1958 *Present:* H. N. G. Fernando, J.

S. R. JAYARATNA, Appellant, *and* J. M. SINGALAXANA (Public Health Inspector), Respondent

S. C. 393—M. C. Kegalla, 21,770

Housing and Town Improvement Ordinance—Section 6 (2) (e)—" Structure ".

In a prosecution for erecting a " structure ", without the consent of the proper authority, in contravention of section 6 of the Housing and Town Improvement Ordinance—

Held, (i) that the Court should be furnished with a description of the structure.

(ii) that in the expression " the addition of any building, room, outhouse, or other structure" in section 6 (2) (*e*), the word " structure " has to be construed *ejusdem generis* with the kinds of structure previously specified.

APPEAL from a judgment of the Magistrate's Court, Kegalla.

F. A. de Silva, for the accused-appellant.

E. A. V. de Silva, for the complainant-respondent.

Cur. adv. vult.

December 19, 1958. H. N. G. FERNANDO, J.—

The complaint made against the appellant in this case was that *he had made alterations* in a certain building, without the consent of the proper authority, in contravention of Section 6 of the Housing and Town Improvement Ordinance. The Magistrate charged him from the summons (which specified the same offence) on 2nd April 1958, and fixed

the case for trial. The journal entry of 21st May 1958 shows that an amended charge was then framed and that the accused was charged afresh. No amended charge is available in the record, but it is clear, from the evidence and the Reasons, that the appellant was tried and convicted on a charge of making a specific "alteration", namely, the addition of a structure, which is an alteration specified in paragraph (*e*) of Section 6 (2) of the Ordinance.

The only evidence for the prosecution was that of the Public Health Inspector. The witness, in chief, merely stated "I saw a structure being put up in front of the building by the accused and another person" and added that no permit had been issued for the structure. This evidence was quite insufficient to establish the charge: it did not enable the Magistrate to decide whether what had been put up by the appellant constituted a "structure" within the meaning of paragraph (*e*) or even an "alteration" of the nature mentioned in any other provision of Section 6: the Court had no power to act on the Inspector's opinion that a "structure" had been erected, and should have been furnished with a description of the work or erection sufficient to enable the Court to hold that something contemplated by the Section had in fact been done. The Magistrate should therefore have acquitted the accused forthwith after the examination-in-chief of the Inspector, because no other witness had been named in the complaint.

Nevertheless the witness was cross-examined, and in answer to questions he did furnish some description of what had in fact been done. It is clear however that there was no alteration of the nature contemplated in paragraph (*e*). In the expression "the addition of any building, room, outhouse, or other structure", the word "structure" has to be construed *ejusdem generis* with the kinds of structure previously specified. There is such an addition, only if some ground space, which is or has been rendered vacant, is utilized for the erection thereon of some new structure. Moreover, the structure must be something resembling a room or outhouse, that is to say, something which wholly or partially encloses the space utilized. "Alterations" of other kinds are dealt with in other paragraphs of Section 6 (2).

The appeal is allowed, and the conviction and sentence are set aside.

Appeal allowed.