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Present: Akbar J. 1929.

SILVA *v.* THABREW.

132—P. C. Avissawella, 17,331.

Housing and Town Improvement—Replacement of tiles—Structural alteration—Ordinance No. 19 of 1915, s. 6 (2) (a).

Replacement of the tiles and zinc sheets on a roof does not amount to construction of the roof within the meaning of section 6 (2) (a) of the Housing and Town Improvement Ordinance.

APPEAL from a conviction by the Police Magistrate of Avissawella.

N. E. Weerasooria, for accused, appellant.

March 27, 1929. AKBAR J.—

The accused was charged with having committed an offence under section 13 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915, in that he did effect certain structural alterations to his building within the Sanitary Board limits of the town of Dehiowita without obtaining the necessary permit from the Chairman. He was convicted and sentenced to pay a fine of Rs. 15. It appeared in evidence that the Sanitary Inspector had, owing to the outbreak of plague in May, 1928, demolished the three walls of the room at the back and that he had removed the tiles and the zinc sheeting which were on the main roof.

The Inspector admitted that the accused had not rebuilt the walls of the back room so demolished by him, that the accused had not reconstructed any part of the framework of the roof, which had been

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left intact by him, and that the accused had only replaced the tiles and " thakarams " as they were before. Whether the accused is guilty or not depends on the words of section 6 (2) of the Ordinance.

Certain alterations in buildings within the limits of a local authority are prohibited without the written consent of the Chairman, and sub-section (2) defines what the word " alteration " means. As I have stated, the accused has not built, erected, or re-erected any wall of this building, nor has he constructed or reconstructed any part of the framework of the roof. The Police Magistrate in his judgment has convicted the accused because he thought the accused had violated the terms of section 6 (2) (*k*) and section 6 (2) (*a*) of the Ordinance. As regards the former sub-section he says that the act of the accused should be regarded as an attempt to re-erect the part of the building which had been destroyed, and was, therefore, a violation of the sub-section. The sub-section does not apply to an attempt, and as I have already stated, he has not re-erected any wall. The authority quoted by the Police Magistrate, namely, the case in S. C. 674, P. C. Ratnapura No. 30,307,[1] does not apply. In the first place that case referred to a prosecution under section 8 of the Road Ordinance,, and further, the evidence in that case showed that the house was rebuilt by the accused, the wooden pillars being replaced by brick ones, the result being that a new building was built on the old foundations.

The Police Magistrate was also of the opinion that the accused had violated section 6 (2) (*a*), which sub-section reads as follows:— Alteration means " the construction of a roof or any part thereof . . . . . " In the interpretation of these words the Police Magistrate has made use of the addition to the section introduced by section 3 of Ordinance No. 32 of 1917, which is as follows:—

" But the expression shall not include (*a*) the reroofing in whole or in part with cadjan or any substance of a similar character of any building or part of a building; or (*b*) the re-erection in whole or in part of any wall of any thatched mud and wattle building or any part thereof rendered unfit for habitation by stress of weather or other similar cause, &c. "

I am not surprised at the Police Magistrate being led astray by these new additions. It will be seen from the report of the Select Committee on the Ordinance[2] that the amendment was introduced for the purpose of providing some relaxation in the provisions of section 6 as they stood; so that the object of section 3 of Ordinance No. 32 of 1917 was merely to give additional relief from the severity of the already existing provisions of section 6.

[1] *See S. C. Minutes of December 14, 1925.*
[2] *See Hansard for October, 1917, page 371.*

The legality of the conviction depends on the meaning of the words " construction of a roof " in section 6 (2) (*a*). I do not think it was ever contemplated to stop the shifting of tiles for the purpose of stopping leaks. The vord " construction " clearly means the construction of the framework of the roof, so that the relaxation provided by Ordinance No. 32 of 1917 was meant to apply where the reroofing involved the reconstruction of the framework of the roof. As I have already stated, the accused did nothing to the framework of the roof, which was in the original condition in which it was before the tiles were removed.

I am, therefore, of the opinion that the conviction is wrong, and I would set it aside and acquit the accused.

Set aside.