1899.
May 26.

RODRIGO *v.* FERNANDO.

P. C., Kalutara, 7,043.

Criminal Procedure Code, s. 190—Recording verdict forthwith after hearing—Criminal trespass by landlord on premises occupied by tenant—Entry into garden.

It is important that a Magistrate should observe the requirements of section 190 of the Criminal Procedure Code as to the duty of recording his verdict of acquittal or guilty forthwith after hearing the evidence for the prosecution and defence.

An entry by the landlord into his garden let to a tenant, with intent to commit an offence or to annoy him, is criminal trespass.

THIS was a prosecution for criminal trespass by a tenant against his landlord and those who had helped him in the offence.

The complainant, in giving his evidence, said that under a notarial lease he was in occupation of a house belonging to the first accused, with liberty to complete a half-built house and put up any other building that might be necessary on the premises wherein the house stood; that he, with the view of erecting a shed for his horse and carriage, directed a cooly to prepare a piece of ground adjoining his house in order to put up the stables; and that when this work was going on, the first accused, accompanied by the other accused, interfered with the work, abused the complainant and his cooly, filled up the holes that had been dug, made a great noise, and used indecent language to the complainant and his cooly.

The Police Magistrate was of opinion that, even if the landlord thought that his tenant was infringing any covenant in the deed of lease, he was not justified in entering the premises and interfering with the work of the complainant in the manner they did, and that their object in going there was to insult and annoy the complainant. He sentenced them each to pay a fine of Rs. 20.

They appealed.

Dornhorst (*Peris* with him), for appellant.

H. J. C. Pereira (*Schneider* with him), for respondent.

30th May, 1899. WITHERS, J.—

1899.
May 30.

The accused in this case has been convicted of the offence of criminal trespass, and their appeal is on matters of law only. One of the points of law taken, and I think very properly not pressed in this case, was that, inasmuch as the Magistrate had not given judgment *forthwith*, his judgment was of no force or effect. I mention the matter because it is very important that a Magistrate should observe the requirements of section 190 of "The Criminal Procedure Code, 1898," which enacts that a Magistrate shall, after taking "the evidence for the prosecution and defence, *forthwith* record a verdict of acquittal or guilty as he may find." If this point had been pressed, I might have had to send the case back for a re-trial, which would not have been at all satisfactory.

The other point is this: Can a landlord commit the offence of criminal trespass on premises possessed or occupied by his tenant? The facts relating to this part of the case appear to be these. At the time of the alleged offence the complainant was in possession of a house and its adjuncts under a notarial contract of hire and lease with the defendant. That house stands in a cocoanut garden which was not comprised in the lease, but the complainant may well be considered an occupant of the garden round his house. Here the entry was into the garden and not into the house. Now, in that state of things I have no doubt that an entry by the landlord into the garden, with intent to commit an offence or to intimidate, insult, or annoy the complainant, constitutes criminal trespass. This is not the first time, of course, that I have considered the offence of criminal trespass as defined by our Code, and I cannot help thinking it was intended to expand the English common law offence of forcible entry to other cases of entry upon property with criminal or wrongful intent. Now, there can be no doubt by the English law that, if one who had a legal title to a land enters it by violence or by show of force when the land is in possession of another, he commits the offence of forcible entry. In *Newton v. Holland* (*1 M. & G. 644*), the judges thought that a landlord might be guilty of forcible entry *after the tenant's term had expired*, both at common law and under the statutes. Hawkins, in his *Pleas of the Crown* (book I., chap. 64, section 33), states that the possession of a joint tenant or tenant in common is such a possession as may be the subject of a forcible entry by his co-tenant, for though the entry of the latter be lawful *per mie et per tout* so that he cannot in any case be punished for it in an action for trespass, yet the lawfulness of the entry is no excuse for the violence.

1899.
May 30.
WITHERS, J.

Here the right of the landlord to go into his garden was no excuse for him to go there to intimidate and insult the occupant. Mr. Dornhorst called my attention to a passage in Starling's Indian Criminal Law, where the author states the following proposition:—" The entrance of a member of a joint Hindu family into the family dwelling-place cannot be criminal trespass, nor is the entry of a stranger with the permission and license of one of the members," and in support of this statement the writer cites *in re Rama Krishna Chandra, 6 Bengal Law Reports, Appeal 80,* and *15 W. R. 6.* Unfortunately I have not these reports to refer to, but I should want very strong authority to satisfy me that that is sound law. However, the circumstances are not the same. From one point of view I should regard an entry by a landlord into the premises occupied by his tenant with the intent to intimidate, insult, or annoy him, as a worse offence than if committed by a stranger, because the landlord is bound by his contract of lease to suffer his tenant to have the free enjoyment of his premises. Affirmed.