

1900.  
January 11  
and 15.

ESTOGU PILLAI v. CHINNIAH.  
P. C., Trincomalee, 7.065.

*Thoroughfares Ordinance, No. 10 of 1861, s. 91, sub-section 8—Attaching additions to shop by way of sunshades so as to project over the side drain—Evidence of injury to the road.*

The words of sub-section 8 of section 91 of "The Thoroughfares Ordinance, 1861," are wide enough to include the case of a person who, having shelters to his shop alongside of the public road, fixes cadjan tats to the eaves of his roof and lets them down over the side drain propped by two sticks planted in the ground next the drain, so that the tat, though easily removable, projects over the outer edge of the drain.

The injury to the road may be in regard to not only its substance or surface, but also the reduction of the breadth of the thoroughfare available for traffic between the side drains.

THE complaint against the accused was that he had attached additions by way of tats or sunshades to his boutique so as to project over the outer edge of the side drain, in breach of the 91st clause, sub-section 8, of the Ordinance No. 10 of 1861.

The Police Magistrate, after hearing evidence, found the accused guilty, and sentenced him to pay a fine of Rs. 25, or in default to undergo one month's rigorous imprisonment.

The accused appealed with the leave of the Court.

*H. Jayawardana*, for appellant

*Wendt*, for respondent.

*Cur. adv. vult.*

15th January, 1900. BROWNE, A.P.J.—

I have no note of any previous decision on the section in question (Ordinance No 10 of 1861, 91, 8) which subjects to prosecution any one who shall do any of these things, viz., shall attach additions to his house so as to project over the outer edge of the side drain of any road, or shall by means of temporary supports or otherwise expose goods or wares of any description over any portion of a road or its side drain, or shall by causing carts to be loaded or unloaded in front of his dwelling in any way injure the side drain.

It will be noted that the first two of these will be offences even without injury to the road. In P. C., Trincomalee, 4,343 (*S. C. M. 22nd January, 1895*), injury was not proved, but if it has to be proved, there may be injury otherwise than to the substance or surface of the road—*i.e.*, it will be sufficient offence to narrow the breadth of the thoroughfare available for traffic between the opposite side drains.

1900.  
January 11  
and 15.

BROWN, A.P.J.

The first offence is a very terse statement of that which is an offence against the Municipal Councils' Ordinance, No. 7 of 1887, section 183, any projection, encroachment, or obstruction erected or placed against or in front of any house or building, if the same overhangs or juts into, or in any way projects into or encroaches upon, or is an obstruction to the safe and convenient passage along any public street, or obstructs, or projects, or encroaches into or upon any uncovered drain in such street. But I do not know that its simple words are less clear than the more elaborate language of a quarter of a century later. I consider they contain all the different kinds of encroachments which the latter more elaborately describes.

The offence charged here is that appellant did "attach additions" by way of tats or sunshades to the said bankshall so as to "project over the outer edge of the side drain in breach of," &c. The Magistrate has convicted the accused, but fined him only such an amount as forbids any appeal except upon a matter of law, and thus for the second time, and before myself (*vide* 4,343, P. C., Trincomalee), the power of this Court to deal in appeal with questions relating to the construction of this clause are curtailed. Here the only contention that has been advanced is that the tat complained of is not an "addition to the house," which is "attached to" it. The description of it is that there are not only shutters to the building, but there are also the tats made of cadjans, which is "fixed to the rafters," and each tat has two props which are fixed about 2 inches in the ground (but on which side of the side drain is not stated), but can be removed without any effort, and would not remain so fixed if the tats were removed. In 4,343, P. C., the tat was made of boards, and when not propped outwards served as a shutter, and so were not always beyond the line of the drain as those of the appellant are said to be.

It appears to me that the words of the Ordinance are so wide as to include erections of the kind proved, and that no ground of law has been established, nor, having read the careful judgment of the Magistrate, does it appear to me that any other appeal on matter of law is arguable against the same.

The appeal must be dismissed.