

Present: Branch C.J.

1925.

MUTTETUWAGAMA v. SILVA.

674.—P. C. Ratnapura, 30,307.

*Thoroughfares Ordinance—Commence a building along a thoroughfare—  
Notice to Chairman, District Committee—Ordinance No. 10 of  
1861, s. 86.*

A person who puts up a new building on old foundations along a thoroughfare, is bound to give notice to the Chairman of the District Committee, in terms of section 86 of the Thoroughfares Ordinance, No. 10 of 1861.

*Ahamah v. Goonewardene*<sup>1</sup> considered.

**A** PPEAL by the Solicitor-General from an order acquitting the respondent.

*Navaratnam, C.C.*, for appellant.

December 15, 1925. BRANCH C.J.—

The respondent was charged under section 86 of the Road Ordinance, 1861, as amended by section 2 of Ordinance No. 6 of 1913 with commencing to build a boutique room along a thoroughfare without giving one calendar month's previous notice in writing to the Chairman of the District Committee. The evidence shows that the house was practically rebuilt by the accused, having been damaged by the floods. He replaced the wooden pillars with brick pillars and repaired the walls with wattle and daub and planks. The house was rebuilt on the old foundations and remains of the same size as the old building, which had been about thirty years on the spot. The learned Magistrate acquitted the respondent, giving as his reason that he thought it doubtful whether the act of the respondent came within the section in question. He thought that the section relates "to buildings about to be commenced, and not to repairs to existing buildings, except in so far as temporary fences and enclosures are made use of for the purposes of such repairs."

In *Ahamah v. Goonewardene* (*supra*), which came before Middleton J., in 1910, the facts were as follows:—The appellant had raised by means of pillars the roof of his house which was along the public road; he had not commenced an entirely new building. The section which Middleton J. had to consider, namely, section 86 of Ordinance No. 10 of 1861, corresponds, so far as is material for the purposes of this case, to the section as it now exists. Middleton J. held that

<sup>1</sup> (1910) 5 Bal. 105.

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the raising of the roof by means of pillars came within the words "commence any building." So far as I am aware the conclusion arrived at in that case has never been questioned, but I desire to guard myself by saying that I do not adopt the reasoning used by Middleton J. I prefer to decide the case before me on its own facts.

In the present case the respondent has really put up a new building, using the old foundations, and I think that this may fairly be said to come within the enactment in question.

I reverse the order of acquittal and find the respondent guilty, and sentence him to pay a fine of Re. 1, and in default three days' simple imprisonment. I have made the fine purely nominal, as there is no reason to think that the respondent would not have given the notice if he had known it was necessary.

*Set aside.*

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