Present: Jayewardene A.J. 1926.

PERKINS *v.* DON SAMEL.

59—P. C. Matara, 37,454.

Resthouse—Public place—Right of access—Penal Code, s. 488.

A resthouse is a public place within the meaning of section 488 of the Penal Code.

APPEAL from a conviction by the Police Magistrate of Matara. The facts appear from the judgment.

Soertsz, for accused, appellant.

Cur. adv. vult.

February 19, 1926. JAYEWARDENE A.J.—

The accused appeals against his conviction under sections 488, 433, and 409 of the Penal Code. He has been sentenced to undergo one month's rigorous imprisonment on each count, sentences to run concurrently. The accused, who is said to be an *ex* Vidane Arachchi, went to the resthouse at Hakmana and created a disturbance there. The accused was drunk. He sat on a chair and put his legs against a table, which knocked against a chair, which was upset and broken. The accused then dashed a chair on the ground, and a piece of this chair, which broke, struck against the crockery and damaged some

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glassware. The accused asked for liquor, but the resthouse-keeper refused to serve him as he was drunk. He was also abusive. The resthouse-keeper informed the Police, and a constable came and removed the accused to the police station. These facts have been accepted by the learned Police Magistrate. The accused appeals on several points of law, one of which alone has been certified, that is, that a resthouse is not a public place within the meaning of section 488. I may here point out that imprisonment under section 488 must be simple, and the sentence passed on the accused under that section cannot be sustained. I agree with the Magistrate that a resthouse is a public place. As he says, the term " resthouse " as defined by Ordinance No. 10 of 1861 includes any ambalam, maddam, or other public buildings for the shelter of travellers, and any member of the public, so long as he conforms to the rules framed under section 19 of that Ordinance, where they are called public resthouses, is entitled to seek shelter in a resthouse. In *Pietersz v. Wiggin* [1] it was held that a police station was not a " public place, " and in the course of his judgment Withers J. said:—

> " In my opinion a public place in the said section is a place to which and from which the public have ingress and egress and regress as of right and without reference to any particular purpose, as a public thoroughfare, square, &c. "

In *Wijesuriya v. Abeyesekera* [2] this definition was accepted, and it was held that a " circus " to which people paid for admission was not a public place within the meaning of section 488. This seems to be at variance with the view taken of a " public place " in an English case, *The Queen v. Willard.*[3] There Grave J. said:—

> " A public place is one where the public go, no matter whether they have a right to go or not. The right is not the question. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there."

As Lord Coleridge C.J. said in that case: " It is difficult to define affirmatively what is a public place." It would depend on the facts proved in each case. But a " resthouse," in my opinion, is a public place.

As regards the conviction under section 433 for criminal trespass, although it is urged in the petition of appeal that the intent alleged has not been proved, this point has not been certified. I shall deal with it by way of revision. I do not think there is any evidence to prove or to justify the inference that the accused went to the resthouse with the intention of committing mischief or causing annoyance to the resthouse-keeper. He went there to obtain liquor.

[1] *(1892) 2 C. L. R. 111.* [2] *(1919) 21 N. L. R. 159.*
[3] *(1884) 14 Q. B. D. 63.*

When his request was refused he began to commit mischief to the annoyance of the resthouse-keeper. I do not think the conviction under section 433 can be sustained. The offence of mischief under section 409 has been clearly brought home to the accused. The conviction under section 433 will therefore be struck out. As regards the sentence, as the imprisonment under section 488 can only be simple, I would vary the sentence of imprisonment imposed by the Magistrate and direct the accused to pay a fine of Rs. 100 on each count (sections 488 and 409). Further, the accused will enter into a bond to keep the peace and to be of good behaviour for a period of six months in a sum of Rs. 1,000 with two sureties. In default of payment of fine (Rs. 200) the accused will undergo one month's simple imprisonment on the first count and one month's rigorous imprisonment on the second count on which he has been convicted, the sentences to run concurrently.

Conviction affirmed ; sentence varied.