1951 *Present :* **Dias S.P.J. and Gunasekara J.**

PONNUSAMY, Appellant, *and* ALPHONSUS, Respondent

S. C. 212—M. C. Hatton, 17,180

Rural Courts Ordinance, No. 12 of 1945, ss. 10 (b), 11—Criminal trespass with intention to intimidate, insult or annoy—Right of Rural Court to try such offence—Penal Code, ss. 427, 433.

A Rural Court has no jurisdiction to try an offence of criminal trespass where the intent is to intimidate, insult or annoy.

APPEAL from a judgment of the Magistrate's Court, Hatton. This appeal was reserved for adjudication by a Bench of two Judges on a reference made by de Silva J.

M. M. Kumarakulasingham, with *J. C. Thurairatnam*, for the accused appellant.

H. V. Perera, K.C., with *F. C. W. van Geyzel*, for the complainant respondent.

Cur. adv. vult.

August 20, 1951. GUNASEKARA J.—

The appellant in this case was convicted by the Magistrate's Court of Hatton on a charge of criminal trespass, punishable under section 433 of the Penal Code, which alleged that the intent of the trespass was " to insult and/or intimidate " the complainant. The case comes before us for the decision of a question that has been reserved by de Silva J. Section 48 of the Courts Ordinance (Cap. 6) provides that whenever any question shall arise for adjudication in any case coming before a single Judge of the Supreme Court, which shall appear to such Judge to be a question of doubt or difficulty, it shall be lawful for such Judge to reserve such question for the decision of more than one Judge of that Court; and section 48A provides that any question so reserved shall be decided by a Bench, constituted in accordance with an Order made by the Chief Justice in that behalf, of two or more Judges of that Court.

The present question arose before de Silva J. in the unusual form of a preliminary objection taken by the appellant's Counsel, as appears from the following passage in his order:

> " Learned Counsel for the accused-appellant has raised a preliminary objection. He submits that the Magistrate's Court has no jurisdiction to try this case. He cites Sec. 11 of Ord. 12 of 1945 (Rural Courts) and submits that the Rural Court has exclusive jurisdiction to try this case—*vide* schedule 2 attached to the said ordinance ".

This submission assumes, of course, that there is a Rural Court which has jurisdiction over the place where the offence is alleged to have been committed and upon that assumption the question for decision is whether that Rural Court has jurisdiction to the exclusion of the Magistrate's Court of Hatton to try the offence charged. The point appears to be covered by the decision in *Maruthappen v. Ashton* [1] where the intent of the trespass charged was alleged to have been to annoy the complainant, and my brother Dias held that for that reason a Rural Court had no jurisdiction to try the offence. My brother de Silva having cited this case sets out as follows his ground for reserving the question for the decision of a larger Bench:

> " I have already read this judgment and the second schedule to the ordinance and I feel that this matter requires consideration by a fuller Bench. This is a matter of importance and I should like the matter to be considered by a Bench of two Judges. I accordingly refer the preliminary objection raised by learned Counsel for the appellant for consideration and determination by a Bench of two Judges of the Supreme Court."

Section 11 of the Rural Courts Ordinance, No. 12 of 1945, provides that (subject to certain exceptions) the jurisdiction conferred by that Ordinance on Rural Courts shall be exclusive and that cases within that jurisdiction shall not be entertained, tried or determined by any court established under the provisions of the Courts Ordinance. The criminal

[1] *(1948) 49 N. L. R. 132.*

jurisdiction of Rural Courts is defined by section 10, and it is contended for the appellant that the offence of which he has been convicted falls within the class defined in (*b*) of that section as follows:—

> " the offences for the time being included in the Second Schedule to this Ordinance, that is to say, such of the offences under the provisions of law enumerated in the first column of that schedule as are specified or described in the corresponding entries in the second column of that Schedule, but subject in the case of each of those offences to any limitations, restrictions or conditions set out in respect of that offence in the third column of that Schedule;"

The Second Schedule, which is headed " offences within the jurisdiction of Rural Courts ", is in four columns headed respectively as follows:

> " 1. Ordinance and section thereof by which the offence is declared or made punishable.
> 2. Description of offence.
> 3. Limitations, restrictions or conditions.
> 4. Additional powers ".

Among the provisions of law enumerated in the first column is section 433 of the Penal Code, which provides a penalty for criminal trespass, and the corresponding entry in the second column is " Criminal trespass. as defined in section 427 of that Code ". There is set out in respect of this offence in the third column the following limitation, restriction or condition:

> " A Rural Court shall have jurisdiction only in cases where the offence intended to be committed is an offence within the criminal jurisdiction of a Rural Court."

One of the ingredients of criminal trespass is an intent to commit an offence (as defined in section 38 (2) and (3) of the Penal Code) or to intimidate, insult or annoy any person in occupation of the property that is trespassed upon. Intimidation is not an offence unless it amounts to criminal intimidation as defined in section 483 of the Penal Code, and in any event criminal intimidation is not within the jurisdiction of a Rural Court. Insult is one of the ingredients of the offence made punishable under section 484 of that Code and is not by itself an offence within the meaning of section 427. Nor is annoyance an offence. The question for decision therefore resolves itself into a question whether a Rural Court has jurisdiction to try an offence of criminal trespass where the intent is to intimidate, insult or annoy the person in occupation of the property.

The offences in respect of which jurisdiction is given to Rural Courts by (*b*) of section 10 of the Rural Courts Ordinance are those specified in the second column of the schedule, being offences that belong to the class specified in the first column, subject to any limitations, restrictions or conditions set out in the third column. Accordingly, but for the limitation set out in the third column, a Rural Court would have jurisdiction to try any offence of criminal trespass punishable under section 433 of the

Penal Code. It is contended for the appellant that the effect of the words in the third column is to create an exception in the case of those offences of criminal trespass punishable under section 433 where the intent is to commit an offence and the offence intended to be committed is outside the jurisdiction of a Rural Court, and that therefore Rural Courts are given jurisdiction to try all other offences of criminal trespass punishable under section 433 of the Penal Code. What is stated in the third column does connote that Rural Courts have no jurisdiction to try offences of the former class, but the whole of the limitation on the jurisdiction of a Rural Court to try offences of criminal trespass is not contained in that connotation. It is stated positively that such a court shall have jurisdiction *only* in cases where the offence intended to be committed is an offence within the criminal jurisdiction of a Rural Court. It seems obvious that all other cases of criminal trespass, and therefore all cases where the intent is to intimidate, insult or annoy the person in occupation of the property, are outside the jurisdiction of Rural Courts.

Mr. Kumarakulasingham contends that it cannot be that the Legislature intended to exclude from the jurisdiction of Rural Courts cases where the intent is merely to insult or annoy some person but include, as it has done, graver forms of criminal trespass. There is much force in this contention, but if the Legislature did intend to give these courts jurisdiction to try such cases it has failed to give effect to that intention. I would say, with all respect, that the case of *Maruthappen v. Ashton* [1] was rightly decided. In my opinion the offence in question in the present case is not one that a Rural Court has jurisdiction to try.

DIAS S.P.J.—For the reasons given by my brother Gunasekara I agree that the case of *Maruthappen v. Ashton* [1] was rightly decided.

Objection relating to jurisdiction of trial Court overruled.

[1] *(1948) 49 N. L. R. 132.*