

1947

*Present : Dias J.*

KANGASABAI, Appellant, and CANAGARATNAM, Respondent.

S. C. 432—*M. C. Matale*, 8,059.

*Housing and Town Improvement Ordinance—Building operation—Conversion into dwelling house—Section 6 (2) (g).*

The "alteration" contemplated by section 6 (2) (g) of the Housing and Town Improvement Ordinance is the conversion into a dwelling house of a building which up to that time had not been used as a human habitation.

<sup>1</sup> (1920) 22 N. L. R. at p. 158.

<sup>2</sup> (1935) 36 N. L. R. 442.

<sup>3</sup> (1926) 28 N. L. R. at p. 63.

<sup>4</sup> (1927) 5 T. L. R. 11.

<sup>5</sup> (1932) 12 C. L. Rec. at p. 28.

## APPEAL against a conviction from the Magistrate's Court, Matale.

*H. W. Tambiah*, for the accused, appellant.

No appearance for the complainant, respondent.

*Cur. adv. vult.*

June 27, 1947. DIAS J.—

The appellant was permitted by the local authority to build a garage on his land. It was an affair of clay and cadjans and was not intended to be used as a human habitation. The appellant, however, rented that shed to Selliah as a dwelling place. It is alleged that thereafter the appellant authorised Selliah to fix a jute hessian curtain or screen to two reepers at the two ends of the room which was thereby converted into two parts. Selliah lived in one part and sold vegetables in the other. Whenever Selliah wanted to go from one part of the room to the other, he crawled under the jute hessian curtain.

The appellant has been convicted and sentenced to pay a fine of Rs. 100 under section 13 of the Housing and Town Improvement Ordinance (Chap. 199) for contravening the provisions of section 6 (2) (g) of that Ordinance. The only relevant portions of section 13 under which the appellant could be convicted appear to be section 13 (1) (c) for executing "a building operation" in contravention of section 6 (2) (g) or under section 13 (1) (f) for causing Selliah to do so. I doubt whether the act of affixing a jute hessian screen to two reepers inside a room can be described as a "building operation" within the meaning of section 13—see the observations of Poyser J. in *Nesaduray v. Appuhamy*<sup>1</sup>.

Section 6 (1) provides that no persons shall make an "alteration" in any building within local limits without the written consent of the Chairman. For the purpose of section 6 and the connected sections, section 6 (2) defines the word "alteration" to mean *inter alia* "the conversion into a dwelling house of any building not originally constructed for human habitation"—section 6 (2) (g).

Can the act of Selliah, whether authorised thereto by the appellant or not, be called the conversion into a dwelling house of this shed, which at that time was being used by Selliah as his residence? The word "convert" means to change a thing from one state to a different state. When one speaks of the conversion of a sinner, or the conversion of the quadrangle of the Courts into a set of chambers, we imply that the last state of the sinner and the quadrangle are changed from their previous state into something different. If the state remains unchanged there is no "conversion".

This shed was not originally constructed for human habitation. The conversion took place when the appellant rented that shed to Selliah to serve as a human habitation. It is impossible to say that when the jute hessian screen was affixed there was any further conversion of the shed into a dwelling house because it was that already. When the screen

<sup>1</sup> (1935) 14 C. L. Rec. at p. 197.

was affixed there was a conversion of part of the dwelling house of Selliah into a vegetable boutique, but I cannot hold that this amounts to a breach of section 6 (2) (g) which says nothing about converting a building into a shop or place of trade.

I am of opinion that section 6 (2) (g) has in view the doing of some work—some building operation—which results in the alteration or conversion into a dwelling house, of a building which up to that time was not used as a human habitation—see the observations of Fernando J. in *Nesaduray v. Amarasinghe*<sup>1</sup>. If before that work or building operation was done the building had, in fact, been used as a human habitation, the doing of that work does not convert that building into what it already was.

It is extremely doubtful that Selliah, who had taken this shed as the tenant of the appellant, would have asked his permission to affix a jute hessian screen to two reepers.

I do not think this charge can be maintained. It may be that the appellant committed some offence when he rented the shed to Selliah to serve as a human habitation, but that is not the charge against him.

I set aside the conviction and acquit the accused.

*Conviction set aside.*

