1939 *Present :* **Abrahams C.J.**

MUNICIPAL COUNCIL, COLOMBO *v.* MURUGAPPA CHETTIAR.

631—2—M. C. Colombo, 17,686.

Housing and Town Improvement Ordinance—Offence of re-erection of a building—What amounts to re-erection—Ordinance No. 19 of 1915, s. 5.

The expression "re-erect" in section 5 of The Housing and Town Improvement Ordinance may be taken as the equivalent to the words "erect a new building".

Jansz v. Municipal Council, Colombo (*34 N. L. R. 337*) explained.

APPEAL from a conviction by the Municipal Magistrate of Colombo.

N. Nadarajah (with him *E. B. Wikramanayake* and *N. Kumarasingham*), for the accused, appellants.

L. A. Rajapakse (with him *M. M. I. Kariapper*), for the complainant, respondent.

Cur. adv. vult.

January 24, 1939. ABRAHAMS C.J.—

This is an appeal against a conviction in the Municipal Court of Colombo, in which the first appellant was ordered to pay a fine of Rs. 75 and the second appellant a fine of Rs. 30 for an offence against section 5 of The Housing and Town Improvement Ordinance, No. 19 of 1915, which reads as follows:—

> "No person shall erect or re-erect any building within the limits administered by a local authority, except in accordance with plans, drawings and specifications approved in writing by the Chairman."

It was alleged by the Courts Inspector of the Municipal Engineer's Department, Colombo Municipality, that the appellants re-erected three tenements without the requisite plans, drawings and specifications. It was admitted by the appellants that they had not submitted any plans, drawings and specifications, but they contended, and they still contend, that the building operations which they had undertaken in respect of the tenements did not amount to the re-erection of buildings.

The evidence of the building operations was given by the Surveyor Inspector of the Municipality, and no attempt has been made before me to controvert those facts. The Inspector said that on March 12 he inspected the premises and he found that the roof of the tenements had been totally removed. The front short walls and wood work of two of the tenements had been removed, and the two cross walls of one were in course of demolition. A pillar of one of them was being built. The second appellant was supervising the work and the Inspector required him to stop it. A further inspection of the premises on March 17 found the work still in progress. The demolished front walls had been rebuilt, the roof practically reconstructed and the two cross walls re-erected. Every position of the building except one cross wall had been taken down and rebuilt with new walls and new pillars. Counsel for the appellants admits that most of the original buildings had been demolished and were in the process of being rebuilt.

Now there is no definition of "re-erection". I invited Mr. Wikramanayake, who appeared for the appellants, to say how much of an old building was to be left to justify his contention, when building operations were undertaken resulting in the completion of a new building of which the remaining portion of the old building formed a part, that there was no re-erection but only, as he contended, repairs or alterations to the old building. He said that he was arguing that re-erection demanded the construction of a totally new building upon the site of an old building that had been completely demolished, and he was prepared to accept the proposition that I put before him, namely, that so long as one brick stood upon another re-erection could not be performed. He based such an astonishing argument upon the language used by Garvin S.P.J. in *Jansz v. Municipal Council of Colombo*[1]. In this case where certain building operations had taken place the point at issue related to the construction of section 18 (4) of The Housing and Town Improvement Ordinance, which, however, has nothing to do with the present case. In section 18, for the purposes of the application of that section, the word is given an extended meaning, but that extended meaning does not apply to section 5. However, this is what Garvin S.P.J. says, "the word 're-erection' in the provisions of section 18 in its original form has reference to the replacement of an existing building by another, substantially similar in structure to the one which it replaced", and later at page 340 he refers to a later Ordinance, No. 32 of 1917, which amended section 18 by enlarging the meaning of the term 're-erection' "to include operations which did not involve the entire replacement of a building by another". Mr. Wikramanayake argues from that that Garvin S.P.J's interpretation of the word 're-erection' goes so far as the last brick argument to which I have referred above, because presumably he has used the words "entire replacement". I think Garvin S.P.J. would have been horrified if it had been put to him that the language he used involves such a *reductio ad absurdum*. I think his language was approximate only.

In my opinion it is a pure question of fact whether a building has been repaired or altered or re-erected. It is not possible to lay down any hard and fast rule. Assuming that there is not a complete demolition, removing the very foundations themselves, the question would be, I conceive, as to how much of the original building was left and what were the new operations. To say that because the old foundations had been left to support a new building merely amounts to alterations or repairs to the old building is as good as saying that if one had a pair of shoes made, using the soles of an old pair, that amounted to repairing the old pair of shoes.

Although the wording of the enactments is not identically the same, I think that the words of Coleridge C.J. in *James v. Wyvill*[2] can be adopted in this connection. This was a case in which the language of the bye-laws made under the Local Government Act of 1858 was considered, and the question of what was the meaning of the expression "to erect any new building" was discussed. The learned Chief Justice said, "Now the question, whether a building is a new building or not,

[1] *34 N. L. R. 337, at p. 339.*

[2] *51 (N.S.) L. T. 237, at p. 24.*

has been decided over and over again to be a question of fact; it is a question of degree. For instance, if a building were nearly all taken away and then rebuilt, it clearly would be a new building; on the other hand, it is quite clear that by a small addition of, say, a door the building would not thereby become a new building. Between these two extreme cases there may be thousands of cases, and it would be impossible to give a definition in each particular case as to what is, or is not, a new building; and it must be left to the discretion of each judge to decide for himself what is a new building. So that the question is and must be a question of fact."

I think that the expression "re-erect any building" can in the absence of any definition binding us to any particular meaning be clearly taken as the equivalent to the words "erect a new building". I therefore am of the opinion that the Magistrate came to a proper conclusion and I dismiss the appeal.

Appeal dismissed.