BOMBAY HIGH COURT

Gulam Ahmed Rogay

Vs

Bombay Municipality

(Bavdekar and Vyas, JJ.)

26.09.1950

JUDGMENT

Bavdekar, J.

1. This is a reference made to us by the learned Chief Judge of the Court of Small Causes at Bombay under Section 218C of the City of Bombay Municipal Act. The question referred to this Court is, whether in arriving at the valuation, for the purposes of Section 154 of the City of Bombay Municipal Act, of property to which the Bombay Rent Control Act of 1947 applies, the maximum gross value to be assigned to the property is limited to the maximum standard rent of the property together with the additions thereto permitted by the latter Act.

2. It appears from the record that there was a dispute between the landlords of certain premises, which are liable to be assessed for Municipal taxes under the provisions of the City of Bombay Municipal Act, and the Municipality about the rateable value of those premises. In order to apply the scale of rates it is necessary to determine under Section 154 of the City of Bombay Municipal Act the rateable value of the property in question ; and Section 154(1) says that the rateable value shall be arrived at in the following manner :In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent, and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever.The rateable value is, therefore, nine-tenths of "the amount of the annual rent for which such land or building might reasonably be expected to let from year to year." These words find a place in certain rating Acts in England, to which a reference will be made below, and it does not appear that, when the question of their meaning was considered irrespective of the effect of any Rent Act, they have been given any meaning different from that given to the words "annual rent which a tenant might reasonably be expected...to pay for a hereditament" which find a place in the Valuation of Property (Metropolis) Act 1869 and which have been interpreted by the House of Lords in England. Reference may be

made to a case of this Court, namely, *Globe Theatres, Ltd. v. Chief Judge, Sm. C.C*[1]. in which the principles which have been adopted in England in cases of rating are declared to be applicable so far as they do not depend upon the words of any particular section in rating cases in India also. The landlords, who were the appellants before the learned Chief Judge of the Small Causes Court of Bombay, contended, however, that, in fixing the rateable value under the City of Bombay Municipal Act, in the first instance, the provision of the Rent Control Act will have to be taken into consideration ; and, in the second instance, they said that where, under the terms of the Rent Restriction Act, it was not permissible for the landlord, upon penalty of fine and imprisonment, to charge more than a certain sum mentioned as the standard rent and permissible increases, the amount of annual rent for which any land or building might resonably be expected to let from year to year was limited to the standard rent together with the permissible increases permitted by the Rent Act.

3. Now, a similar question arose for determination in England under Rent Restrictions Act, 1920. Valuation for the purposes of rating was there made under Section 4 of the Valuation (Metropolis) Act, 1869, which, in the first instance, required the determination of a term called "the gross value," It was defined as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and the landlord undertook to bear the cost of the repairs and insurance, and "rateable value was defined as the gross value after deducting there from the probable annual average cost of the repairs and insurance." Under the terms of the Rent Restrictions Act, 1920, even if the tenant paid a rent in excess of the maximum prescribed by the Act, he was entitled to recover it from the landlord, and the landlord argued that, inasmuch as there was a maximum limit imposed upon what he was entitled to realise from the tenant, in the first instance, the provisions of the Rent Restrictions Act, 1920, would have to be taken into consideration in arriving at the valuation of the hereditament, and, secondly, the highest gross value which could be assigned to a hereditament would be the standard rent within the meaning of the Rent Restrictions Act, 1920, which was applicable to the hereditament plus the increase of rent permitted by the Act. Now, these questions were decided by the Divisional Court in favour of the landlord, and when the Assessment Committee of the Metropolitan Borough of Poplar went in appeal, the appellate Court, Bankes L.J. dissenting, agreed with the view of the King's Bench Division ; but when the Assessment Committee appealed to the House of Lords, again Carson L.J. dissenting, the order of the Court of Appeal was reversed and both the questions were decided against the landlord.

4. It is true that not only is the wording of Section 4 of the Valuation (Metropolis) Act, 1869, different from the wording of Section 154(1) of the City of Bombay Municipal Act, but there is this difference between the Rent Restrictions Act, 1920, which applied in the Poplar Borough

case and the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which applied to the premises in respect of which there has been a reference made to us : Whereas under the Rent Restrictions Act, 1920, if, notwithstanding the provisions of the Act, the tenant made any payment to the landlord, which was in excess of the maximum of that which the landlord was entitled to recover under the Act, the payment was not illegal, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, on the other hand, in the first instance, prohibits recovery by a landlord of anything in excess of the standard rent and the permitted increases, and, in the second instance, provides that, in case the landlord were to recover anything more than what he was permitted to recover, he will be committing an offence and subjected to the penalties which have been prescribed therefor ; and it was because of these two differences that, when in India a similar question arose under a Rent Act, which was enacted during the course of the first World War, the Rangoon High Court took the view that the position in India was different. They held in the case of The Municipal Corporation of the City of *Rangoon v. The Surati Bara Bazaar Co., Ltd*[2]. that in the absence of of special circumstances, the Corporation of the City of Rangoon must take as its basis for assessment of buildings and lands to taxation, the standard rent in those cases in which the standard rent had been fixed by the Rent Controller. In other cases, it must fix the rateable value on a consideration of all the surrounding facts and circumstances including the effect that the Rangoon Rent Act has, or may have, on the matter. There is only one other case, which went up to any one of the Indian High Courts in a similar context, and that is the case of the The Corporation of the Town of *Calcutta v. Asutosh De.*[3] The view which was taken in that case was that the Corporation was not entitled to increase the assessment above the standard rent mentioned in Section 2, Sub-section (f), Clause (t), of the Calcutta Rent Act, 1920. The assessment there was made under Section 127, Clause (a), of the Calcutta Municipal Act, which provided:The annual value...shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year, less..." and it does not appear that there was any difference between the provisions of the Calcutta Rent Act, 1920, and the Bombay Rent Control Act, 1947, in regard to a landlord being liable to penalties. As will be seen, however, below, that case is not likely to furnish any useful guide for the determination of the question before us, because the Act embodied a section No. 26, which provided that "during the continuance of this Act, the Corporation of Calcutta, or any other local authority, shall not raise its assessment of any premises above the standard rent on the ground of the increase of value.

5. Now, the first point which has been made by the learned advocate, who appears on behalf of the landlords, is that there is a difference between the wording of Section 154(1) of the City of Bombay Municipal Act and the wording of the Valuation (Metropolis) Act, 1869. It is quite true that the wording is not exactly the same, though the wording which has been found in Section

154(1) of the City of Bombay Municipal Act is to be found in the Parochial Assessments Act, 1836. That Act defined the net annual value as The rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent.The learned advocate, who appears on behalf of the landlord, says that, whereas under the Bombay Act what has got to be found is what a landlord would reasonably be expected to get from the premises, what has to be found under the Valuation (Metropolis) Act, 1869, is what the tenant would be expected to pay as rent from year to year. He points in this connection, in the first instance, to the words, 'to let' which are to be found in the City of Bombay Municipal Act, and he says that there cannot be any letting, unless there is, in the first instance, a tenancy, and if an Act prohibits the landlord from receiving any rent from the tenant in excess of a particular amount, no contractual tenancy can come into being between the landlord and the tenant upon the basis of the higher figure, because of the prohibition contained in the Act which restricts rents. If a person rents premises however, promising to pay higher rent, a perfectly legal tenancy may come into being though the landlord may not be able to recover more than the standard rent and permitted increases. It appears to us, therefore, that the words 'to let' in the City of Bombay Municipal Act do not make any difference. It is true that those words are not to be found in Section 4 of the Valuation (Metropolis) Act, 1869 ; but that Act uses the words "the rent which a tenant might be expected to pay from year to year," and obviously if the argument which has been based upon the meaning of the words 'to let' is correct, the argument could be advanced upon the use of the words 'the rent' which find a place in Section 4 of the Valuation (Metropolis) Act, 1869. We think that what the words of Section 154(1) of the City of Bombay Municipal Act mean is that, assuming that a lawful tenancy can be brought into being between a landlord and a tenant, what would be the rent for which the premises would let just as in the case of the Valuation (Metropolis) Act, 1869, the question was, what would be the rent which a tenant would be willing to pay assuming that a lawful tenancy could be brought into being. It has been pointed out in the judgment of the House of Lords in Poplar Assessment Committee v. Roberts [1922] 2 A.C. 93 that the gross value referred to in Section 4 has got to be ascertained for the purposes of rating the actual occupant, whether the occupant is or is not a tenant and though no person could be made a tenant in respect of a hereditament, of which the gross value has to be determined, and we do not think, therefore, that there is any force in this contention which has been advanced on behalf of the landlords. It is said, however, that even if the words 'to let' do not make any difference, there is still a distinction between the wording of Section 154(7) of the City of Bombay Municipal Act and the wording of Section 4 Of the Valuation (Metropolis) Act, 1869, because in the former definition the landlord is not altogether excluded, and in support of this contention reliance is placed upon the observations of the learned Chief Justice of the Rangoon

High Court in the case mentioned above. Now, it is quite true that that was the view which was taken in Rangoon of the meaning of the words "the annual rent for which any premises might reasonably be expected to let" ; but it appears to us, apart from all authorities, that whether any particular premises might reasonably be expected to let for a particular sum would depend upon whether it would be possible to find for the premises a tenant who would be willing to pay the amount as rent. If assuming that the premises could be let, a person could be found to pay for them annually a particular amount, then, there will be no difficulty in saying that this amount would be the amount for which the premises could reasonably be expected to let. On the other hand, unless it could be said that a tenant would be found who would pay for the premises annually a particular rent, we do not understand how it can be said that the premises can reasonably be expected to let for that amount from year to year. The meaning of both the expressions is therefore the same and the landlord is as much excluded from the one as from the other.

6. But there is ample authority for the proposition that there is no difference whatsoever between the wording which has been used in Section 154(1) of the City of Bombay Municipal Act and that used in the Valuation (Metropolis) Act, 1869. As I have already mentioned, the Valuation (Metropolis) Act, 1869, uses different wording; but the same wording as is used in Section 154(1) of the City of Bombay Municipal Act is used in the Parochial Assessments Act, 1886, and it was pointed out by the House of Lords in the case of London County Council v. Churchwardens &c. of Parish of Erith and Assessment Committee of Hartford Union [1893] A.C. 562 that "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament" is the same thing as "the rent at which the same might reasonably be expected to let from year to year." Similarly, Bankes L.J., even though he was inclined to disagree with the decision of the majority in the appeal Court in the Poplar Assessment Committee's case, observed in *Roberts v. Poplar Assessment Committee*[4]There is no material distinction between this definition of rateable value (that given in Section 4 of the Valuation (Metropolis) Act, 1869) and that contained in the Parochial Assessments Act, 1836.We fail to understand in that case how it can possibly be said that the landlord comes in in the definition which has been given in Section 154(1) of the City of Bombay Municipal Act.

7. Some argument was advanced before us as to the difference in the practices between India and in England with regard to recovering taxes. It was said that in England the liability to pay the rates is, in the first instance, of the tenant, whereas the liability to pay the rates in India is of the landlord. It is quite true that, subject to certain exceptions, which cannot be very frequent, in India, the liability to pay the rates, in the first instance, is of the landlord, but what the rates are to be levied on in India as well as in England that is, the figure which has got to be arrived at before applying the scale of taxes is as mentioned above the same thing and it does not make any

difference to the argument which has been advanced on behalf of the landlords whether the taxes which are to be based upon that figure are liable to be paid, in the first instance, by the tenant or by the landlord. The argument that the Bombay Rent Act makes a difference may be a perfectly valid argument; but that would not be because in Bombay the taxes are, in the first instance, payable by the owner, and not by the tenant, though, if the Municipality finds that it cannot recover the taxes from the owner, it would be entitled to recover them also from the tenant. Nor do we think that there is any force in the contention that this makes so to speak the value upon which the rates are to be levied the value of the premises to the owner and not the value of the premises to the tenant as is the case in England. One can understand the argument which has been sought to be made on behalf of the landlords, if one were to come to the conclusion that in India the rates are to be levied upon the value of the premises to the owner. There is an obvious difference between the two; but if we look at the City of Bombay Municipal Act, we find that in India also the valuation is made, not upon the value of the premises to the owner, but the value of the beneficial occupation to the tenant. Section 147(1) of the City of Bombay Municipal Act provides, for example, that in case the rateable value of the premises is higher than the rent, then the landlord would be entitled to recover from the tenant the extra taxes which he may have to pay on account of the rateable value being higher than the rent. It is not in dispute that this Court has taken the view that where owing, for example, to subletting at a higher figure, the Municipality fixes the rateable value of the premises at a higher figure than the rent which is payable by the tenant to the landlord, the landlord is entitled to recover the extra taxes which he has to pay under Section 146(1) of the City of Bombay Municipal Act. Had the valuation to be made upon the value of the premises to the owner, Section 146(1) would not find a place in the City of Bombay Municipal Act. Nor would it have been permissible for the landlord to recover from the tenant the extra taxes which he has paid, in the first instance, on the ground that the subletting by the tenant made a difference to the rateable value.

8. The principal question, in my view, which arises for determination in the present case is the effect of those provisions of the Bombay Rent Act which makes it penal for the landlord to levy from the tenant anything more than the standard rent and the permissible increases. It is contended on behalf of the landlord that, in case there is a provision in the Rent Act, which makes it penal for the landlord to levy anything more than the standard rent of the premises, as a matter of common sense, no person can possibly be found, who would be willing to pay for the premises anything more than the maximum permitted by the Act, It is argued that the tenant would take into consideration that it is not permissible for the landlord to let the premises at a higher rent, and that if he attempts to do so, he stands the risk of being found guilty and being sent to the jail, and it is said that no tenant, who, it must be assumed, would be a sensible person, would pay anything more than what is the maximum which the landlord is entitled to exact from

him. The learned advocate, who appears on behalf of the landlords, points out further that, even if a tenant were to be found, who would enter into an agreement with the landlord to pay more than the maximum permitted by the Rent Act, in determining the value of the premises for the purposes of rating, it will have to be taken into consideration that, even if he agrees to start with to pay a higher rent, and, as a matter of fact, pays it, the first thing which he would do after he obtains the premises would be to make an application for the determination of the standard rent and thereafter refuse to pay anything more and recover what he has paid in excess of the standard rent and the permissible increases.

9. Now, as I have already mentioned, there is this difference between the Bombay Rent Act and the Rent Restrictions Act, 1920, that, whereas the Bombay Act makes it penal for the landlord to levy anything more than the standard rent and the permissible increases, there was no such provision in the Rent Restrictions Act, 1920, but there was a provision in it owing to which the tenant was entitled to recover from the landlord anything which he might have paid in excess, though he was not bound to do so and though any payment which he may make may not have been an illegal payment. Lord Buckmaster L.J. pointed out; that under the English Act the payment of anything more by the tenant was not illegal, and he said that assuming even that the basis which he thought was the true basis of his judgment was not correct, then, the argument that the payment by the tenant of anything more than what was permitted by the Rent Act was not illegal would be an argument which was fatal to the case of the landlords. The learned advocate, who appears on behalf of the Municipality, contends, on the other hand, that even though it is penal for the landlord under the Bombay Rent Act to exact anything more, it is not penal for the prospective tenant either, to agree to pay more, or, as a matter of fact, actually to pay more. Now, we do not wish to go into the question as to whether a tenant who, in spite of the prohibition by the Rent Act, pays anything more to the landlord than the standard rent or permissible increases, is not guilty either of an offence or of abetting an offence committed by the landlord. It may be that, if a tenant enters into an agreement with a landlord to pay more than what the landlord was entitled to receive under the Rent Act, the agreement itself is not penal. It is argued before us that, as a matter of fact, the agreement is not even illegal. Now, that again is not a matter upon which it is necessary to express any opinion, though it is doubtful whether, assuming that there is such an agreement entered into between the landlord and tenant, the agreement can specifically be enforced against the tenant by the landlord. The principal question is as to whether inasmuch as there is a limit placed by the Bombay Rent Act upon what the landlord may legally receive, that affects the assessment and, in the second instance, regulates it in this sense that nothing more than the maximum prescribed by the Rent Act can possibly be said to be the annual value of the premises.

10. Now, Section 154(1) does not form part of the Valuation Act; but all the same, the City of

Bombay Municipal Act introduces what may be called a rating system, and we have no doubt that this system is based upon the same principle upon which the rating systems in England are based, and that is, that the burden of the rates in any particular area must be distributed equally between the hereditaments or lands and buildings in that area. The way in which the distribution is sought to be rendered fair or equitable is by dividing it in the proportion of the value of the beneficial occupation to the tenant. It is not in dispute that the Bombay Rent Act prescribes as a standard rent different figures in respect of premises, depending upon whether they happen to have been let on a particular date ; whether they happen to have been let before that date ; whether they happen to have been let after that date, and it has been pointed out on behalf of the City Municipality of Bombay that, if we were to accept the contention which has been advanced on behalf of the landlords, the result must necessarily be that the burden of the rates would be divided between the various hereditaments in proportion to figures which, from the point of view of rating, must be held to be purely arbitrary. The figures are mentioned in the Bombay Rent Act. They may not be arbitrary for the purpose for which that Act was designed ; that is, in order to provide for the landlord's not charging higher rents to persons who were in occupation of the premises belonging to them, because of the conditions created by the war. It is obvious that, if certain rents were fixed as standard rent, with a view that the landlord may not be able to recover anything more than that and the permitted increases, some date has to be prescribed for the purpose of determining the standard rent. In case of premises which were not let upon that date again some method had to be devised by which the standard rents could be fixed, and in doing so two cases appear to have been considered; cases in which the premises were let either before or after the date prescribed, or cases in which the premises have never been let at all. But it is obvious that considering the way in which the figures of standard rent have been determined by the provisions of the Rent Act, they have no relation whatsoever to the comparative value of the premises, to be taxed whether from the point of view of the landlord, or from the point of view of the tenant; and if that is so, then, the necessary consequence in taking the figures of standard rent as those determined the burden of the rates is inequality of burdens.

11. That is not seriously disputed on behalf of the landlords ; but the contention which has been advanced before us is that that does not make any difference; if the law states that, in determining the annual rent upon which the taxes are to be calculated, what must be found out is what the premises would reasonably be expected to be let for, then, it cannot be ignored that the landlord is under a disability laid upon him by the Bombay Rent Act, and the disability is such that, if he were to commit breach of the provisions of the Act, he would be liable to incur a penalty, including the penalty of imprisonment. Now, it does appear that, whenever a similar question has been raised, in the first instance, the view has been taken that, whenever there has got to be an ascertainment of a figure which a tenant would be expected to pay, regard must be had to all the

circumstances, which a tenant would take into consideration, if a proposition was placed before him that he should hire out or take on rent the place ; and it is for this reason that Bankes L.J. who was disinclined to agree with the majority view of the appellate Court, mentioned in the Poplar Assessment Committee's case, that he could understand an argument, with which he was wholly in agreement, that the Rent Act must be taken into consideration in determining what is the gross value ; but he said that, so long as it was not illegal for the tenant to pay anything more, he could not understand how the maximum which was prescribed by the English Rent Act would be the maximum, beyond which the gross value in Section 4 of the Valuation (Metropolis) Act, 1869, could not possibly go. The learned advocate, who appears on behalf of the landlords, says that that would show that, in the first instance, the Rent Act must be taken into consideration, and, in the second instance, he says that, if there is a disability placed upon the landlord, no tenant can possibly be found who would be prepared to pay anything more.

12. Now, in our view, assuming that we were considering what would be the amount which a tenant would be willing to pay, irrespective of any statutory restrictions ; that is, the statutory restrictions being there, we wished to find out what amount he would be willing to pay if he were prepared to ignore the statutory restrictions, it would not be correct to say that no person could possibly be found who would be prepared to pay anything more than the maximum prescribed by the Rent Act. The question which has got to be then determined, it being assumed that the tenant is prepared to ignore the restrictions, is a question of supply and demand. A tenant would naturally take into consideration that the landlord is under a disability. Assuming that there are premises which are equally suitable in all respects available at the rent of Rs. 100 per month, we can understand that the tenant would take into consideration that the landlord is under a disability ; he would not be prepared to pay more than Rs. 100 in any case for premises equal in all respects which are governed by the Rent Act, because other premises are available to him for a sum of Rs. 100 ; but if these latter premises are not subject to the Rent Act, then, the tenant may not be prepared to pay even Rs. 100, because he would expect that the landlord would probably be willing to strike a bargain for a lesser amount. But unless it could be said that premises were available, not only for the amount of Rs. 100, which we have mentioned above, but for the amount which the landlord is able to exact as a standard rent and permissible increases, he might be prepared to pay more than the standard rent and such permitted increases. It is true that in determining what a tenant would be prepared to pay we must not take into consideration cases of capricious persons ; a capricious person may be prepared to pay for premises which strike his fancy far larger amounts than what an average person would be prepared to pay, and when we are asking ourselves the question what the tenant who has been characterised as a hypothetical tenant would be prepared to pay, we must not allow ourselves to be influenced by any caprice in the hypothetical tenant; but the demand for premises owing to the fact that there has been

considerable shortage in the erection of buildings during war time or other emergent time and the fact that there is in consequence a scarcity of building accommodation, would counteract the force of the natural disinclination of a tenant to pay more than what the landlord is entitled to exact under the Rent Act.

13. The argument which is pressed, however, before us is that we cannot possibly say that it would be reasonable to expect that premises would be let for an amount higher than that which has been fixed by a Rent Act, when there has been a prohibition in letting of those premises for a higher amount by an Act which makes such hiring out penal. Now, it is quite true that the policy of the Rent Act is to fix a maximum upon the rent which could be legally levied ; but as was pointed out by the House of Lords in the case of Poplar Assessment Committee v. Roberts [1022] 2 A.C. 98 the maximum is a maximum which has been placed upon the real rent which a landlord can possibly exact from a tenant. On the other hand, what has got to be determined under Section 4 of the Valuation (Metropolis) Act, 1869, is a rent which has been described variously as hypothetical or imaginary or assumed, and in case the rent which has got to be so determined by whatever name it is called is a figure Which has no relation whatsoever to the real rent, upon which the limit is fixed, then we fail to understand why the figure so found should be limited by the maximum prescribed under the Rent Act. That in the House of Lords case it was pointed out that the rent, which has got to be determined under the provisions of Section 14 of the Valuation (Metropolis) Act, 1869, was an imaginary rent would be quite clear from the observations of the various Law Lords. Lord Buckmaster L.J. pointed out (p. 104):Just as the tenant is hypothetical, so also is the rent; it is only used as a standard which must be examined without regard to the actual limitation of the rent paid by virtue of covenant as between landlord and tenant, and also, as I regard it, to statutory restrictions that may be imposed upon its receipt.Lord Atkinson L.J. pointed out (p. 107):This tenant has been, therefore, appropriately styled the 'hypothetical tenant, and so unreal may his existence be that the owner-in-fee of the hereditament, who is in beneficial occupation of it, may play the part of the hypothetical tenant, ready to pay the annual rent mentioned in the statute for his own property. This imaginary rent is not to be confounded with the rent which an actual tenant in possession in fact pays. It may naturally be assumed that the hypothetical tenant would take this latter Into consideration, along with many other things, including the capacity of the hereditament and its adaptabilities, in calculating the amount of the rent he might be expected to pay; but the actual rent paid by the actual tenant is not, and cannot be, treated as a measure of, or a substitute for, the hypothetical rent which conceivably might be expected from a hypothetical tenant. It therefore appears to me that where you find a statute dealing exclusively with actual rent paid by actual tenants, actual increases of such rent, evictions from the hereditament in respect of which the actual rent is paid, and the interest paid by the mortgagors of such a hereditament, the natural conclusion to arrive at

is that this statute was not designed or intended to deal with the rating of hereditaments at all.Similarly, Lord Sumner observed (p. 116):...I think that the word 'rent' must now be held to mean something which at any rate is not conditioned by the legal relations which exist between an actual landlord and an actual tenant. An occupier under a beneficial lease cannot require the annual value to be cut down to the rent actually reserved. Equally a hypothetical occupier, although he will occupy, if he occupies at all, under a beneficial statute, must not be supposed to limit what he is prepared to give in order to get the occupation of the hereditament, merely to the amount, the giving of which will enable him to retain it in the face of any thing that an actual landlord could legally do against him.Similarly, Lord Parmoor observed (p. 120):Rateable value is an assumed value based on an assumed rental.

14. In our view, therefore, what has got to be determined under Section 154(1) of the City of Bombay Municipal Act is an assumed rent, and the maxima which are prescribed by the Rent Act do not apply to the ascertainment of the figure of this hypothetical, imaginary or assumed rent.

15. Nor does it make any difference that the Rent Act makes it penal for the landlord to levy anything more than the standard rent. This may or may not affect the question of any actual rent which a tenant may be expected to pay. It would certainly affect the rent the landlord may reasonably expect to realise; but where the rent which has got to be determined under the provisions of Section 154(J) is admittedly imaginary, then, I do not understand how the fact that it is penal for the landlord to levy actually something more than what is permitted by the statute can make any difference.

16. As I have already mentioned, the figure which has got to be ascertained for the purpose of any particular hereditament under Section 154(2) is a figure upon which is to be based the figure of the rates which that particular hereditament is bound to pay, and this figure must necessarily depend upon the character of the hereditament. It is true that that hereditament must be taken as it is. If it has got any disabilities, for example, then they must be taken into consideration in determining what the tenant would be willing to pay and what amount the premises would reasonably be expected to let for. But the penalty which has been prescribed by the statute for the levying of the actual rent by the landlord has nothing to do with the ascertainment of this figure. It is true that Lord Carson, who delivered the minority judgment in the House of Lords case, referred to a case, *Sculcoates Union v. Dock Co. at Kingstone-upon-Hull*[5] and it is argued on behalf of the landlords that, just as we have got to take into consideration any statutory disability which a tenement may be suffering from in the way of making profits, we must also take into consideration a statutory disability which the hereditament may be suffering from in order to determine what would be the amount which the tenant may be expected to pay ; but we do not

think that the case of Sculcoates Union v. Dock Co. creates any difficulty. What happened in that case was that it became necessary to value for the purposes of rating certain docks. There were certain railway and tramway lines leading from the docks to a junction of the North Eastern Railway Co., and the argument which was advanced on behalf of the parish, through which the lines passed, was that in determining the rent which a hypothetical tenant would be prepared to pay for the docks, regard could not be had to the fact that by an Act which was applicable to the docks there was a prohibition of levying from the North Eastern Railway Co. any tolls. It was held that that contention could not possibly be upheld. If a tenant was prepared to take the property on hire at all, the amount which he would be prepared to pay would be based upon the consideration that, even though he would be entitled to make profits from other persons, in so far as the North Eastern Railway Co. was concerned, he would not be entitled to levy any tolls from them in respect of the dock traffic. In our view, there is no similarity between that consideration and the consideration that it is not permissible to the landlord to levy anything more than what the Rent Act permits. We have already said that the figure which has got to be arrived at under Section 154 1), even though it is characterised as a rent, is really a hypothetical figure ; it has no reality, except, of course, that the rates are to be based upon it. It is not in dispute that in arriving at this figure the fact that a property cannot be let must be ignored, and that fact must be ignored, even though the disability in this regard is imposed not by a trust instrument but by a statute. Now, if the figure which has got to be arrived at is an imaginary rent, one cannot understand why the statute, which makes it impossible for the landlord to levy anything more than the standard rent of the premises, cannot be ignored in finding out the figure. This figure is really speaking the value of the beneficial occupation to the tenant. That Value ignores any statutory restrictions upon the levying of rent in excess of the standard rent and permissible increases; and, in our view, even if the value is ignored as it stood then, and even if the statute renders it penal to the landlord to levy anything more than the value, that cannot possibly have any relation to the standard rent and permitted increases permitted by the Act.

17. We must answer, therefore, the question which has been referred to us in the negative. Costs will be costs in the case.

Vyas, J.

18. These are three references made by the learned Chief Judge of the Court of Small Causes, Bombay, under Section 218C of the City of Bombay Municipal Act (Bombay Act No. III of 1888).

19. The question in these references is whether the rateable value of properties is to be limited to the maximum standard rent of those properties together with the additions thereto permitted by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The term "standard rent"

is defined in Section 5, Sub-section (10), of the Bombay Rents, Hotel and Lodging, House Rates Control Act, 1947 (Bombay Act LVII of 1947). The assesses contend that the rateable value should be limited to the maximum standard rent, which is subject to the restrictions imposed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, whereas the case of the Municipality is that the word "rent" as used in Section 154(2) of the City of Bombay Municipal Act does not mean the actual rent paid, which is governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, but means hypothetical rent which a hypothetical tenant would be expected to pay without any regard being had to the statutory restrictions imposed upon its receipt.

20. The learned Chief Judge of the Court of Small Causes, Bombay, has expressed an opinion, while making these references, that he would follow the view taken by the full bench of the Burma High Court in The Municipal Corporation of the *City of Rangoon v. The Surati Bara Bazaar Co., Ltd*[6]. and by Mukherji J. of the Calcutta High Court in The Corporation of the *Town of Calcutta v. Ashutosh De*[7] and would hold that the question should be decided against the Municipality.

21. Mr. Purushottam for the assessees has referred us to Section 134(1) of the City of Bombay Municipal Act (Bombay Act III of 1888) and, while commenting on the words "the amount of the annual rent for which such land or building might reasonably be expected to let from year to year," has argued that since, in view of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it is not lawful for the landlord to charge, and for the tenant to pay, rent higher than the standard rent, the rateable value should be limited to the maximum standard rent.

22. In support of this contention Mr. Purshottam has relied on Sculcoates *Union v. Dock Co. at Kingston-upon-Hull*[8]In that case the poor law guardians had contended that the rent which a tenant might be reasonably expected to give for the railway and tramway lines ought to be taken into consideration in determining the rateable value. The dock company had contended that the rent ought to be excluded from consideration in determining the rateable value, having regard to Section 53 of 24 & 25 Vic. c. 79, and to the fact that no rent had been paid since December, 1890. The question, for the opinion of the Court, was whether the respective contentions of the appellants or the respondents were right. The Court of Appeal (Lord Halsbury, and Lopes and Kay L. JJ.) held first, varying the decision of the Queen's Bench Division (Mathew and Wright JJ.), that the method adopted by the dock company of ascertaining the rateable value of their property was right, but secondly (by Lopes and Kay L. JJ., Lord Halsbury dissenting), reversing the decision of the Queen's Bench Division, that the rent which a tenant would pay for the railway and tramway lines ought to be taken into consideration for the purpose of arriving at the rateable value, even if such rent could not be legally exacted from the railway company. The

poor law guardians appealed against the first part of that decision, and the dock company appealed against the second part.

23. In the course of his address before the House of Lords Lord Herschell L.C. said that their Lordships were dealing with a profit-bearing undertaking. The parishes did not ask that the land should be valued merely as land, or land covered with water, but they said (p. 148):These are docks with wharves, railways, and all these adjuncts and appliances, and it is as docks capable of earning a profit that they ought to be rated. You are to find out what a tenant from year to year in view of the profits earned would be likely to give and upon that principle they have been rated.His Lordship went on to say (p. 149):But then it is said, 'But they could earn more profits than they are earning, and therefore you ought to suppose that a hypothetical tenant would give more.' But if the legislature have said they shall not earn those suggested further profits because they shall not charge tolls, how can it be established as a matter of fact that they could earn more? It appears to me that if you are to disregard such statutory restrictions as these, you might just as well say that a railway company ought not to be rated only according to the tolls which it receivesought not to be rated even according to the tolls which it could by law receive within its maximum, but that you ought to disregard its statutory maximum and ask what a tenant from year to year would give for the railway if he could charge any tolls which he pleased.

My Lords, I do not think there is any foundation for such a proposition.

24. Proceeding further his Lordship observed (p. 150):But the question is whether you are to consider the profits which it might earn if a state of things existed which does not exist, or whether you are to consider the profits which it can earn under the only conditions under which it is allowed to earn profit at all. My Lords, it seems to me that the latter is the state of things which must be taken into account, and that any other course would lead not only to absurdities, but to the gravest injustice as regards the rating imposed. In London County Council v. Churchwardens, Ac. of Parish of Erith and Assessment Committee of Dartford Union [1893] A.C. 562 I pointed out that where you came to the conclusion that the actual owner would pay a higher rent than anybody else was likely to pay, even there, taking the owner into account in considering what a hypothetical tenant would give, you were not to fix the amount higher than you thought the owner would pay as tenant.

25. Relying on this case Mr. Purshottam for the assessees contends that since rent earned by the landlord can be earned only in conformity with the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the maximum standard rent should be the basis for determining the rateable value under Section 154(2) of the City of Bombay Municipal Act. In other words, Mr. Purshottam's contention is that it would not be right to determine the rateable value regardless of the limitations imposed by the Bombay Rents, Hotel and Lodging House

Rates Control Act, 1947, on the earning of rent.

26. Mr. Purshottam has next drawn our attention to the decision in The Municipal Corporation of the City of Rangoon v. The Surati Bara Bazaar Co., Ltd., in which it was held that in the absence of special circumstances, the Corporation of the City of Rangoon must take, as its basis for assessment of buildings and lands to taxation, the standard rent in those cases in which the standard rent had been fixed by the Rent Controller, It was held that in other cases it must fix the rateable value on a consideration of all the surrounding facts and circumstances including the effect that the Rangoon Bent Act has, or may have, on the matter. In delivering judgment of the full bench, Robinson C.J. said that one of the questions referred to them was whether, in assessing buildings and lands to taxation in Rangoon under the City of Rangoon Municipal Act, 1922, the Corporation must take as its basis the standard rent as denned in Section 2, Clause (8), of the Rangoon Rent Act, 1920, as amended by Burma Act I of 1922, or can take as it basis an hypothetical value derived from standards other than those afforded by the Rangoon Rent Act. His Lordship went on to say that this question had come before a bench of that Court, to which he was a party previously, in the case of William Carr v. The Municipal Committee of Rangoon, What was then held was that the principle to be adopted was that laid down in the Municipal Act, but that that principle might be, and, where a standard rent had been fixed, must be qualified by the provisions of the Rangoon Rent Act. His Lordship proceeded further to observe (p. 678);We had not before us at that time the cases that have now been cited; but our decision might have been supported by the case of Sculcoates Union v. Dock Co. at Kingston-upon-Hull and also by the majority of the Court of Appeal in the case of Roberts v. The poplar Assessment Committee, upholding the judgment of the King's Bench Division. Subsequently, however, that case was taken to the House of Lords, and by a majority, their Lordships reversed the decision of the Courts below.In the first case cited the House of Lords held with reference to a Dock Company which in addition to its docks and wharves, had railway and tramway lines but had been prohibited by an Act of Parliament from charging a certain railway company any tolls for the use of those railway lines, that since no rent could be earned by the Dock Company because of the statutory prohibition, the rent which could have been earned but for that prohibition ought not to be taken into consideration in determining the rateable value of the Dock Company's property.His Lordship then proceeded to quote Lord Herschells remarks (p. 149):But then it is said, 'But they could earn more profits than they are earning, and therefore you ought to suppose that a hypothetical tenant would give more.' But if the Legislature have said they shall not earn these suggested further profits because they shall not charge tolls, how can it be established as a matter of fact that they could earn more?

27. Mr. Purshottam relies on these observations and states that the statutory restrictions placed on the earning of rent cannot be discarded in determining the rateable value under Section 154(1) of

the City of Bombay Municipal Act.

28. Next Mr. Purshottam has cited Corporation of Calcutta v. Ashutosh De, in which it was held that the Corporation of Calcutta, in assessing certain premises under Section 181, Sub-section (1), of the Calcutta Municipal Act, at a time when the Calcutta Rent Act, 1920, was in force, were not competent to increase the assessment above the rent at which the premises were let on November 1, 1918, which, under Section 2r Sub-section (f), Clause (i), of the Calcutta Rent Act, was the standard rent for those premises. Our attention was lastly drawn by Mr. Purshottam to Globe *Theatres, Ltd. v. Chief Judge, Sm. C.C*[9]. in which in the body of the judgment Mr. Justice Kania observed as under (p. 695):It is therefore first necessary for the Municipality or the Chief Judge to consider for what amount the land or building may reasonably be expected to let from year to year. The expression 'annual letting value' was construed by Lord Halsbury in Cartwright y. Sculcoates Union in these terms (p. 673):

The problem is to ascertain, according to the statute, what a tenant from year to year might reasonably be expected to give as rent. For the solution of that problem it appears to me that apart from the decisions,...all that could reasonably affect the mind of the intending tenant ought to be considered.This would, however, not mean in our opinion that the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, $re finally to determine the rateable value of a hereditament. It would only mean that all that could reasonably affect the mind of the intending tenant should be taken into consideration.

29. This important question of rating came up for consideration in Poplar *Assessment Committee v. Roberts*[10]. It was agreed between the parties in that case that the facts should be stated in the form of a special case for the opinion of the King's Bench Division. The two important questions which were stated in the special case were:

(2) Whether the said Rent (Restrictions) Act, 1920, in its application to the said hereditament is to be taken into account in arriving at the valuation of the said hereditament under and for the purposes of the Valuation (Metropolis) Act 1869?

(3) Whether the highest gross value which can be assigned to and placed upon the said hereditament in the said Valuation List for the year 1920 is the 'Standard Rent' (within the meaning of the said Rent (Restrictions) Act, 1920) applicable to the said hereditament plus the highest increase or increases of rent provided for and set out in Section 2(I)(c) and (d) of the said Act?The Divisional Court (Darling, Avory and Salter JJ.) answered these questions in the affirmative. The Court of Appeal by a majority (Scrutton and Atkin L. JJ,, Bankes L.J. dissenting) affirmed the decision of the Divisional Court. Bankes L.J., though holding that the provisions of the Act of 1920 did not determine the rateable value of the hereditament, was of

opinion that those provisions must necessarily be taken into account in arriving at the valuation of the hereditament.

30. But the case in question went up to the House of Lords, and it was held by Lord Buckmaster, Lord Atkinson, Lord Sumner and Lord Parmoor, Lord Carson dissenting, that in arriving at the valuation for the purposes of the Valuation (Metropolis) Act, 1869, of a hereditament to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied, the maximum gross value to be assigned to that hereditament was not limited to the standard rent of the hereditament together with the additions thereto permitted by the latter Act. It was held further by Lord Buckmaster, Lord Atkinson, and Lord Parmoor, Lord Sumner expressing no opinion on the point, that the Act of 1920 was not to be taken into account in determining the valuation for rating purposes of the hereditaments to which it applied. In his address before the House of Lords Lord Buckmaster said that the question simply was whether the Act of 1920 affected the rateable value of the hereditaments to which it applied. The appellants said that it did not, and the respondent, fortified by the judgment of the Divisional Court and of two out of the three learned Judges of the Court of Appeal, asserted that it did.

31. For the appellants it was contended in that case that the underlying principle of the Metropolitan Rating Act of 1869 was that the value of the hereditament to the occupier should be the basis of assessment to the rates, and that there should be equality as between each occupier holding similar property, so that the burden of local taxation may be equitably distributed and borne. Lord Buckmaster said that if those assumptions be accepted, the appellants must succeed. He pointed out, however, that the difficulty lay in seeing whether that really was the basis upon which the Act of 1869 rested. The statute, although its preamble dwelt on the expediency of establishing a common basis of value and promoting uniformity of assessment, did not in terms say that it was the value of the occupation that had to be fixed. What it did provide was that the gross value meant the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament on the assumption that he undertook to pay rates, taxes and tithe, and the landlord undertook the cost of repairs and insurance. Lord Buckmaster went on to say that it was round the true meaning of this section (Section 4 of the Valuation (Metropolis) Act, 1869), that the dispute centred. The tenant referred to was, by common consent, an imaginary person ; the actual rent paid was no criterion, unless, indeed, it happened to be the rent that the imaginary tenant might reasonably be expected to pay in the circumstances mentioned in the section. But, said Lord Buckmaster, although the tenant is imaginary, the conditions in which his rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the valuation is made. It is the landlord who is affected, and he, as landlord, is not the subject of assessment, nor can his interest in the property be considered for the purpose of determining what that assessment should be. If, however, the rent which has to be

ascertained under the section is the real rent, then the fact that that cannot be increased will have a material effect upon the valuation-----Just as the tenant is hypothetical, so also is the rent; it is only used as a standard which must be examined without regard to the actual limitation of the rent paid by virtue of covenant as between landlord and tenant, and also, as I regard it, to statutory restrictions that may be imposed upon its receipt. Prom the earliest time it is the inhabitant who has to be taxed. It is in respect of his occupation that the rate is levied, and the standard in the Act is nothing but a means of finding out what the value of that occupation is for the purposes of assessment. In my opinion, the rent that the tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute of 1869 imposes" (pp. 103-104.) As we have already pointed out, Lord Atkinson, Lord Sumner and Lord Parmoor endorsed this view. But Lord Carson dissented from that view and stated that the only question before them was whether the highest gross value which could be assigned to and placed upon the hereditaments in question in the valuation list for the year 1920 was the standard rent within the meaning of the Rent (Restrictions) Act, 1920. He went on to observe that he agreed with the decision arrived at by the King's Bench Division, and by the majority in the Court of Appeal and said (p. 125):Are we then, as the appellants' counsel contends, to disregard this statutory limitation of rent in ascertaining for valuation purposes the rent which the hypothetical tenant under the valuation would pay?He then went on to say (p. 125);I cannot persuade myself that it is possible to ask the assessment authority to enter into such super speculative and hypothetical regions, and I am of opinion that the only rent we have to consider is a rent de jure recoverable and not a voluntary promise which cannot be enforced.The gist of the majority decision of the House of Lordsin the above mentioned case is that the word "rent" as used in Section 4 of the Valuation (Metropolis) Act, 1869, was to be interpreted regardless of the provisions of the Rent Restrictions Act of 1920.

32. Mr. Purshottam for the assessees distinguishes the above judgment of the majority of the House of Lords in Poplar Assessment Committee v. Roberts, on the ground that, whereas under the Valuation (Metropolis) Act, 1869, a tenant is the subject of assessment, under the City of Bombay Municipal Act it is the landlord's interest in the property which is to be considered for the purpose of determining the rateable value. Now, in our opinion, this distinction which is drawn by Mr. Purshottam between the words "the annual rent which a tenant might reasonably be expected to pay for a hereditament" occurring in Section 4 of the Valuation (Metropolis) Act, 1869, and the words "the amount of the annual rent for which such land or building might reasonably be expected to let" used in Section 154(1) of the City of Bombay Municipal Act is not correct. In this context it would be of advantage to refer to the Parochial Assessments Act, 1836, which denned the net annual value as follows:The rent at which the hereditament might

reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent.

As we have seen, Section 4 of the Valuation (Metropolis) Act, 1869, says, amongst other things, that the term 'gross value' means the annual rent which a tenant might reasonably be expected taking one year with another to pay for an nereditament, etc. The two expressions "the rent at which the hereditament might reasonably be expected to let" and "the annual rent which a tenant might reasonably be expected to pay" have been interpreted to mean the same thing. For instance, it was observed by Lord Atkinson in Poplar *Assessment Committee v. Roberts1*[1] that the system of valuation set up by the Valuation of the Metropolis Act of 1869 was practically identical in its terms with the terms of the Parochial Assessments Act of 1886. Again, it was observed in the same case by Lord Parmoor at page 120 that there was no difference in principle between the statutory method directed in the Valuation (Metropolis) Act, 1869, and the statutory method directed in the Parochial Assessments Act, 1886, In Roberts v. Poplar Assessment Committee [1922] 1 K.B. 25, 40. it was stated by Bankes L.J. that there was no material difference between the definition of rateable value as contained in the Valuation (Metropolis) Act, X869, and that contained in the Parochial Assessments Act, 1836. Then, again in London County Council v. Churchwardens <&c. of Parish of Erith and Assessment Committee of Dartford Union [1893] A.C. 562. Lord Herschell L.C. observed as follows (p. 588):The annual rent which a tenant might reasonably be expected, taking one year with another to pay for a hereditament' is the same thing as 'the rent at which the same might reasonably be expected to let from year to year.There is no doubt therefore that the above mentioned two expressions, one used in the Valuation (Metropolis) Act, 1869, and the other used in the Parochial Assessments Act, 1836, mean exactly the same thing. We are therefore of the view that the rent for which a land or building might reasonably be expected to let would mean the same thing as the rent which a tenant might reasonably be expected to pay. In our opinion, therefore, there is no doubt that what is required to be taken into consideration while fixing the rateable value under Section 154(1) of the City of Bombay Municipal Act is the beneficial value of the property to the tenant, and once we hold that view, as we do, it must follow that the determination of the rateable value cannot be limited by the maximum standard rent.

33. In the Calcutta case of The Corporation of the Town of Calcutta v. Ashutosh De there was a section of the Calcutta Rent Restriction Act which in terms affected the determination of the rateable value of lands and buildings. No such thing is to be found in the case of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. That Rent Restriction Statute, which is a temporary one, is not intended to be a valuation Act interfering in any manner with the

system of valuation set up by the City of Bombay Municipal Act.

34. Then there is Section 147(1) of the City of Bombay Municipal Act, from which it would appear that where the Municipality recovers from a landlord an amount higher than the rent which the landlord recovers from his tenant, he can recover the difference from the tenant. Therefore if we keep Section 147(1) in view while interpreting the expression "the amount of the annual rent for which such land or building might reasonably be expected to let" used in Section 154(1) of the Act, we would have no difficulty in appreciating that the rateable value referred to in Section 154(1) is not intended to be limited to the maximum standard rent. The landlord has got a statutory remedy to recover from the tenant the difference between the amount paid by him to the Municipality and the amount received by him as rent from the tenant, and as long as he has that remedy, there could be no point in saying that the rateable value of the lands and buildings must be limited by the maximum standard rent for them as fixed under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

35. Mr. K.T. Desai for the Municipality has drawn our attention to *Bomford v. South Worcestershire Assessment Committee*[12] in which it was held that the gross rateable value of the cottage was not on the true construction of Section 72 of the Local Government Act, 1929, to be limited by reference to the weekly sum of 3s. which was the most that the farmer could receive for it, by deduction from wages or otherwise, from the worker, since a farmer might be willing to pay a larger sum than 3s. in rent for the cottage in order to secure accommodation for an agricultural worker whom he wished to employ. In the course of his judgment Tucker L.J. said that (p. 582):Section 72 of the Local Government Act, 1939, envisages as possible hypothetical tenants of these hereditaments either the agricultural workers, employed in agricultural operations on the land in question, or the farmer, that is, the person in occupation of the agricultural land which is being worked, who takes the hereditament for his own occupation, for letting to his farm worker or for allowing the farm worker to live there as a licensee.His Lordship went on to observe that it was said to follow from the operation of the Agricultural Wages (Regulation) Acts, 1924, and the orders made there under, as a matter of law, that there was only one figure which could be taken as the gross value, namely, the figure arrived at on the basis of 3s. a week. In his Lordship's Page No. 162 Tiff not found

Cases Referred.

1(1045) 48 Bom. L.R. 691
2(1982) I.L.R. 1 Ran, 668
3(1927) 31 C.W.N. 864
4 [1922] 1 K.B. 25 (p. 40)
5[1895] A.C. 180
6(1923) I.L.R. 1 Ran. 668
7(1927) 31 C.W.N. 864

8 [1895] A.C. 136
9(1945) 48 Bom. L.R. 691
10[1922] 2 A.C. 93
11[1022] A.C. 98, 106
12[1947] 1 K.B. 575