

[IN REVISION.]

1912.

Present: Ennis J.

ALWIS *v.* KUMARASINGHE.

P. C. Matara, 3,696.

*Revision—Criminal trespass—Order to give security to keep the peace—
Absence of charge—Criminal Procedure Code, ss. 80, 357.*

Where a person was convicted of the offence of criminal trespass, and the facts indicated an intention on the part of the accused to commit a breach of the peace,—

Held, that the Court had the power to order him to give security to keep the peace.

ENNIS J.—The informalities in the case, namely, the absence of a charge and the fact that the formal conviction is for “entering” the premises, instead of, as found in the judgment, for “remaining” on them, do not, I consider, justify the exercise of revisional powers, as it is clear that the accused was fully aware of the charge against him, and has had a fair trial.

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THE facts appear from the judgment.

H. A. Jayewardene (with him *F. H. B. Koch*), for petitioner.—An offence involving a breach of the peace means an offence in which the breach of the peace necessarily enters as a constituting element. Even if a breach of the peace is committed by a person in the course of the commission of an offence, of which breach of the peace is not a necessary ingredient, the provisions of section 80 do not apply. The offence of criminal trespass may in certain circumstances involve a breach of the peace, but in this case there is no evidence that any breach of the peace was committed. *Arm Samantu v. Emperor*,¹ *Muttiah Chetty v. Emperor*.²

A. St. V. Jayewardene, for the complainant, respondent.—Where the conduct of the accused in a prosecution for criminal trespass points to an intention to commit a breach of the peace, the Court has the power to order the accused to give security to keep the peace. Counsel cited *Queen v. Gendoo Khan*,³ *Re Jhapoo*,⁴ *Baidya Nath Majundus v. Nibaran Chander Gape*,⁵ 72—P. C. Ratnapura 5,131,⁶ *De Silva v. James*.⁷

October 9, 1912. ENNIS J.—

In this case the accused has been convicted under section 433 of the Penal Code of criminal trespass by remaining on certain premises with intent to annoy the persons in occupation, and has been bound over to keep the peace under section 80 of the Criminal Procedure Code.

There is no appeal in this case, but the Supreme Court is asked to interfere in revision and set aside the conviction and order. The informalities in the case, namely, the absence of a charge and the fact that the formal conviction is for "entering" the premises, instead of, as found in the judgment, for "remaining" on them, do not, I consider, justify the exercise of revisional powers, as it is clear that the accused was fully aware of the charge against him, and has had a fair trial. It has been urged that the accused did not, in fact, remain on the premises after he had notice to go, but the accused admitted that he remained till July 15, and it appears that he had been told to go on the 12th. I see no reason to interfere with the conviction on the facts of the case.

The only other point raised is whether under section 80 of the Criminal Procedure Code an order for security for keeping the peace could be made. Under that section such an order can be made

¹ 30 Cal. 866.

² 29 Mad. 190.

³ 7 W. R. Cr. 14.

⁴ 20 W. R. Cr. 37.

⁵ 30 Cal. 93.

⁶ S. C. Min. Feb. 18, 1907.

⁷ 3 S. C. D. 80.

whenever any person is convicted of any offence which involves a breach of the peace.

Two Indian cases, *Arm Samantu v. Emperor*¹ and *Muttiah Chetty v. Emperor*,² under similar sections in the Indian Code, have been cited to show that before an order for security could be made a breach of the peace must have taken place, and that a breach of the peace must itself be an ingredient of the offence under which the conviction is had.

On the other hand, other Indian cases, viz., *Queen v. Gendoo Khan*³ and *Re Jhapoo*⁴ and *Baidya Nath Majundus v. Nibaran Chander Gaps*,⁵ have been cited, in which an order for security to keep the peace was held necessary and lawful when the facts which constituted the offence of criminal trespass were such as to indicate an intention to commit a breach of the peace. The cases 72—P. C. Ratnapura 5,131⁶ (unreported) and *De Silva v. James*⁷ in this Court seem also to have been decided on the same lines.

In the present case the conviction is for criminal trespass with intent to annoy, and upon examining the facts it appears that the annoyance consisted of threats to kill the persons employed on the premises, and not merely attempts to stop the work and refusal to surrender account books.

In these circumstances, I consider that the offence was one calculated to involve a breach of the peace; and following the previous decisions of this Court, I hold that the order was properly made, and that there is no good ground to exercise the revisional powers of the Court.

Application refused.

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¹ 30 Cal. 366.

² 29 Mad. 190.

³ 7 W. R. Cr. 14.

⁴ 20 W. R. Cr. 37.

⁵ 30 Cal. 93.

⁶ S. C. Min., Feb. 18, 1907.

⁷ 3 S. C. D. 80.