1937 *Present :* **Fernando A.J.**

NESADURAY *v.* AMARASINGHE

488—M. C. Colombo, 10,417.

Housing and Town Improvement Ordinance—Alteration of buildings—Conversion of stores to tenements—Ordinance No. 19 of 1915, s. 6 (1).

A person who uses a building not constructed for human habitation as a dwelling house without making an alteration for the purpose of converting the premises into a dwelling house is not guilty of an offence under section 6 (1) of the Housing and Town Improvement Ordinance.

THE accused appellant was charged with (1) effecting alterations to existing buildings, to wit, by converting stores into dwelling houses by means of internal partitions, without the previous written sanction of the Chairman of the Municipal Council, Colombo, in breach of section 6 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915; (2) for occupying the same buildings or allowing them to be occupied without having obtained a certificate of conformity in terms of section 15 (1) of the same Ordinance. The Municipal Magistrate convicted the appellant on both charges, and sentenced him to a fine of Rupees twenty-five on each charge and a further continuing penalty of Rupees two and fifty cents per diem on the second charge, to commence on the 15th day from the date of conviction until the appellant refrains from renting out the unauthorized premises.

Mackenzie Pereira (with him *Stanley de Soyza* and *V. F. Guneratne*), for appellant.—The respondent admits that the actual structural alterations were effected not by the appellant but by his son. In order to assign a meaning to the word conversion as used in our Ordinance, we are not called upon to travel outside its provisions. Section 6 defines the word alteration, and what is penalized is the making of an alteration without the written consent of the Chairman. We cannot divorce the word alteration from the word conversion, see sub-section (2) to section 6, so that what is objectionable is conversion by alteration which is quite a different thing to a conversion by user. In the case of *Inspector Nesadurai v. Appuhamy* [1] Poyser J. held that the user of a firewood shed as a living room did not contravene the provisions of this section, and there too the meaning of the word conversion had to be considered, and the Supreme Court was not prepared to hold that mere user without actual alteration was enough. The section has been enacted to penalize the person who effects the alterations or the person at whose instance they were effected ;

[1] *14 Law Recorder. 196.*

here the appellant had nothing whatsoever to do with the buildings. This is a penal liability which is put an end to by the death of the wrongdoer. The obligation to apply for a certificate of conformity in the first instance rests with the person who has erected the building, see sub-section (2) to section 15, the buildings having been constructed by the appellant's son he should have seen to it. The appellant may presume that all this has been done for he came into the premises long after. The refusal of the Chairman to grant the appellant a certificate is bad, he does not state the grounds of refusal, see sub-section (2). Both charges come under preventive measures, the authorities have misconceived the present prosecution, taxes have been recovered for over one year, the buildings in the altered form have been allowed to exist for over two years, they must therefore be treated as existing buildings. One does not resort to preventive measures to remove a mischief which has been allowed to come into existence. The Ordinance provides for remedial measures, see Part 2 to the Ordinance. Chapter 3 deals with obstructive buildings and chapter 4 with insanitary buildings; remedies are provided in these chapters. The continuing penalty is bad; it is impossible for the appellant to get rid of his tenants within fifteen days, at least they are entitled to a month's notice.

E. F. N. Gratiaen (with him *F. C. de Saram*), for the respondent.—So long as the appellant continues to use the buildings as dwelling houses having had no authority to use them as such he commits the offence. The Chairman gave the appellant timely warning, he is merely taking advantage of his son's wrong doing. The passage in Lumley on *Public Health, vol. I., p. 1033,* shows that for conversion actual structural alteration is not necessary. The only sections under which we could have charged the appellant are the two referred to in the charge, we cannot obtain an order for demolition. Unless the Court holds the appellant has contravened the provisions of section 6, it will be open to the appellant to continue renting out an unauthorized building so long as he pays the council a penalty. The Chairman cannot sanction these buildings as they do not conform to building regulations. It will be difficult to treat these buildings either as obstructive or insanitary buildings.

Council cited *Wilkinson v. Rogers*[1].

September 8, 1937. FERNANDO A.J.—

The appellant in this case was charged with making certain alterations to the buildings at No. 87, Dematagoda, by converting certain stores standing on the premises into dwelling houses, in breach of section 6 (1) of Ordinance No. 19 of 1915. He was also charged with allowing the premises to be occupied as dwelling houses from and after July 29, 1936, without a certificate from the Chairman of the Municipal Council as required by section 15 (1) of Ordinance No. 19 of 1915.

The facts were practically admitted. The appellant's son was the lessee of the stores, and before his death in April, 1936, had converted the seven stores into tenements and let them out to tenants. He appears to have done so without the permission of the Municipality, but later he obtained certificates of conformity for two out of the seven stores. The

[1] *2 De G. J., & S. 62.*

appellant's son having died in April, 1936, the appellant continued to let the tenements to tenants, although there were no certificates of conformity. The Chairman of the Municipal Council wrote two letters P1 and P2 to the accused, and the accused thereafter submitted certain plans and applied for a certificate of conformity for these buildings, but his application was refused.

The appellant must have been aware when he received the letters from the Municipal Council that no certificates of conformity had issued in respect of these buildings, and that he was not entitled to let them out to tenants, but even after the receipt of these letters, the appellant continued to allow the buildings to be occupied, and in these circumstances, I think he was clearly guilty on the 2nd count. He attempted to argue that he was willing to give notice to the tenants to vacate the tenements, but that he did not give such notice because he did not know which tenement the Municipality wanted to be vacated. As a matter of fact, the learned Magistrate held, and I think rightly, that the accused was well aware of the tenements in respect of which the objection had been taken by the Municipal Council. With regard to the 1st count, it is clear that whatever alterations were made, they were made not by the appellant, but by his son who died in April, 1936, and it must also be admitted that the son had a lease from the owner of the premises, and had undertaken by that lease to make alterations to the buildings in question.

Mr. Gratiaen, however, argued for the respondent that the mere fact that the appellant used or allowed the use of the buildings as tenements constituted a conversion within the meaning of the Ordinance, and that such conversion would also be an alteration within the meaning of section 6. Section 6 enacts that no person shall make any alteration in any building without the written consent of the Chairman, and section 10 provides that no person shall commence any building operations involving the alteration of a building, unless he shall have given to the Chairman seven days' notice of his intention to commence such operations, and has obtained the approval or consent of the Chairman, and section 13 provides that any person who shall commence or execute operations in contravention of any provisions of this chapter shall be liable to a fine. It is necessary, therefore for the prosecution to prove that a person did make some alteration in a building and did commence the building operations involving such alteration without giving notice to the Chairman and without his approval. When section 6 (2) enacted that for the purposes of this and the connected sections an alteration means any of the following works including the conversion into a dwelling house of any building not previously constructed for human habitation, it seems clear to my mind that the Ordinance had in view some work which resulted in the alteration or conversion. Mr. Gratiaen referred to certain English decisions in which it has been held that the mere use of a building not constructed for human habitation as a dwelling house may be a conversion of such building into a dwelling house, but even if this construction is applicable to section 6 of Ordinance No. 19 of 1915, still I do not think such user would make that conversion an alteration within the meaning of section 6. In other words a person who uses a building not constructed for human habitation as a dwelling house may be committing some offence

against the provisions of Ordinance No. 19 of 1915, but if he makes no alteration, and carries on no building operations for the purpose of converting the premises into a dwelling house, then, I do not think he can be regarded as having made an alteration in the terms of section 6, or of having commenced building operations within the terms of section 10, nor could he for that purpose be regarded as having commenced or executed any building operations within the terms of section 13 (1) (*a*) or (*c*).

For these reasons I think the conviction on the 1st count must fail. I would accordingly set aside the conviction on that count, and affirm the conviction and sentence on the 2nd count. The continuing penalty imposed by the learned Magistrate will also stand.

Varied.