1938 *Present* : **Poyser S.P.J.**

REYAL *v.* ASSAN.

573—M. C. Colombo, 2.

Dwelling house—Meaning of term—Exclusive use for residential purposes unnecessary—Tenancy of qualifying property—Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, ss. 2 (2) (a) and 14 (3) (c) and 14 (5).

To constitute a dwelling house within the meaning of section 2 (2) (*a*) of the Colombo Municipal Council (Constitution) Ordinance it is not necessary that the house should be used exclusively for residential purposes. It would be sufficient if some person dwells in the house.

Under section 14 (3) (c) of the Ordinance all tenants of a qualifying property are qualified to be registered as voters.

APPEAL from an order of the Municipal Magistrate of Colombo.

H. V. Perera, K.C. (with him *J. E. M. Obeyesekere* and *M. M. I. Kariapper*), for the objector, appellant.

L. A. Rajapakse (with him *J. E. A. Alles*), for the respondent.

40/22

Cur. adv. vult.

October 3, 1938. POYSER S.P.J.—

The appellant, a registered voter in the San Sebastian Ward of the Colombo Municipality, objected to the respondent's name being included in the list of voters for that ward on the grounds that he was not a tenant of qualifying property situated within the limits of that ward and that he was not resident in such ward on the material date. The Commissioner referred this objection to the Municipal Magistrate and the latter on August 27 last, held that the objection was unsound and dismissed it.

The facts are as follows : The respondent was the tenant of the premises No. 130, Hulftsdorp street, with the exception of two rooms used as offices. He slept there and had his meals there. The premises in question satisfy the provisions of section 14 (3) of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, for they are assessed at Rs. 600 a year. The respondent was residing in these premises on the material date, namely, May 1, 1938, and had been residing there since May, 1936.

On behalf of the appellant it was contended (1) that the respondent did not reside in a dwelling house as contemplated by section 2 (2) (*a*) of the Ordinance, (2) that assuming he did, he was not responsible to the owner for the payment of the rent of the qualifying property within the meaning of section 14 (3) (*c*) of the Ordinance as there was more than one tenant of the qualifying property but no joint tenancy as contemplated by section 14 (5).

I do not think there is any substance in the first contention that was raised ; in fact, it was not pressed. A dwelling house is not defined in the Ordinance. Under certain English Acts there is such a definition, for example, in section 5 of 41 & 42 Victoria, chapter 26, it is defined as including any part of a house separately occupied as a dwelling. In my opinion to constitute a dwelling house some person must dwell in the house and it is not necessary that the house should be used exclusively for residential purposes. A number of houses can be used and are used partly for business purposes and partly for residential purposes, as these premises were, and I can see nothing in the Ordinance which lays down, or from which it can be inferred, that "dwelling-house" means a house which is exclusively used for residential purposes. For these reasons the appellant is not, in my opinion, entitled to succeed on this ground.

In regard to the second point, the Ordinance in my opinion contemplates both separate and joint tenancies of qualifying property. When section 14 (3) (*c*) and section 14 (5) are read together I do not think there can be any doubt on this point. It was argued that the words in section 14 (5) "be deemed to be a tenant of the qualifying property, notwithstanding the fact that the qualifying property is jointly tenanted" indicated that the Ordinance only contemplated a person who was the sole tenant of the qualifying property or was a joint tenant. I do not think this is so or that it was intended to restrict the operation of this section to persons who were joint tenants as recognized under the English law, that is who had an interest in real property passed by the same conveyance or claim. I think the Ordinance contemplated, subject to the provisions of section 14 (5), that all tenants of any qualifying property should be qualified to be registered as voters.

The appeal will therefore be dismissed. I would, however, add that if the provisions of Ordinance No. 14 of 1938, which amended the principal Ordinance, were applied these objections could not arise, for in section 2 the word "building" is now substituted for the word "dwelling-house" and the definition of "tenant" in section 14 (*b*) is amended and it now includes any person in possession or occupation of any qualifying property whether as lessee, sub-lessee, tenant or sub-tenant. The amending Ordinance came into force on April 12, 1938. The Magistrate however considered that this objection was unaffected by the amendments introduced by the amending Ordinance as the matter of the revision of the lists was a pending matter when such amending Ordinance came into force and consequently, having regard to the provisions of section 5 (3) of the Interpretation Ordinance, 1901, had to be carried on and completed as if no such amending Ordinance existed. Because I am upholding the Magistrate's decision, it must not be assumed that I agree with his decision on this latter point. For the purpose of this appeal I think the objection fails if only the principal Ordinance is taken into account and it is therefore unnecessary to consider whether the amending Ordinance can be applied or not.

The appeal is dismissed. The appellant will pay the respondent the costs of the appeal and of the inquiry before the Magistrate.

Appeal dismissed.