1967 *Present :* **G. P. A. Silva, J.**

S. VEERIAH, Appellant, *and* V. SELVARAJAH, Respondent

S. C. 1413/66—M. C. Badulla, 17113

Criminal trespass—Estate labourer—Refusal by him to leave his line room after notice to quit—Intention to annoy—Proof—Penal Code, ss. 433, 434.

The accused-appellant, who was an estate labourer, was charged with criminal trespass in that he did not leave his line room after he had been given notice by the Superintendent of the estate to quit the line room upon the termination of his services. The Superintendent stated in evidence that the accused had made an application for reinstatement to the Labour Tribunal and that the inquiry on that application was still pending. But he did not state that the notice to quit the line room was independent of the notice of termination of the accused's services or of the offer made by him to reinstate the accused on certain conditions. Nor did he state that the notice to quit was intended to take effect irrespective of the result of the inquiry pending before the Labour Tribunal or of any action that may be taken by the Labour Department on behalf of the accused. The position taken up by the accused was that he had no intention to annoy the Superintendent and that if the Labour Tribunal decided against him he was prepared to leave the estate.

Held, that there was reasonable doubt as to whether the accused's dominant intention in not leaving the line room was to cause annoyance to the Superintendent. It was also highly probable that he remained in the line room while making a bona fide endeavour to secure reinstatement through a Tribunal set up by law for the purpose. The accused was therefore entitled to be acquitted.

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

R. K. Thevarajah, for the accused-appellant.

M. Kanakaratnam, for the complainant-respondent.

Cur. adv. vult.

May 27, 1967. G. P. A. SILVA, J.—

The accused-appellant in this case was employed as a labourer on Oliyamandi Estate and was given a line room for his occupation. Sometime in 1965 his services were terminated by the Superintendent of the estate and he was granted time till 28.2.1966 to vacate the line room. The appellant did not leave the line room on 28.2.1966 and he was thereafter charged with having committed (1) criminal trespass by unlawfully remaining on the said estate and (2) house trespass, by unlawfully remaining in the said line room, with intent to annoy the Superintendent, and with having thereby committed offences punishable under section 433 and 434 of the Penal Code. Apart from the facts set out above it transpired in the evidence of the Superintendent of the estate during the trial that the accused had made an application for reinstatement to the Labour Tribunal and that the inquiry on that application had been partly heard and was still pending. It was also admitted by the Superintendent that the Labour Department took up the matter of the accused's discontinuance in January 1966 and that the Superintendent was prepared to reinstate him if he signed a bond for good behaviour. The Superintendent however did not state at any stage of his evidence that the notice to quit the line room issued to the accused was independent of the offer to reinstate the accused or of any decision which may have been taken by the Labour Tribunal. There was not even a suggestion that the notice to quit was intended to take effect irrespective of the result of any action by the Labour Department on behalf of the accused or of the inquiry by the Labour Tribunal on the application of the accused. The position taken up by the accused at the trial was that his services were wrongly terminated and that he had made an application to the Labour Tribunal for redress and that he was awaiting its decision. He further stated in evidence that if the Labour Tribunal decided against him he was prepared to leave the estate and that he was not staying there to annoy the Superintendent. The learned Magistrate, holding that the accused had no right in law to remain on the estate and that his remaining there caused annoyance to the Superintendent, convicted the accused of both the charges.

It was contended on behalf of the accused that the absence of a legal right did not necessarily render his act of remaining in the line room after notice to quit one of criminal trespass or house trespass if he believed in good faith that he had a right to do so pending the decision of the Labour Tribunal. Secondly, it was argued that the annoyance to the Superintendent resulting from the act of the accused in remaining in the line room did not nevertheless constitute criminal trespass unless there was proof that the dominant intention of the accused was to annoy him.

The question whether a person committed criminal trespass in somewhat similar situations has come up for consideration before this court and before the Privy Council on earlier occasions. In the case of *Forbes v. Rengasamy*[1], where an Indian labourer, who was employed on an estate and who was allowed free housing accommodation was given notice by the Superintendent terminating his contract of service and was warned several times that he must leave the estate on the expiration of the notice, refused to leave the estate, it was held that the accused remained on the estate with the intention of causing annoyance to the Superintendent and was guilty of criminal trespass. The notice to quit in this case having been given on 2nd December, 1939, it was sought to be argued that the accused was a monthly tenant of the line room in which he lived and that he was entitled to notice to quit the room given before the commencement of the month and terminating at the end of the month. Keuneman J. took the view, with which I respectfully agree, that the accused was not a tenant of the premises but that his residence in the room was in his capacity as a servant and that even if he was a tenant, his tenancy terminated when his contract of service was legally ended. He therefore considered the conduct of the accused in continuing to reside in the line room to be a criminal trespass as his intention, confirmed by his refusal to accept the discharge ticket, was to cause annoyance to the Superintendent.

In the case of *The King v. Selvanayagam*[2], even though certain factors bearing on some elements of the offence of criminal trespass, other than the one arising in the instant case, arose for consideration, the principles enunciated by the Privy Council in regard to the element of causing annoyance are of great assistance to me. Their Lordships in that case assumed on the facts that the accused's occupation of the premises after the terminal date of notice to quit was unlawful but were not prepared to affirm the conviction of the accused as they were not satisfied *inter alia* that the dominant intention of the accused in remaining in the line was to cause annoyance to the person. They dismissed as unacceptable the view that, in considering the question, the intent to annoy can be presumed where annoyance is the natural result of the act, unless it could also be shown that the causing of annoyance was the primary motive. This view was crystallised in the following passage :—

"Entry upon land, made under a bona fide claim of right, however ill-founded in law the claim may be does not become criminal merely

[1] *(1940) 41 N. L. R. 294.*

[2] *(1950) 51 N. L. R 470.*

because a foreseen consequence of the entry is annoyance to the occupant. To establish criminal trespass the prosecution must prove that the real or dominant intent of the entry was to commit an offence or to insult, intimidate or annoy the occupant, and that any claim of right was a mere cloak to cover the real intent, or at any rate constituted no more than a subsidiary intent."

In a more recent case, *Anganuttu v. The Superintendent of Tangakelle Estate*[1], T. S. Fernando, J. affirmed the conviction of a labourer who, having been dismissed for misconduct and asked to quit the estate, remained on the estate contumaciously in circumstances which could not but annoy the Superintendent. The decision was strongly relied on by the counsel for the respondent. The case of *King v. Selvanayagam* does not appear to have been cited to Fernando, J. in the course of the argument. However, even if it had been cited I do not think that it would have made a difference to Fernando, J.'s decision which has not departed from the principles laid down by the Privy Council in that case. For, the conduct of the accused as disclosed by his own evidence when he stated that even if he was given his discharge ticket, his pay, his wife's discharge ticket and her pay, he would not leave the estate, left no room for any other conclusion than that his dominant intention was to annoy the Superintendent. The same observation would apply to the case of *Forbes v. Rengasamy*, referred to earlier, as, in the circumstances of that case too, it was reasonable to infer that the primary motive of the accused in remaining on the estate and refusing to accept his discharge ticket was to cause annoyance to the Superintendent.

The essential requirement that annoyance should be the dominant intention in the offence of criminal trespass has been unmistakably reiterated by the Privy Council in the very recent case of *Azeez v. The Queen*[2]. Although this pronouncement was made on a set of facts very different from those of the three cases referred to above, the principle laid down is not affected thereby. It may be stated with justification that this case went much further than all the earlier cases in its emphasis on the requirement of causing annoyance as the dominant intention. Whereas the earlier cases dealt with accused persons who were already on the premises with the leave of the occupants and the charges were based on alleged wrongful continuance in the premises, in the case of *Azeez v. The Queen*, the 1st accused was a complete outsider, the President of a Trade Union called the Democratic Workers' Congress, who had no right to enter the estate and in fact entered the estate after the clear refusal by the Superintendent to grant him permission to do so. The act of entering was therefore in undoubted defiance of the authority of the Superintendent and therefore with the full knowledge that it would cause him annoyance. Yet the Privy Council set aside his conviction for criminal trespass making the following observations :—

[1] *(1956) 58 N. L. R. 190.* [2] *(1964) 67 N. L. R. 73.*

" In their Lordships' view the evidence in this case did not suffice to establish either directly or by inference beyond reasonable doubt that the object of trespassing on the estate was to annoy Mr. Rasanayagam ". They also confirmed the view expressed by Their Lordships in the earlier case of *King v. Selvanayagam* that every trespass did not come within the ambit of criminal trespass contemplated in section 427 of the Penal Code and that the commission of civil trespass too caused annoyance in the majority of cases to the occupants of the property trespassed upon.

When I examine the facts of the instant case in the light of the principles laid down in the above cases, there seems to be no escape from the conclusion that the conviction of the accused cannot stand. As I have already stated, there is no evidence to show that the notice to quit the line was independent of the notice of termination of services. If therefore his services were not terminated he would in the normal course have continued in residence in his line room and he may well have reasonably entertained the hope that there was further room for negotiating with the Superintendent through the Labour Department particularly because the Superintendent at one stage offered to reinstate him on certain conditions. This offer is a relevant consideration in deciding the question of bona fides or mala fides on the part of the accused as the conduct of the Superintendent in these circumstances justified the bona fide belief in the accused that the notice of termination of services was not irrevocable and that if it was revoked, his continuance in the line room was a matter of course in which event it would have been most imprudent for him to leave the line room before all efforts at reinstatement had failed. Further, the application for reinstatement to the Labour Tribunal was admittedly one recognised by law and the fact that the Superintendent participated in the proceedings showed that the application was maintainable, whatever the final outcome might have been. Having made the application, it is but natural that the accused would have expected a favourable decision in which event the Superintendent would have been compelled by law to reinstate the accused and, in the absence of any evidence to the contrary, there is no reason to think that the Superintendent would, despite the reinstatement, have insisted on the accused quitting the line room which he occupied. While these facts are by themselves sufficient for a reasonable doubt to arise as to whether the accused's dominant intent in not leaving the line room was to cause annoyance to the Superintendent, there are various items of evidence in favour of the accused which appear to contain a ring of truth. His evidence was that he was not staying on the estate to annoy the Superintendent and not even an attempt was made in cross-examination to contradict that assertion. He also stated that he was prepared to leave the estate if the Labour Tribunal decided that his dismisssal was justified and no suggestion was made in cross-examination that the application was a frivolous one or that he had already secured employment elsewhere having abandoned any hope of success before the Labour Tribunal. These are items of evidence

which, if contradicted, would have weighed on the side of a dominant intention to cause annoyance and the failure of the prosecution to contradict them must necessarily enure to the benefit of the accused. The material consideration in relation to the charge is the state of mind of the accused. Can it be said in these circumstances that the accused was acting mala fide and indulging in the unrewarding pastime of causing annoyance to the Superintendent or bona fide in an endeavour to secure reinstatement by recourse to a Tribunal set up by law for redress of his grievances although, without doubt, his conduct would have had considerable nuisance value and resulted in annoyance to the Superintendent. It seems to me that the answer to this question, does not merely remain in the field of a reasonable doubt, which would have been sufficient for an acquittal of the accused, but ascends to the level of high probability on the side of his bona fides and necessarily negatives a dominant intention to annoy the Superintendent by his conduct. These reasons compel me to the conclusion that the learned Magistrate took too narrow a view of the law, having regard to the interpretation that it has received, and misdirected himself when he found the accused guilty of the offences on the ground that he had no right in law to remain in the estate and that his remaining in the estate caused annoyance to the Superintendent. I therefore set aside the conviction and sentence and acquit the accused.

Appeal allowed.