lease, and in our opinion the nexus is present and clearly present where a case arises where the landlord accepts a premium for the purpose of granting a lease in future.

It has also been argued by Mr. Lulla that under s. 18 (*1*) only a landlord who accepts a premium that renders himself

[1] [1951] 2 All. E. R. 278. [2] [1946] A. C. 278.

[3] [1940] A. C. 1014.

liable to the penal consequences provided in that sub-s., and Mr. Lulla says that in this particular case the relationship of landlord and tenant was not established at the date when the premium was received by the accused. In our opinion, this contention is based upon a clear fallacy. The definition of "landlord" is a person who is for the time being receiving or entitled to receive rent in respect of any premises. Therefore, in order to determine who is the landlord in respect of any particular premises, the question that has got to be asked is, who is the person who is entitled to receive rent in respect of those premises? Even if the person does not actually receive rent, his title to receive rent is sufficient. In this particular case it is impossible to contend, in our opinion, that the accused were not the landlords of the premises in respect of which they entered into an agreement, in respect of which they accepted a deposit and in respect of which they actually passed a receipt for rent. The accused were the persons who were entitled to receive the rent and therefore they satisfy the definition of the statute.

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In our opinion, therefore, the facts on which this reference has been made to us do bring the case of the accused within the meaning of s. 18 (*1*), and accordingly we answer the question submitted to us in the affirmative. The matter will go back to the Criminal Bench for disposal according to law.

Answer accordingly

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

PREM NARAYAN AMRITLAL VARMA, PETITIONER *v.* DIVISIONAL TRAFFIC MANAGER, BHUSAVAL CENTRAL RAILWAY, OPPONENT.*

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Jan. 27

Payment of Wages Act (IV of 1936) ss. 15, 17—Powers of the District Court in appeal—Whether appellate Court has jurisdiction to interfere with the order made by the authority condoning delay—Construction.

The District Court exercising appellate powers under s. 17 of the Payment of Wages Act, 1936, has no jurisdiction to interfere with a decision of the Payment of Wages Authority condoning the delay on the part of the employee in making an application to the Authority for

* Civil Revision Application No. 674 of 1952 with C. R. A. Nos. 673 and 675 of 1952.