1920.

Present : De Sampayo J.

KASTURIRATNE *v.* SENANAYAKE.

684—P. C. Avissawella, 20,223.

Housing and Town Improvement Ordinance, No. 19 of 1915, s. 13—No. 32 of 1917, s. 3—Removal of two walls and rebuilding them—Is it repair or minor alteration ?

Accused removed two old walls supporting the roof of his house and rebuilt them without obtaining permission from the Chairman of the Sanitary Board.

Held, that the erection of the two new walls was not a mere "repair or minor alteration," and that accused was guilty of a breach of section 13 of the Housing and Town Improvement Ordinance, No. 19 of 1915.

THE facts appear from the judgment.

J. S. Jayawardene, for accused, appellant.

September 29, 1920. De Sampayo J.—

This is a prosecution under section 13 (1) (*a*) of the Housing and Town Improvement Ordinance, No. 19 of 1915, for commencing building operations without the permission of the Chairman of the

Sanitary Board in contravention of the provisions of the Ordinance in that behalf. The reference is to section 6 (1), which prohibits " any alteration in any building " without the written consent of the Chairman, and to section 10, which prohibits the commencement of any building operation " involving the erection, re-erection, or alteration of a building " without giving notice to and obtaining the approval and consent of the Chairman. The facts of the case are that in June last the accused removed two old walls supporting the roof of his house and rebuilt them without obtaining any permission from the Chairman. In the first place, it is contended on his behalf that the above provisions of the Ordinance did not apply, as the house had existed before the coming into operation of the Ordinance, and *Wickramasuriya v. Perera* [1] is cited in support of the contention. That case, however, only decided that, where building operations had lawfully commenced before the date of the Ordinance, the act of continuing them after that date was not within the enactment. It is obvious that that case does not support the argument. It is next argued that the erection of the new walls in place of the old ones was only effecting repairs to the house, and that the accused is exempted from the penal provisions of the Ordinance by virtue of certain exceptions created by section 3 (*b*) and (*c*) of the amending Ordinance, No. 32 of 1917. Section 6 of the main Ordinance had defined the word " alteration," but section 3 of the amending Ordinance enacted that the expression shall not include—

" (*b*) The re-erection in whole or in part of any wall of any thatched mud and wattle building, or any part thereof, rendered unfit for habitation by stress of weather or other similar cause ; or

" (*c*) Any repair or minor alteration as to which it shall have been declared by public notice on the order of the Chairman that the consent of the Chairman will not be required under this section."

It is for the accused to establish the facts which would enable him to bring himself within either of these exceptions. There is nothing to show that the house was only a thatched mud and wattle building. Nor do I think that the erection of the two new walls constitute a mere " repair or minor alteration." It appears to me to amount to a substantial building operation. In any case there is nothing to show that it has been declared by public notice or otherwise that the consent of the Chairman will not be required for works of this kind. On the contrary, from the fact that the Chairman has on the face of the plaint authorized the prosecution, I presume that no such notification has been made. No appeal lies in this case on the facts, as the fine is a small one, and the point of law taken fails for the above reasons. The appeal is, therefore, dismissed.

Appeal dismissed.

[1] *(1917) 20 N. L. R. 156.*