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1943 *Present :* **Soertsz, Keuneman and Cannon JJ.**

SOYSA *v.* COLOMBO MUNICIPAL COUNCIL

9—C. R. Colombo, 53,486.

Appeal—Judgment of Court of Requests—Assessment of annual value—Right of appeal—Municipal Councils Ordinance, s. 124 (3)—Civil Procedure Code, s. 833 (a).

Section 124 (3) of the Municipal Councils Ordinance confers a special right of appeal from decisions of the Commissioner of Requests in matters of assessment unrestricted by the provisions of section 833 (*a*) of the Civil Procedure Code.

The rent actually received by the landlord is not necessarily conclusive evidence of the annual value of premises even in cases in which there is no contradiction by the Council of that evidence or in which there is no evidence of *mala fides* or of special circumstances.

A rent, which has been recently agreed to without the payment of a premium or the like may be taken as *prima facie* evidence liable to be rebutted.

***Weerasinghe v. Municipal Council of Kandy* (25 *N. L. R.* 409) overruled.**

THE plaintiff appellant instituted an action in the Court of Requests objecting to the decision of the Municipal Commissioner whereby the appellant's premises were assessed at the annual value of Rs. 500 for the year 1939. The Commissioner of Requests held that the assessment was fair and reasonable and the action was dismissed with costs.

At the hearing of the appeal, the Counsel for the respondent took the point that only a question of fact was involved and that there was no appeal without the leave of the Court. Moseley J. thereupon referred the whole case to a Bench of three Judges.

H. V. Perera, K.C. (with him *A. M. Charavanamuttu*), for the defendant, respondent.—This is an appeal from a judgment of a Court of Requests and leave to appeal ought to be obtained. This action was instituted under section 124 of the Municipal Councils Ordinance and it is of the nature of an appeal. Sub-section (3) of that section deals mainly with the procedure for the determination of the action.

[SOERTSZ J.—What is the effect of the words "in all cases" in that sub-section ?]

"All" is used because of the actions instituted in District Courts and Courts of Requests. It means "every case". In legal documents expressions are used although they could be disregarded.

[SOERTSZ J.—Cannot we give a meaning to it?]

The words "subject to appeal" in that sub-section is a statement with regard to the decision. It merely says that the decision is not final but subject to an appeal. The rights of appeal are to be exercised according to the provisions laid down in the Civil Procedure Code. From an assessment the liability to pay the rates follows. It is a debt and therefore it comes within section 833 (*a*) of the Civil Procedure Code.

[CANNON J.—Does not the Municipal Councils Ordinance confer a special jurisdiction on the Court of Requests ?]

When a right is conferred on a party, it does not necessarily confer a jurisdiction on a Court. If the existing jurisdiction is large enough then no special right is conferred on the Court. Section 75 of the Courts Ordinance defines the jurisdiction of Courts of Requests.

[SOERTSZ J.—In that section the expression "debt, damage or demand" is given a wide meaning.]

The expression must be given the same meaning elsewhere as well. It is illogical to give a different meaning to section 833 (*a*) of the Civil Procedure Code. The view taken in *Weerasinghe v. M. C., Kandy*[1] is correct.

Here a party comes into Court to get a declaration as to the quantum of the assessment. The law had taken away the right of appeal to Court that an aggrieved party had by vesting that right in the Chairman and section 124 of the Municipal Councils Ordinance has restored that right. It is not an action *sui generis* but the restoration of a right. A Court cannot grant a bare declaration of a right. There must be a liability.

N. Nadarajah (with him *B. C. Ahlip*), for the plaintiff, appellant.—Section 124 of the Municipal Councils Ordinance provides a remedy against the decision of the Chairman by instituting an action. This is an appeal. In the earlier Ordinances the words "in all cases" do not appear. Under Ordinance No. 17 of 1865 there was no machinery to review the assessment. Ordinance No. 5 of 1867 provided for objections and appeals. Section 141 of the Municipal Councils Ordinance, 1887, re-enacted the provisions for objections and appeals.

The words "in all cases" are used to clarify the right that is already given. Sub-section (4) also indicates this view. The expression "subject to appeal" means that an aggrieved party can appeal.

The word "demand" is defined in Byrne's *Law Dictionary*. It was considered in *Mohideen v. The Proprietors of the Kellie Group*[2]. Liability to pay has nothing to do in this case.

A general provision of an Ordinance cannot take away a provision of a particular Ordinance—*Maxwell on the Interpretation of Statutes, p. 328.* This is an action for the valuation of the property. The question here is to consider whether it is an interest in land.

H. V. Perera, K.C., in reply.—It is a question relating to land but not an interest in land. The special provision of the law is not inconsistent with the general law. In *Mohideen v. The Proprietors of the Kellie Group* (*supra*) the word "demand" was given a wide meaning. Byrne's definition agrees with that case.

[SOERTSZ J.—We will hear the appeal.]

[1] *25 N. L. R. 409.*

[2] *(1915) 18 N. L. R. 506.*

N. Nadarajah.—The assessor said that the property was assessed on the square foot basis. The amount of the rent was not questioned. Unless there is collusion or bad faith between the owner and tenant the rent should be the basis of assessment. In cases where the owner is in occupation different considerations, such as the revenue and profits or contractor's basis, will be applied. See *Abdul Haniffa v. The Municipal Council of Colombo*[1]; *Mohamed v. The Municipal Council of Colombo*[2]; *Sidoris Appuhamy v. The Municipal Council of Colombo*[3]; *Silva v. Colombo Municipal Council*[4]; and *Weerasekera v. Municipal Council, Colombo*[5].

The English rule, too, is the same, that is, the actual rent should be taken in the absence of any *mala fides.* Other methods had been adopted where the owner was in occupation as in *The Ceylon Turf Club v. The Colombo Municipal Council*[6]. See also *27 Halsbury (Hailsham), p. 388, section 821.*

H. V. Perera, K.C.—*Weerasekera v. Municipal Council, Colombo (supra)* casts an impossible burden on the respondent. See also *Poplar Assessment Committee v. Roberts*[7]. If a method is appropriate to one kind of property, then it is immaterial whether the owner is in occupation or not. Poyser J. in *Weerasekera v. Municipal Council, Colombo,* held that without any justification the assessment ought not to be raised.

Cur. adv. vult.

October 23, 1940. SOERTSZ J.—

The first question that arises on this reference relates to an objection taken by Counsel for the defendant-respondent to the hearing of this appeal, when it came up before my brother Moseley J. On that occasion, it was submitted to him that the appeal involved a pure question of fact on which the Commissioner of Requests had pronounced final judgment, and that, consequently, there was no right of appeal from it in view of section 833 (*a*) of the Civil Procedure Code, which enacts that " there shall be no appeal from any final judgment or any order having the effect of a final judgment, pronounced by the Commissioner of any Court of Requests in any action for debt, damage, or demand, unless upon a matter of law, or upon the admission or rejection of evidence, or with the leave of the Commissioner, anything in section 78 of the Courts Ordinance notwithstanding ".

In this instance, no leave has been obtained from the Commissioner, or from this Court in accordance with section 833 (2) of the Civil Procedure Code.

In support of his submission, respondent, Counsel relied on the ruling in the case of *Weerasinghe v. Municipal Council of Kandy*[8], in which Schneider J. upheld a similar objection.

Counsel for the appellant submitted that in virtue of section 124 (3) of the Municipal Councils Ordinance, there was a right of appeal in all cases from the decision of a Commissioner of Requests with regard to

[1] *(1922) 1 Times 7.*
[2] *(1915) 1 C. W. R. 34.*
[3] *(1919) 6 C. W. R. 335.*
[4] *(1905) 3 Bal. 163.*
[5] *40 N. L. R. 418.*
[6] *(1934) 37 N. L. R. 393 at 403.*
[7] *(1922) 2 A. C. 93 at 107.*
[8] *25 N. L. R. 409.*

assessment of any house, building, land, or tenement, and he asked for a review of the ruling in the case relied on by the respondent. He also contended that this appeal involved a question of law.

Moseley J. ruled that the appeal raised what "seems to be purely a question of fact", but because he had "some hesitation in agreeing with the view taken by Schneider J.", he referred the whole case for consideration by a Divisional Bench.

The answer to the question raised by the preliminary objection depends on the correct interpretation of section 124 (3) of the Municipal Councils Ordinance. Does that section confer a special and unrestricted right of appeal from decisions of a Commissioner of Requests in matters of assessment, or must that section be read with section 833 (a) of the Civil Procedure Code as subject to the restriction imposed by it?

The relevant part of section 124 of the Municipal Councils Ordinance is in these terms :—

(1) "If any person is aggrieved by the decision of the Chairman with regard to the assessment of any house, building, land or tenement, he may . . . . institute an action objecting to such decision in the Court of Requests having jurisdiction . . . . if the amount of the rate or rates . . . . does not exceed three hundred rupees, and in the District Court having jurisdiction, where such amount exceeds the sum of three hundred rupees".

(2) "Upon the trial of any action under this section, the plaintiff shall not be allowed to adduce evidence of any ground of objection which is not stated in his written objection to the Chairman".

(3) "Every such Court shall hear and determine such action according to the procedure prescribed for such Courts by the law for the time being in force regulating the hearing and determination of actions brought in such Court, *and the decision of such Court shall in all cases be subject to appeal to the Supreme Court*".

(4) Every such appeal shall be governed by the provisions of Chapter LVIII. of the Civil Procedure Code, or by any Ordinance hereinafter enacted regulating the making of appeal to the Supreme Court from any judgment, decree or order of Courts of Requests or District Courts".

The argument advanced by respondent's Counsel is that this section does not confer a special right of appeal in matters of assessment, but merely declares that the decision given by the Commissioner is not a final but an appealable decision, and that the conferment of the right to appeal, and the limits within which that right may be exercised are to be found in section 833 (*a*) of the Civil Procedure Code read with section 78 of the Courts Ordinance.

I have examined this contention with great care, but I can find no justification for it, whether the approach to it be historical or expository. Whichever way I look at it, it seems to me that section 124 of the Municipal Councils Ordinance creates and defines a special proceeding in regard to the hearing and determination by the relevant Courts of questions arising from the decision of the Chairman of the Municipal Council on matters of assessment, and confers a special right of appeal to the Supreme Court from the decisions of such Courts.

So far as I have been able to delve into the history of this matter of assessment in relation to the jurisdiction of Tribunals, the first enactment dealing with it is Regulation No. 5 of 1320 which, for the purpose of obtaining contributions for the repairs of the roads in the Fort, Pettah and *gravets* of Colombo, authorised a committee of five respectable persons to assess the annual rent of dwelling houses and shops within that area, and provided for an appeal to the collector whose decision was to be final. This regulation created *a special jurisdiction* in regard to matters of assessment distinct from the jurisdiction of the Courts in existence at that date. It gave a right of appeal to the collector *in every case*. The regulation of 1820 was repealed by Ordinance No. 4 of 1834 which consolidated and amended the law relating to assessment tax on houses in Colombo and Galle, and enacted that the assessment should be made by a committee, and gave the right to any owner or occupier to appeal from the assessment to the relevant *District Court* which was required to decide such appeal 'by examination of parties or hearing evidence'. *This Ordinance too gave a right of appeal in every case.*

In 1843 by Ordinance No. 10 of that year, Courts of Requests were established with Commissioners to preside over them. By section 5 of that Ordinance these Courts were given jurisdiction to try cases up to the value of £5 and by section 22 the decisions of these Courts were subject to review by the Supreme Court. In the following year Ordinance No. 17 of 1844 provided for the assessment of the "*bona fide* value of all houses and buildings" by a committee, and gave an aggrieved party the right to object to such assessment "*whatever may be its amount*", before the Court of Requests of the town concerned and directed the said Court "to decide upon the matter of such objection in a summary way", and enacted that "no appeal or review shall lie against any such decision". Here again it will be observed that a special jurisdiction distinct from the ordinary jurisdiction of Courts of Requests is created.

The next important Legislative Enactment dealing with this matter is Ordinance No. 5 of 1867 which enacted that "if any person shall be aggrieved by the assessment or non-assessment of any house, building, land or tenement, it shall be lawful for him to object . . . . before the Court of Requests having jurisdiction . . . . *if the amount of the rate on the annual value . . . . does not exceed ten pounds*, and to the District Court if such amount exceeds ten pounds. And such Court shall decide upon such objection *in a summary way . . . . and its decision shall be subject to appeal to the Supreme Court*". At the time this Ordinance came into force the law relating to the jurisdiction of Courts of Requests was the law enacted by Ordinance No. 8 of 1859. Section 8 of that Ordinance is in these terms:—

> "Each of the said Courts (*i.e.*, Courts of Requests) shall be a Court of Record and shall have cognizance of, and full power to hear and determine *all actions* in which the debt, damage or demand shall not exceed ten pounds".

Section 19 gave a right of appeal from any final judgment or order for any error in law or in fact.

Now it seems to me that these two enactments afford a clear clue to the solution of the question before us. The only reasonable inference

to be drawn from the fact that notwithstanding sections 8 and 19 of Ordinance No. 8 of 1859, the Legislature thought it necessary to promulgate Ordinance No. 5 of 1867 in order to confer jurisdiction on Courts of Requests in matters of assessment *not exceeding ten pounds* and to give a right of appeal is that it regarded the question of objection to assessment or non-assessment as something outside the scope of actions for debt, damage or demand. It is immaterial to inquire whether this view of the Legislature was right or wrong. What is important and to the point is that that appears to have been its view when it passed Ordinance No. 5 of 1867. For if objection to assessment or non-assessment was in its view, within the meaning of the words "action for debt, damage or demand", Courts of Requests already had jurisdiction to entertain that matter in virtue of Ordinance No. 8 of 1859, inasmuch as the monetary limit for Courts of Requests was the same, in both Ordinances, namely, ten pounds, and there was a right of appeal by virtue of section 19 of Ordinance No. 8 of 1859 as I have already pointed out.

When the Municipal Councils Ordinance, No. 7 of 1887, was passed it expressly reserved, by section 141, the jurisdiction created by Ordinance No. 5 of 1867. Things continued in this state till the enactment of Ordinance No. 12 of 1895 which, by section 4, empowered Courts of Requests to take cognizance of and to hear and determine all actions in which the debt, damage or demand shall not exceed Rs. 300. Six years later, the question arose whether this increase in the monetary limit of the jurisdiction of Courts of Requests resulted in a similar extension of jurisdiction in regard to matters of assessment, and in the case of *Bell v. Colombo Municipal Council*[1], Lawrie J. held that by virtue of section 4 of Ordinance No. 12 of 1895, it was competent for a Court of Requests to try and determine a matter of assessment in which the rate involved was Rs. 264. In the case of *Jalaldeen v. The Colombo Municipal Council*,[2] Wood Renton J. approved this decision of Lawrie J. as "sound". But when the case of *Jalaldeen v. The Colombo Municipal Council* came before a Bench of two Judges on some other questions, Hutchinson C.J. and Wendt J. overruled *Bell v. The Colombo Municipal Council.* They held that the jurisdiction of Courts of Requests in matters of assessment remained at the monetary limit of Rs. 100 and that that limit had not been altered by Ordinance No. 12 of 1895. They also ruled that the "demand" involved in the objection to assessment is related in terms of money not to the amount of the increase or the decrease of the assessment, but to the rate. The rate was the determining factor. In the course of his judgment, Wendt J. made this observation :—

> "I cannot subscribe to the decision of Lawrie J. in *Bell v. The Colombo Municipal Council.* I think that the Ordinance of 1867 created a new and special right, and prescribed a special procedure for, enforcing it".

With that observation I would respectfully associate myself.

The resulting position, then, is that even if it is conceded that an action instituted by right of section 124 (1) of the Municipal Councils Ordinance objecting to the decision of the Chairman with regard to the assessment of any house, building, land or tenement can, *a priori*, be said

[1] 4 *A. C. R.* 27. [2] 4 *A. C. R.* 131.

to be an action for debt or demand, the Legislature preferred to treat such an action as *sui generis*, and enacted Ordinance No. 5 of 1867 conferring a special jurisdiction, providing a special procedure for the hearing and determining of such actions, and giving aggrieved parties a special right of appeal. When Ordinance No. 7 of 1887 replaced Ordinance No. 5 of 1867, section 141 of the new Ordinance expressly empowered the party aggrieved by the decision of a Chairman "to object to and appeal against such assessment or non-assessment in the manner provided by the Ordinance No. 5 of 1867". In other words, it continued the special jurisdiction, the special procedure and the special right of appeal provided for by earlier Ordinance. Ordinance No. 6 of 1910 which followed interfered with this state of things only to the extent of raising the monetary limit of the jurisdiction of Courts of Requests in matters of assessment so as to enable them to try actions in which the rate involved did not exceed Rs. 300. It brought the monetary limit in matters of assessment in line with the monetary limit of the jurisdiction of Courts of Requests in all other actions that they had power to try, and so met the difficulty created by the decision given in Jalaldeen's case.

For these reasons, I am of opinion that such an historical examination as I have attempted leads to a conclusion contrary to the view taken by Schneider J. and establishes that section 124 of the Municipal Councils Ordinance creates a special right of appeal and defines that right independently of the Courts Ordinance and of the Civil Procedure Code, except that it adopts the procedure laid down by "Chapter 58 of the Civil Procedure Code or by any Ordinance hereafter enacted regulating the making of appeals".

An examination of the words of section 124 leads to the same conclusion. The effect of the words "and the decision of such Court shall in all cases be subject to appeal to the Supreme Court" is, in the plain meaning of those words, to give a right of appeal not restricted in the way in which the right of appeal given by section 833 (*a*) of the Civil Procedure Code is restricted. If it had been the intention of the Legislature to impose similar limits to the right of appeal in matters of assessment, it seems to me that the obvious course for it to take was to refer to and adopt the provision in section 833 (*a*) just as it referred to and adopted Chapter 58 of the Civil Procedure Code when providing for the mode of preferring and prosecuting appeals.

Schneider J. appears to have reached the conclusion to which he came in *Weerasinghe v. Municipal Council* (*supra*), by taking the view that the words "shall in all cases *be subject to appeal*" are inappropriate for conferring a special right of appeal. He seems to have thought that if the conferment of a special right of appeal had been in the contemplation of the Legislature, it would have said "the aggrieved party may appeal", or "it shall be lawful for the aggrieved party to appeal". But although the language of statutory law is, to a large extent, conventional, I do not think it is quite as stereotyped as this comment of Schneider J. suggests I can see no substantial difference between the phrases "may appeal", "it shall be lawfull to appeal", and "shall be subject to appeal". They seem to be different ways of saying the same thing.

On the other hand, Counsel for the respondent admitted that on his submission the words " in all cases " in sub-section (3) are otiose. He sought to dispose of them by ascribing them to the copiousness of the draftsman's vocabulary. I am afraid I must refuse to be lured by the attractive simplicity of that solution. As Moseley J. observed these words " mean what they say " or are " meaningless ". It is an elementary rule of legal interpretation that words used in Legislative Enactments must be given a meaning wherever possible. It is not only possible, but quite easy to give the words " in all cases ", in this context, their ordinary meaning. Difficulty arises, and we find ourselves " in wandering mazes lost " only when we set out in search of support for a preconceived or desired interpretation by disregarding words that occur, and importing other provisions of law which have a purpose of their own, into a provision such as section 124 of the Municipal Councils Ordinance which has an independent completeness.

As a last resort, respondent's Counsel submitted that public policy suggests that the Legislature must have intended to adopt one measure of appeal from decisions in all cases that can reasonably be brought within the phrase action for " debt, damage, or demand ". I have already dealt with the submission that objection to assessment is within the meaning of the word " action for debt or demand " but with reference to this appeal to public policy, it has been often remarked that when we enter the region of public policy we are on slippery ground, and astride Burrough J.'s aged, but still " very unruly horse ". (*Richardson v. Mellish*[1].) We do not know where it will lead us. It is sufficient to say that it may well be that the Legislature thought that public policy required that such an imporant and difficult matter as that of assessment should be put in a class of its own.

For these reasons I am of opinion that the decision in *Weerasinghe v. Municipal Council, Kandy* (*supra*) is erroneous.

In view of this ruling and because Moseley J. has referred the whole case to us, we heard Counsel on the substantive appeal, and I now propose to address myself to that appeal.

The relevant facts are that the Municipal Council, through its Assessor, rated the appellant's property, No. 189, Bambalapitiya, on an annual value of Rs. 500. The appellant objected to this assessment, and asked that it be reduced to Rs. 450. The Commissioner refused to entertain the objection, and dismissed the action with costs. The appeal is from that decision.

The burden is on the appellant to show that the Assessor's assessment is unreasonable, and the question is whether the appellant has discharged that burden.

The learned Commissioner has accepted the appellant's evidence that he receives a monthly rental of only Rs. 45 ; that he tried his best to get Rs. 50 ; that his present tenant offered him only Rs. 40 in April, 1939 ; that he refused to accept that offer ; that the building remained unoccupied in May, 1939 ; that the present tenant later offered him Rs. 45 per

[1] *2 Bing 229.*

mensem and took it at that rental from June 1, 1939; that up to date, he pays that rent. There is also the uncontradicted evidence of the appellant that when this building was ready for occupation in February, 1937, he asked for Rs. 50 a month but could find no tenant till April. He then found a tenant who offered to pay him Rs. 50 a month, occupied the building from April to October, and then "ran away without paying rent for August and September". The nett result of that transaction was that the appellant received only Rs. 33.50 per mensem during that period. He never again found a tenant who even professed a willingness to pay Rs. 50 a month. He says that in order to find a tenant at Rs. 45 a month, he has had to reject lower offers, and to keep the building unoccupied for months at a time.

The plaintiff-appellant further testified to a drop in rents in this area, and on this point, he was supported by two witnesses whom he called, and by three witnesses called by the defendant-respondent. All that the Municipal Assessor was able to say in regard to this was that a comparative statement (D 4) of annual values compiled by him for the period 1934-1939 showed that, but for one exception, the assessments have remained the same, but he was unable to say, except inferentially from D 4, that the rents have remained the same in this area. In view of all this, it is difficult to understand why the Commissioner of Requests says that the plaintiff's allegation that there has been a tendency for rents in this area to drop "is not warranted by the evidence".

The defendant-respondent's case rests mainly on the results obtained by the Assessor by the application of what is known as the square foot method. The Assessor takes a number of more or less similar instances in this area and shows that in those instances, on the assessed value, the tenant pays as rent more per square foot of space than the tenant of this building would be paying if the rental had been fixed at Rs. 50 per mensem. On the assessed value of the premises in question, the square foot method yields 58 cents per square foot, whereas the statements D 1 and D 2 show that other premises in the near neighbourhood stands 82 cents, 70 cents, and 71 cents per square foot. Now, to carry the argument involved in this to its logical conclusion, it seems to follow that by the application of this method it would have been possible to justify an annual value of Rs. 600 or more for these premises.

When I make this comment I do not intend to suggest that the actual rent paid by a tenant to his landlord must for the purpos of assessment, always prevail over the results obtained by applying other principles familiar to the Law of Rating, such, for instance, as the square foot method applied in this case.

In *Weerasekera v. Municipal Council, Colombo*[1], Poyser J. said: "As I stated before, the rent actually paid is by no means conclusive as to what a hypothetical tenant would pay, but it is *primâ facie* evidence which, if uncontradicted may become conclusive". In *Silva v. Colombo Municipal Council*[2], Pereira J. observed as follows:—"The actual rent received by the landlord, in the absence of evidence of *mala fides* on the

[1] *40 N. L. R. 419.* [2] *3 Bal. 163.*

part of the landlord or tenant is *generally speaking*, a fair test to go by in estimating the annual value, provided, of course, it has not been fixed in view of special circumstances applicable to any particular case". The words I have underlined are of the greatest importance when we are examining these judgments in order to obtain guidance for ourselves. Those words are, in my view, intended to convey the meaning that the actual rent paid is not necessarily conclusive even in cases in which there is no contradiction by the Council of the evidence for the landlord in regard to the rent paid by his tenant, or in which there is no evidence of *mala fides*, or of special circumstances. I have thought fit to draw attention to this fact because there are other cases in which the decisions seem to suggest that in the absence of "contradiction", "*mala fides*", or "special circumstances", the actual rent paid affords a conclusive test. That appears to be too wide a proposition. I am indebted to my brother Keuneman for a reference to a passage in *Faraday on Rating (4th ed.), p 70,* which sums up admirably the law on this matter. It says, "as a broad principle the rent actually paid is *primâ facie* evidence of value, but it is not conclusive evidence ; *the rent,* however *recently* agreed to be paid by a *perfectly free occupier* under the statutory terms, would be a *criterion of value difficult to set aside*". *Ryde on Rating (5th ed.), p. 207,* puts the matter thus :—"But though the rent actually paid is not the measure of rateable value, or even conclusive evidence of the value at the date when the rent was fixed, if a rent payable under a yearly tenancy *has been recently fixed* without payment of any premium or the like, it may be taken as *primâ facie* evidence liable to be rebutted". It is not difficult to imagine cases in which even in the absence of "contradiction", "*mala fides*" or "special circumstances", a rent lower than that which a hypothetical tenant might reasonably be expected to pay is fixed between landlord and tenant without what is known as "higgling of the market".

In the case before us, the Assessor does not deny that the monthly rent of Rs. 45 is the actual rent. The Commissioner of Requests has found that there has been no "*mala fides*", that there are no "special circumstances" relating to the fixing of this rent ; the evidence establishes that there has been sufficient "higgling of the market" by the landlord, and the rent of Rs. 45 a month is a rent that has been *recently* fixed.

In these circumstances, the appellant has satisfied the requirements imposed upon him and has proved that Rs. 450 is the annual value of this building in the meaning given to "annual value" in section 4 of the Municipal Councils Ordinance.

I would, therefore, allow the appeal, set aside the decree entered by the Commissioner of Requests and direct decree to be entered declaring Rs. 450 to be the annual value of this building for the year 1939.

The appellant is entitled to costs here and below.

KEUNEMAN J.—I agree.

CANNON J.—I agree.

Preliminary objection overruled.
Appeal allowed.