

Present : Drieberg J.

1929.

ABEYGUNESEKERE v. SURIYADASA.

612—M. C. Kandy, 224.

*Housing and Town Improvement Ordinance—Reconstruction of wooden partition—Alteration of building—Ordinance No. 19 of 1915, s. 6 (1).*

Where the wooden partition of a room was altered by fixing asbestos sheets to the existing framework,—

*Held*, there was an alteration of a building within the meaning of section 6 (1) of the Housing and Town Improvement Ordinance.

**A** PPEAL from a conviction by the Municipal Magistrate of Kandy.

*Navaratnam*, for accused, appellant.

*Garvin*, for complainant, respondent.

October 18, 1929. DRIEBERG J.—

It has been clearly proved that the wall on the ground floor, in what is called the staircase hall, was constructed at some time between February and the end of June, 1929; there was no wall there previously but only a partition made of jute hessian.

The case regarding the partition in the room on the first floor presents some difficulty. Inspector Abeygoonewardene says that he went to the house when Mr. Schokman was living there and that there was then no wooden partition. He must be mistaken, for Mr. Schokman, whose evidence has been accepted, says there was a wooden partition. The appellant says that he removed the wood planks of this partition and fixed sheets of asbestos on the existing framework. He did so without the sanction of the Chairman,

Is this an alteration in a building within the meaning of section 6 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915? It would be such an alteration if it could be described as a "construction of an inner wall or partition," section 6 (2) (c).

The work cannot be regarded as the repair of an existing structure. Though the framework of wood remained and was utilized, the work of replacing the wood planks with asbestos sheets can rightly be described as a reconstruction of the partition. Similarly, if a wall were to be removed and another built on the same foundation, or, to render the analogy closer, with the central pillars which remained being utilized, this could be described as a reconstruction. Such a reconstruction or "re-erection" of a wall would be an

1929. alteration unless done in the circumstances stated in section 6 (a),  
**DRIEBERG J.** i.e., if it was a wall of a thatched and mud and wattle building  
rendered unfit for habitation by stress of weather or similar cause.

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It appears to me that a reconstruction of a partition wall is a construction within the meaning of section 6 (2) (c), there being nothing to limit it to an entirely new construction. Further, this meaning of the word is in keeping with the purpose and intent of the Ordinance.

I was referred to the case of *Silva v. Thabrew*.<sup>1</sup> The circumstances in that case were exceptional, the accused having replaced roofing material which had been temporarily removed by the authorities on an outbreak of plague; no new material was used in the re-roofing.

The appeal is dismissed.

*Appeal dismissed.*

