

1948

Present : **Basnayake J.**CANAGASINGHAM, Appellant, *and* URBAN COUNCIL,  
TRINCOMALEE, Respondent*S. C. 693—M. C. Trincomalee, 521**Housing and Town Improvements Ordinance—Building of external wall—Not connected with building—No offence—Section 6 (2) (a) and 6 (1).*

The building of a wall across one's land is not an infringement of section 6 (1) of the Housing and Town Improvements Ordinance. What that section prohibits is the construction of an external or party wall in any building.

**A**PPEAL from a judgment of the Magistrate, Trincomalee.

*H. W. Tambiah*, with *S. Sharvananda*, for the accused, appellant.

*S. N. Rajaratnam*, for the complainant, respondent.

September 29, 1948. **BASNAYAKE J.**—

The accused-appellant is charged with committing a breach of section 6 (1) of the Housing and Town Improvements Ordinance, in that he did construct an "external party wall" to the building occupied by him, viz., No. 5, Main Street, Trincomalee. He has been found guilty of the charge and sentenced to pay a fine of Rs. 10. This appeal is from that conviction and sentence.

Shortly the facts are as follows. Between the house occupied by the appellant and another building known as the Mansion Hotel, owned by one Balasubramaniam, there is a plot of bare land which is owned by the appellant. On or about February 21, 1948, the appellant built a wall across the space between his building and the Mansion Hotel, dividing the bare land in two. This wall was at first so short as to be not even noticeable. It was gradually raised by the appellant till it came to a stage when it began to be a source of inconvenience to the owner of Mansion Hotel, who complains that rain water falls on the wall and beats into his building, and that the wall also interferes with a window of his.

Learned counsel for the appellant submits that the appellant has not committed the offence with which he is charged. Section 6 (1) of the Housing and Town Improvements Ordinance prohibits the alteration of any building in any one of the ways specified in section 6 (2). The wall that the appellant has erected does not in my view come within any of the items in section 6 (2). The allegation in the charge is that the appellant made the alteration contemplated in section 6 (2) (a). The mere construction of an external wall is not a contravention of section 6 (1). What the section prohibits is the construction of an external or party wall in any building. The wall the appellant has constructed has nothing to do with his building save that it touches it. An examination of section 6 (2) reveals that the object of the legislation is to prohibit unauthorised alterations of buildings unless they are done according to approved plans.

On the facts in this case I am satisfied that the appellant has not made an alteration to a building. The law does not prohibit the construction of a wall across one's land. No other provision of the Housing and Town Improvements Ordinance has been cited to me as prohibiting the act of the appellant. The finding of the learned Magistrate cannot therefore be sustained.

The conviction and sentence are set aside and the accused is acquitted.

*Accused acquitted.*

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