

1969

Present: Samerawickrame, J.

M. RENGASAMY, Appellant, and A. R. Mc INTYRE, Respondent

S. C. 1158/66—M. C. Badulla, 16761

Criminal trespass—Charge against estate labourer for remaining on estate with intent to annoy superintendent—Physical occupation by him of line room after notice to quit—Whether it is a valid defence.

The accused-appellant, who was employed as labourer on an estate, was convicted of the offence of criminal trespass for remaining on the estate with intent to annoy the complainant, who was the superintendent in occupation of the estate. There was another charge laid against him of committing house trespass by remaining in his line room with intent to annoy the complainant, but he was acquitted on the ground that, although his occupation of the line room after receipt of notice to quit was unlawful, it was not the complainant but the accused himself who had actual physical occupation of the line room.

Held, that the fact that the accused was not guilty of house trespass in respect of the line room of which he was in physical occupation did not preclude his being guilty of criminal trespass in respect of his entry on and use of adjacent property in the occupation of the complainant.

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

Colvin R. de Silva, with *Bala Nadarajah*, for the accused-appellant.

R. A. Kannangara, with *M. Underwood*, for the complainant-respondent.

Cur. adv. vult.

July 29, 1969. SAMERAWICKRAME, J.—

The appellant has been convicted of the commission of the offence of criminal trespass by remaining on Braughing Estate which was in the occupation of the complainant A. R. Mc Intyre who is the superintendent of the estate with intent to annoy the complainant.

The appellant had been a labourer on Braughing Estate and on 13th April, 1960, there had been an incident on the estate in consequence of which the appellant and certain others were charged in the Magistrate's Court with being members of an unlawful assembly the objects of which were to wrongfully restrain A. R. Mc Intyre and to commit mischief by damaging a land rover belonging to him as well as to cause hurt to Mc Intyre. They were convicted and sentenced to terms of imprisonment. On appeal the convictions were set aside on the ground that the Magistrate had not examined the person who brought the accused into Court and had thereby failed to comply with the provisions of Section 151 (2) of the Criminal Procedure Code.

The appellant had made an application to the Labour Tribunal asking for reinstatement in his employment as a labourer on Braughing Estate. Order was made by the tribunal in February 1965. In his order, the President of the Labour Tribunal held that the appellant had threatened the employer in his presence and had assaulted him. On appeal the order of the Labour Tribunal was set aside on the ground that the person who functioned as the President had not been appointed by the Judicial Commission and, therefore, had no jurisdiction to make the order appealed from.

Immediately after the incident which took place on 13th April, 1960, in the course of which, according to Mc Intyre, the appellant had intimidated and threatened to kill him, notice (P1) was given to the appellant terminating his employment and requiring him to vacate his line room. No action however has been taken to compel the appellant to leave upon that notice. On 10th March, 1965, shortly after the appellant's application to the Labour Tribunal had been dismissed, a fresh notice (P2) was given to the appellant requiring him to leave the estate. The superintendent of the estate has stated that he had refrained from taking action on the earlier notice out of deference to the Magistrate's Court and the Labour Tribunal in which proceedings were pending.

The present proceedings against the appellant were initiated in the Magistrate's Court of Badulla on 2nd February, 1966. On 16th June, 1966, the appellant's trade union by document (D5) applied to the Labour Tribunal to have the application made to it on behalf of the appellant set down for hearing before the duly appointed President.

It transpired in the course of the trial that the appellant is living on the estate and is working outside. When a civil action was filed for his ejection, the appellant has put the plaintiff to prove his title to the estate.

Learned Counsel for the appellant submitted that as the Labour Tribunal has power to reinstate the appellant, the appellant's continued stay on the estate is referable to that fact and that, in the circumstances of this case, it cannot be inferred that his dominant intention is to annoy the complainant. He cited a number of decisions on the question of the intention requisite to be proved in a charge of criminal trespass. I do not think it is necessary to examine those authorities in view of the circumstances of this particular case. The learned Magistrate's finding is that the appellant is defying the complainant and his intention is clearly to annoy the complainant. The facts and circumstances which have transpired in evidence support the finding of the learned Magistrate and I am, therefore, unable to say that he was not justified in coming to that finding. In fact the appellant appears to be bent on causing to the complainant as much trouble and vexation as possible.

There was another charge laid against the appellant of committing house trespass by remaining in the line room with intent to annoy the complainant but the learned Magistrate acquitted him on the ground that it was not the complainant but the accused himself who had actual physical occupation of the line room. There is no appeal against the acquittal and I am not, therefore, called upon to consider whether it is correct or not. Learned Counsel for the appellant submitted that the acquittal on this charge was relevant to a consideration of the first charge: if the occupation of the line room was not criminal remaining on the estate was not criminal. Had the finding of the learned Magistrate been that the occupation of the line room was lawful it would follow that the appellant's entry upon and use of land immediately adjacent to the line room for the purpose of ingress and egress would also have been lawful. But the Magistrate has not found that the occupation was lawful but that actual physical occupation was in the appellant and not in the complainant. The occupation of the line room by the appellant after receipt of the notice (P2) was unlawful. The view of the learned Magistrate that the fact that the accused is not guilty of house trespass in respect of the line room of which he was in actual physical occupation does not preclude his being guilty of criminal trespass in respect of his entry on and use of adjacent property in the occupation of the complainant finds support in the decision reported in 63 Ceylon Law Weekly, page 86. In the result the appeal fails and is dismissed.

Appeal dismissed.