1954 *Present :* **Nagalingam S.P.J.**

M. P. S. SHAHUL HAMEED, Appellant, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 988—Application No. D765

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 6, as amended by Act No. 45 of 1952, s. 2 (2) and (3)—Acquisition of citizenship—Applicant's wife—Proof of her uninterrupted residence in Ceylon.

In an application made by a person, under the Indian and Pakistani Residents (Citizenship) Act, for the registration of himself and his family as citizens of Ceylon, the applicant, who had married in India on February 24, 1941, showed that his wife did not join him in Ceylon earlier than June 3, 1942, owing to apprehension of enemy action and by reason of the special difficulties created by the existence of a state of war.

Held, that the applicant was entitled to claim the benefit of the provision contained in the last paragraph of section 6, as amended by Act No. 45 of 1952.

APPEAL from an order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents.

N. K. Choksy, Q.C., with *C. Shanmuganayagam*, for the applicant-appellant.

M. Tiruchelvam, Crown Counsel, for the respondent.

Cur. adv. vult.

November 29, 1954. NAGALINGAM S.P.J.—

This is an appeal under the provision of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 from an order of the learned Deputy Commissioner rejecting the application of the Applicant for registration of himself and of his family as citizens of Ceylon. There are a few salient facts which are undisputed. Admittedly, the plaintiff's father was resident in Ceylon for several years and had been contractor to the Dehiwela-Mt. Lavinia Urban Council for the supply of meat. The Applicant has since his father's death in 1937 been and is contractor to the Council and has resided within its area.

Mr. L. V. Gooneratne, a prominent citizen of that area, states that he has known the applicant for the last thirteen years and in his own mind has looked upon him as part and parcel of Ceylon.

The Applicant lives in his own house in Dehiwela and is possessed of immovable property to the value of Rs. 25,000 besides owning the meat business. It is true he is also possessed of property of about the same value in India, but has no business interests there. On the 24th February

1941, he got married in India ; the wife continued to remain in India while he returned to Ceylon within five months of the date of his marriage. His first child was born in India on the 19th January 1942, and on the 3rd June 1942 the wife and child joined him in Ceylon. The second child was born on 1st January 1943, while the third in India and the subsequent children have all been born in Ceylon. The present Chairman of the Urban Council who is the M. P. for the area states that the Applicant is personally known to him since 1942 and that he has been residing with his family continuously since 1942.

On the 12th June 1951, the Appellant made his application for registration. On the 6th August 1953, that is to say, more than two years after the application, the learned Deputy Commissioner notified the Applicant in terms of section 9 of the Act that unless he shewed cause to the contrary, he had decided to refuse his application on the ground that the Applicant had failed to prove that his wife had been resident in Ceylon from the 4th June 1942 to January 1947, and from 9th November 1947, to 11th August 1950 without absence exceeding 12 months on any single occasion. The ground specified by the learned Commissioner is one that is referable not to any express provision of the Act as it stood at the date of the application but to the Amending Act No. 45 of 1952, which had become law in the meantime and under which it was provided that a male married applicant had to satisfy the Commissioner, in addition to the other requirements prescribed by the main Act, that his wife had been *uninterruptedly* a resident in Ceylon from a date not later than the first anniversary of the date of her marriage and until the date of the application. The term uninterruptedly was assigned an artificial meaning by a declaration that the continuity of the residence of the wife should notwithstanding her occasional absence from Ceylon be deemed to have been uninterrupted if such an absence did not on any one occasion exceed 12 months in duration. The Applicant shewed cause by adducing further evidence but the Commissioner informed him that the evidence adduced by him was not conclusive and that he proposed to hold an inquiry in terms of section 9 (3) (*a*) of the Act.

At the inquiry, the Applicant himself gave evidence and called witnesses but at the conclusion thereof the learned Commissioner refused the application on the ground " that the Applicant had failed to satisfy him that his wife had been resident in Ceylon from the date of the first anniversary of marriage ". It is conceded on behalf of the appellant that as the wife had not joined him in Ceylon till the 3rd June 1942, it could not be said that she had had uninterrupted residence in Ceylon from a date not later than the first anniversary of her marriage and up to the date of her application, but it is urged on his behalf that he is entitled to claim the benefit of the last paragraph of the provision amending section 6 of the Act, which omitting words that have no bearing on the present discussion, runs as follows : " For the purposes of the preceding paragraph 2 (ii) the continuity of residence of the wife shall not be deemed to have been interrupted by reason that she was not resident in Ceylon during the period commencing on 1st December 1941 and ending on 31st December 1945 or during any part of that period if the Commissioner is satisfied

that she did not reside in Ceylon during that period or any part thereof owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the war."

The Applicant stated on oath that the reason why he did not bring his wife earlier was because of his apprehension of enemy action and was also due to special difficulties caused by the existence of a state of war. In order to support his evidence as regards the first reason given by him, he called the Village Headman of the area who stated explicitly that towards the end of January or February, 1942, he brought to the notice of the residents of the area both personally and by beat of tom-tom that those who wished to evacuate to the interior might do so in view of the existing state of war. The applicant and the Headman both resided at Waidya Road at that time, close to each other. In regard to the second reason that there were special difficulties caused by war, he called a witness, Mrs. Martenesz, who testified to her assistance being sought by the appellant to secure the services of a servant woman as he had failed in the attempt, and that she too failed to secure a servant and that when the wife returned, a relative of the applicant as well as her own servant gave the wife some assistance. This witness further stated that when the wife arrived in Ceylon in June 1942, she was in a delicate state of health, a fact uncontrovertably established by the child being born in January 1943.

The learned Commissioner has taken the view that the fact that, as early as 3rd June, 1942, the applicant was able to bring his wife to Ceylon, led to the irresistible conclusion that the reasons for his having not brought his wife earlier was not that he had apprehensions in regard to enemy actions nor due to any special difficulties caused by the war but that it was due, as he had affirmed to in his affidavit of 1951, that she was in delicate health. Such an inference is undoubtedly possible but the question is whether that is the proper inference to be drawn from all the facts deposed to by the applicant taken in conjunction with evidence of the other witnesses as well.

At the date the affidavit was sworn to in 1951, the amending Ordinance of 1952 had not been enacted and any apprehension of enemy action which may have been one mental element inducing a husband not to bring his wife to Ceylon would have had no bearing at all on an application made under the Act and hence one can quite appreciate why one, especially a skilled draughtsman, drafting an affidavit in those circumstances, would have omitted to refer to any such fear in the mind of the applicant, as being irrelevant. But at the date of the inquiry which was subsequent to the legislature giving legal recognition to the existence of anxious feelings in the mind of the husband for the safety of his wife and children by providing that a husband should be entitled to satisfy the Commissioner that the absence of the wife was due to an apprehension of enemy action or to special difficulties caused by a state of war, the question whether the applicant had such an apprehension or not became relevant and he gave evidence of the fact and called the Headman to establish that his apprehension was real in that it was moulded and based upon official pro-

nouncements, which not only could not be lightly rejected but which on the other hand brought home to him most forcibly the grave risks to which he would be exposing his wife and child if he were to bring them into an area which was without doubt regarded as a danger zone. Can it be said that the applicant was devoid of all tender feelings towards his wife and child, that he remained unaffected by the announcement of the Headman that those who wished to evacuate to the interior may do so, and that he was so callous as not to care for the welfare, not to speak of the lives, of his wife and child? These questions admit only of one answer and that answer has been anticipated by the Legislature when it enacted the last paragraph of the amending provisions to section 6 of the Act. In particular, the period December 1941 to about April 1942 was one of very great anxiety and mental strain for all the peoples of the Island and especially for those living in Colombo and the neighbouring coastal areas. Singapore had fallen ; the enemy had announced over the radio that Ceylon was to be the next target of attack and that Colombo and Trincomalee had been singled out for air-raids. The atmosphere was charged with these stories of impending enemy attack and when the applicant says that he was influenced by apprehension of enemy attack in not bringing his wife earlier than he did, is it possible in those circumstances to reject his statement? The facts that his wife was also in a delicate state of health and that he was unable to secure the services of a servant woman were also factors which operated on his mind are in no way in conflict and are in fact quite compatible with his attitude that he did fear enemy action. That servants were not willing to be employed either in Colombo or the coastal area about this period owing to apprehension of enemy action is also a matter of common knowledge. It is not difficult to appreciate therefore that the averments in his affidavit of 1951 far from throwing doubt on his case only affirms the well known general proposition that human conduct is governed not by a single but by various emotions and that each emotion may be the resultant product of several factual elements, of which some may indeed be in conflict with one another. It is however said by the learned Crown Counsel that the fact that the wife and child were brought by the applicant in June, 1942, must be regarded as destroying completely any inference that the apprehension of enemy action was in fact an element that in any way controlled the conduct of the applicant. This argument however loses sight of two important considerations ; firstly that after the raids over Colombo and Trincomalee had become realities by April 1942, further raids were regarded as remote in view of the enemy having had the worst of the encounters; secondly the mental anguish of the wife during the period of the raids when the husband was in Ceylon and in a target area cannot be disregarded as a determining factor which made husband and wife decide to brave together the dangers if any of enemy action at that time, each being prepared to perish or survive with the other. Besides, the argument of learned Crown Counsel leads to this unsatisfactory result that had the applicant not brought his wife in June 1942, but brought her in December 1945, then his statement that due to apprehension of enemy action he had not brought his wife would have been entitled to prevail and his application would then have had a plain sailing. But because he or rather the wife braved the perils of enemy action, because the wife was

herself prepared to stand by the husband and share the hazards of war, his conduct is penalised, but to my mind such conduct is worthy of commendation ; in fact I find that the applicant has had certificates granted to him by more than one Chairman of the Urban Council lauding him for remaining behind when a number of shopkeepers had left the area.

I am satisfied on a review of all the facts that the proper and reasonable inference to be drawn is that the wife did not join the husband earlier than 3rd June 1942 because of the latter's apprehension of enemy action and also by reason of the special difficulties created by the war in that servants had been scared away from Colombo and coastal areas as a result of the state of war, and that he is entitled to claim the benefit of the provision contained in the last paragraph amending section 6 of the Act.

For these reasons, I set aside the order of the learned Commissioner and hold that there is a prima facie case made out for allowing the Applicant's application and direct the Commissioner to take further action as required by law. The Appellant will be entitled to the costs of the appeal.

Order set aside.