1938 *Present :* Soertsz and Hearne JJ.

NUGAWELA *v.* MUNICIPAL COUNCIL, KANDY.

169—D. C. Kandy, 47,824.

Municipal Council Ordinance, No. 6 of 1910, s. 164—Sale of property for non-payment of rates—Property subject to services—Purchase by Municipality—No liability to services.

Where property, subject to services to a Dewala, is sold for non-payment of rates and is purchased by the Municipal Council in terms of section 146 of the Municipal Council Ordinance, the property vests in the Council free from any liability for services.

APPEAL from a judgment of the District Judge of Kandy.

N. E. Weerasooria (with him *E. B. Wikramanayake*), for plaintiff, appellant.

H. V. Perera, K.C. (with him *VanGeyzel*), for defendant, respondent.

Cur. adv. vult.

February 8, 1938. SOERTSZ J.—

The paraveni nilakarayas of the lands described in schedule A of the plaint were liable to perform the services enumerated in schedule B.

They failed to pay the Municipal rates due on the premises and the Chairman of the Council took action under section 137 of the Ordinance

No. 6 of 1910, had the premises seized and sold, and availing himself of the right given to him by section 144, purchased them for and on behalf of the Council.

The plaintiff who is a Basnayake Nilame of Pattini Dewale which is the Dewala entitled to exact the services referred to in schedule B, brings this action to have it declared that the purchase by the Council is of no avail against the Dewala, or, in the alternative that the Council as successor to the title of the nilakarayas, is liable to pay a sum of Rs. 56 in lieu of services. The first point was not taken on appeal. In regard to the alternative claim, the Council denies this liability and states that the properties in question, have vested in it free from any obligation to perform or commute these services.

Whether the plaintiff's claim or the defendant's denial should prevail depends upon what the correct interpretation of section 146 is. That section as amended by Ordinance No. 32 of 1930 is as follows:—"Whenever land or other immovable property is purchased by the Council under the provisions of section 144, a certificate substantially in the form contained in schedule H, signed by the Chairman shall vest the property sold *absolutely* in the Council free *from all* encumbrances". In this instance there are three such certificates, D 1, D 2, D 3 and the sole question for determination is what is meant by the words 'vest absolutely and free from all encumbrances'.

For the appellant it is contended that there is no special significance in the word "absolutely" in this context, that it is pure tautology, and that the words mean free from encumbrances, and nothing more. It is also contended that "encumbrances" means nothing more than mortgages.

This latter contention is based on the case of *Sivacolundu v. Noormaliya*[1]. In that case Bertram C.J. in construing section 143 of Ordinance No. 6 of 1910 observed as follows:—"The word 'encumbrances' indeed, may have a very wide significance, but it may also have a limited one. When we look at the scheme of this Ordinance and in particular to the proviso to section 143, I am very much inclined to suspect that what was really in the mind of the Draftsman when he used the word 'encumbrances' was simply mortgages." This observation was made *obiter* and it is a view I cannot share, for it is not at all clear to me why if the Draftsman had in mind mortgages and nothing else, he should have avoided so familiar a word, and employed the word "encumbrances", with its wider connotation. But Bertram C.J. goes on to say that even if the word mortgages is not substituted for the word "encumbrances", the latter word is hardly appropriate for the purpose of describing a limitation of title at its very inception. He says: "when one speaks of encumbrances upon a title, one does not think of a limitation which is an essential element of that title, but of something independent imposed upon the title". Counsel for the appellant pressed this view too upon our attention. I do not quite appreciate the distinction. But even if I assume that a limitation of this kind is not an "encumbrance", it seems quite clear that a land subject to such a limitation cannot be said to vest "absolutely" in the Council. So

[1] 22 *N. L. R.* 427.

long as the title is subject to a limitation or a condition, it is not *absolute*, and section 146 provides for the property vesting *absolutely*. I cannot at all agree that the word "absolutely" should be regarded as redundant. I therefore think that the trial Judge reached a correct conclusion. I must not, however, be understood to subscribe to all the reasons given by him for reaching that conclusion.

I dismiss the appeal with costs.

HEARNE J.—I agree.

Appeal dismissed.