1953 *Present :* **Nagalingam A.C.J.**

P. A. G. THOMAS, Appellant, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 56—Appeal under section 15 (1) of the Indian and Pakistani Residents (Citizenship) Act

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 3—Application for registration as citizen of Ceylon— Quantum of evidence—Costs.

In an application for registration as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act—

Held, (i) that the single circumstance that the applicant had made declarations of temporary residence in " B Forms " for the purpose of remitting two sums of money should not be permitted to have an over-riding effect over all other considerations.

(ii) that the descendant of a person who has been registered as a citizen of Ceylon on the ground of permanent settlement is entitled to a certificate of registration without proof that he himself has permanently settled in Ceylon.

Costs to be taxed as in an action in Class V in the District Court.

APPEAL under section 15 (1) of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.

N. K. Choksy, Q.C., with *E. R. S. R. Coomaraswamy*, for the appellant.

M. Tiruchelvam, Crown Counsel, for the respondent.

Cur. adv. vult.

August 26, 1953. NAGALINGAM A.C.J.—

This is an appeal from an order of the Commissioner for the Registration of Indian and Pakistani Residents refusing the application of the appellant for registration as a citizen of Ceylon under Act No. 3 of 1949.

The Commissioner has accepted the evidence adduced by the appellant in regard to the continuity of his residence in Ceylon within the meaning of and as required by section 3 of the Act, but the ground on which the refusal was based by the learned Commissioner is that he is not satisfied " that the applicant had permanently settled in Ceylon ". Learned counsel for the appellant has urged that the decision of the learned Commissioner is erroneous not only in regard to the question of permanent settlement but also in regard to the question of law that arises in the case, independently of any question of permanent settlement of the appellant.

In so far as the facts are concerned, there can be little doubt that a very strong prima facie case has been made out by the appellant. He was born in Ceylon ; he was educated in Ceylon, excepting for a period of two years in India ; his parents are in Ceylon ; he was married in Ceylon ; his wife has continued to live in Ceylon ; his child was born in Ceylon, and the child has also continued to live up to the date of application in Ceylon ; furthermore, he has been employed continuously in Ceylon ever since he became employable. He has no interest in India in the sense of being possessed of any property there, and it is equally true to say that he has no interest in Ceylon in the same sense. So far as acquisition of any property in Ceylon is concerned, he has referred to the fact that he is a young man twenty-six years of age and has not reached that stage in life when as a result of his own exertions he could be expeeted to have accumulated sufficient wealth to make investments of any kind. What is yet a still stronger factor is that his father has been granted a certificate of registration and so has one of his brothers, while the application of another brother is yet pending.

As against all these facts and circumstances, what has been regarded as sufficient to turn the balance against the appellant has been the statement by the appellant that he is a temporary resident in two application forms, referred to as " B Forms " for the purpose of remitting two sums of money, of Rs. 60 and Rs. 25 in February and December of the year 1949. He has made no other remittances even subsequently. The appellant when called for an explanation in regard to the description of himself as a temporary resident in Ceylon, stated that he had not made that statement with a view to " give up his Ceylon citizenship " but as far as he knew " the only course left at that time was to remit through B Form where the necessary declaration had to be made ",

meaning thereby that that was an integral part of the form and that that was the only form available to him to be used, especially in circumstances which were rather urgent, in regard to the first sum remitted by him, which was in the nature of an assistance to his sister who was very ill; the other sum, it is said, was in the nature of a Christmas gift.

It has been urged on behalf of the appellant, and it has not been controverted by learned Crown Counsel, that the appellant could not describe himself as a citizen of Ceylon before he was registered, and till that registration was effected the only course open to him was to apply in Form B which contains the statement that the applicant is a temporary resident in Ceylon. The learned Commissioner has, however, taken the view that this statement was not only a false statement but a false statement to the knowledge of the appellant, so much so that his conduct indicated that " he could hardly have had much regard for the laws of this country ", and as the appellant had also failed to establish that he had been " associated with any local social service organization or any local public life ", whatever these may mean in relation to the appellant, he made order refusing the application.

Be that as it may, one of the Deputy Commissioners seems to have taken a slightly different view in regard to the explanation offered by the appellant, for on 10th June he made a minute which runs as follows:

> "2. Re permanent settlement I think his explanation in para. 2 overleaf merits favourable consideration. He has made only two remittances. *For this purpose he had no other alternative except to sign the B. Forms.* "—

which to my mind is a realistic view of the situation.

While there cannot be the slightest doubt but that a statement of an applicant that he is only a temporary resident, though made it be for the sake of acquiring any benefit, however small, should be carefully weighed and weighted as heavily as all the surrounding circumstances would permit to the fullest allowable extent, it must not, however, be deemed to be the sole factor or criterion having such an over-riding effect over every other circumstance and fact so as to outweigh the cumulative effect of all other considerations—see the case of *Doucet v. Geoghegan*[1].

It seems to me, therefore, that the learned Commissioner should not have allowed the single circumstance of declarations of temporary residence made in the circumstances in which they were made to be the deciding factor in refusing the appellant's application.

I do not, however, wish to rest my judgment on this ground alone. There is the point of law that has been raised and which has not been adequately met by counsel for the respondent. Under the Act as first enacted, an Indian resident meant a person who fell under one of two different categories: (1) an Indian who had emigrated from India and permanently settled in Ceylon; (2) a descendant of such a person. An amendment widening the class of persons, by introducing a third category, who would be entitled to claim the benefit of the Act was introduced by the amending Act No. 37 of 1950, but as it has little or no impact on the question before me, I shall not advert to that amendment.

[1] *(1878) L. R. Ch. D 441.*

Mr. Chokşy contends that in view of the fact that the father of the applicant has been registered as a citizen of Ceylon as a person falling under category (*a*), the applicant is a person therefore who falls under category (*b*), and as such entitled to be regarded as an Indian resident within the meaning of the Act without his having to establish that he had himself permanently settled in Ceylon. The facts upon which the contention is based are not in dispute. That the applicant's father was born in India, that he emigrated from there to Ceylon and that he has permanently settled in Ceylon is established by the certificate of registration issued to him. The appellant, therefore, being a descendant of a person who falls under category (*a*) is himself entitled to be regarded as an Indian resident to whom the privileges conferred by the Act extend.

Mr. Tiruchelvam sought to meet this argument by putting forward in indignant tones the hypothetical case of an applicant who, he said, may be the son of a person registered as a citizen of Ceylon under category (*a*) but who has made his home in Bombay, and postulated the question whether such an applicant should be granted a certificate of registration as a citizen of Ceylon without proof of permanent settlement ; and he proceeded to posit that such a person may claim the dual benefits of Indian and Ceylon citizenship.

If everything that counsel implies by his deductions be correct, such a case may present a difficulty, but it does not establish that the simple words " a descendant of any such person " have therefore to be given a meaning other than what the words plainly and literally connote. He himself did not venture to suggest what other meaning he was prepared to give them, but he however thought that in order to prevent such a calamity as the one he had visualised the words should be qualified by some such phrase as " who has permanently settled in Ceylon ".

I find it difficult to limit the scope of these words in this manner. Mr. Tiruchelvam has given no adequate reason for so qualifying them, in particular when it is borne in mind that the necessity for permanent settlement has been emphasized in regard to the first category of persons and the third category introduced by the amending Act, but no such requirement has been added to the second category which appears both in the principal and the amending Ordinances. To my mind, there is good reason for the legislature making such a differentiation. Where a person under category (*a*) obtains a certificate of registration, he can and is entitled to exercise the privileges conferred by the Ordinance on behalf of his minor children who would then be entitled to be registered as citizens of Ceylon. In the case of children who are majors, the parent is not entitled to make an application on their behalf for the obvious reason that, the children being majors, they are entitled to make their own decision with regard to an application for registration, and if they decided to have themselves registered the legislature apparently did not intend that they should have to surmount any obstacles which their minor brothers or sisters would themselves not have to negotiate.

If one looks at the problem from this point of view, one can quite appreciate why a descendant of a person who is registered under category (*a*) should be given the right to claim registration without being compelled

to establish the fact of permanent settlement. In the illustration given by Mr. Tiruchelvam, assuming that a son of a person who has been registered under category (*a*) and who has made his home in Bombay makes application for a certificate of registration, then by virtue of the provisions of the Ordinance he would on registration in Ceylon as a citizen lose whatever rights of citizenship he may have had in any other country, so that even the difficulty which Mr. Tiruchelvam envisaged cannot arise.

I am therefore of opinion that the true construction is that where an applicant is a descendant of a person who has been registered under category (*a*) it is not necessary for him to establish that he himself has permanently settled in Ceylon. The fact that he is a descendant of such a person is all that need be established before applying for registration, subject to the other requirements of the Act for effecting registration.

I therefore set aside the order of the learned Commissioner and substitute for it an order that a prima facie case has been made out by appellant for allowing his application, and direct the Commissioner to take the further steps necessary under the Act. The petitioner will also be entitled to the costs of his application, which will be taxed by the Registrar as if it were an action in Class V in the District Court.

Order set aside.