1970 *Present :* Alles, J.

S. ANNAPPAN, Appellant, *and* K. MURRAY, Respondent

*S. C. 962/69—M. C. Nuwara Eliya, 38787*

*Penal Code—Section 427—Criminal trespass—" Intention to annoy "—Quantum of evidence—Estate Labour (Indian) Ordinance (Cap. 133).*

The accused-appellant was employed as a casual labourer on an estate. He had been living on the estate since his infancy in a line room which had been allocated to his mother, who was also a labourer employed on the same estate. After his services were lawfully terminated he failed to leave the estate. He was then charged with criminal trespass for continuing to remain on the estate with intent to annoy the complainant-respondent who was in possession of the property as Superintendent. His uncontradicted evidence was that apart from his mother's line room he had no other place where he could live. The complainant too stated in evidence that the appellant said and did nothing to him.

*Held*, that embarrassment, by itself, to the Superintendent was not sufficient to maintain the charge. There must be an intention to annoy and that intention must be of a nature that is likely to cause a breach of the peace. The facts of the present case did not establish that the appellant continued to remain on the estate with the intention of annoying the complainant. Moreover, the provisions of the Estate Labour (Indian) Ordinance provide a clue as to why, in situations similar to the present case, the estate authorities are compelled to permit persons like the appellant to continue to remain on the estate.

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

*Colvin R. de Silva*, with *M. L. de Silva* and *Justin Perera*, for the accused-appellant.

*Lakshman Kadirgamar*, with *G. E. Chitty* (Jnr.), *P. Ramanathan* and *E. Ratnayake*, for the complainant-respondent.

*Cur. adv. vult.*

January 2, 1970, ALLES, J.—

The appellant, an able-bodied young man, was employed as a casual labourer on Diyagama West Estate, Agrapatana. He had been living on the estate since his infancy in a line room which had been allocated to his mother, who was also a labourer employed on the same estate. On 14th February 1966 he was charged with several others in M. C. Nuwara Eliya 31497 with being members of an unlawful assembly the common object of which was to cause hurt to several persons including Mr. Murray, the Assistant Superintendent, causing hurt to one Ramalingam, committing criminal intimidation and damaging a jeep belonging to the estate. On 30th September 1966, after trial in the Magistrate's Court, several persons including the appellant were convicted of the charges and ordered to enter into a bond to be of good behaviour for a period of one year in a sum of Rs. 100/- with one surety. As a result of his conviction, the appellant's services were terminated in October, 1966. The appellant applied to the Labour Tribunal for relief alleging that his services were wrongly terminated but the Tribunal, on 2nd June 1968, held that the termination was justified and dismissed the application. On 28th May 1969 by P4, the appellant was requested to leave the estate by 6th June 1969, failing which, he was warned that he would be prosecuted for criminal trespass. On his failure to do so, plaint was filed in Court on 18th June 1969 in the present case charging him with criminal trespass. The charge alleged that the appellant committed the offence of criminal trespass by continuing to remain on Diyagama Estate, property in the possession of Murray with intent to annoy him. After trial the appellant was convicted and sentenced to six weeks rigorous imprisonment. The present appeal is from his conviction and sentence.

Learned Counsel for the appellant did not contend that the termination of the appellant's services was not justified, but he urged that the facts did not warrant a conviction for the offence of criminal trespass.

The appellant gave evidence at the trial and his uncontradicted evidence was that apart from his mother's line room he had no other place to live. He also stated that he was not able to get work outside the estate and that he had no intention to annoy the Superintendent by remaining on the estate. This latter assertion is supported to some degree by Mr. Murray, who stated in evidence, that although he had seen and met the appellant subsequent to his conviction the appellant said and did nothing to him.

It was submitted by Counsel for the appellant that the evidence led in regard to the nature of the charges for the offences, in respect of which his services were discontinued, may have coloured the views of the learned Magistrate when he found the accused guilty, but I do not think that such an assumption can be justified. In convicting the appellant, the Magistrate has come to the conclusion that the appellant's presence on the estate could lead to a breach of the peace even though nothing untoward occurred during the period that the appellant continued

to remain on the estate. The learned Magistrate was also satisfied that the Superintendent "has a cause and genuine reason for being embarrassed by the continued presence of the accused on the estate after he had been ordered to leave". Embarrassment alone is, however, insufficient to maintain the charge. There must be an intention to annoy and that intention must be of a nature that is likely to cause a breach of the peace.—*King v. Selvanayagam* [1]. It is now settled law after the decision in the above case that the prosecution must prove that the real or dominant intention of the entry was to commit an offence or to insult, intimidate or annoy the occupant. The facts in that case indicated that the dominant intention of the accused was not to annoy the Superintendent but to remain on the estate where he and his family had lived for generations. As was observed by Viscount Dilhorne in the later Privy Council case of *Abdul Azeez* [2] "it is not every trespass that comes within the ambit of Section 427 ..... the fact that the entry was in defiance of the Superintendent does not warrant the inference that the trespass was committed with intent to annoy him. If that was the case then every trespass committed after the occupier of the property had refused permission to enter would constitute the offence of criminal trespass."

The question whether the dominant intention of an accused person was to annoy the occupant is a question of fact which depends on the circumstances of the particular case. In *Wijemanne v. Kandiah* [3]—a case which was approved by the Privy Council in *King v. Selvanayagam* (supra)—the accused was charged with entering premises in the occupation of another with the intention of molesting a servant woman. Dalton, A.C.J., held that in order to constitute the offence of criminal trespass there must be proof that the primary motive of the accused was the intent to annoy the occupant and on that ground set aside the conviction. In *Nandohamy v. Walloopillai* [4] H. N. G. Fernando, J., allowed the appeal of the accused because the accused set up a claim of title which could not, on the evidence, have been rejected as mala fide. In *Moulin Nona v. Routhledge* [5] Samerawickrame, J., in setting aside the conviction of a married woman who continued to be in occupation of a line room after she had been given notice to quit, held that her dominant intention was to remain with her husband and her family in the line room of which her husband continued to remain in occupation after his employment of the estate had been terminated. Finally in *Namanathan v. McIntyre* [6] in circumstances almost similar to the present case, Manicavasagar, J., held, that in the absence of evidence that the accused had an intention to annoy, an essential ingredient of the offence had not been established.

There are other decisions of our Courts which have held that the intention to annoy the occupant was established on the evidence—in *Forbes v. Rengasamy* [7] the accused refused to leave the estate or accept

[1] *(1950) 51 N. L. R. 470 at 473.*
[2] *(1964) 67 N. L. R. 73 at p. 79.*
[3] *(1933) 35 N. L. R. 244.*
[4] *(1957) 61 N. L. R. 429.*
[5] *(1967) 70 N. L. R. 568.*
[6] *(1967) 69 N. L. R. 401.*
[7] *(1940) 41 N. L. R. 294.*

the discharge certificate and Keuneman, J., held that the intention to annoy was apparent on the evidence. A similar view was taken by T. S. Fernando, J., in *Angamuttu v. Superintendent, Tangakele Estate*[1]. In *Abraham v. Hume*[2] the accused had entered the estate to hold a meeting in spite of the Superintendent's refusal to allow him to do so. He acted in defiance of the Superintendent's orders and held the meeting and did not desist, when the latter protested, saying "Do what you want. You can take me to Court" an utterance which prompted the labourers present to shout and jeer at the Superintendent. Fearing a breach of the peace the Police officer who was present advised the Superintendent to leave the premises. Dias, J., held that the intention to annoy was clear. On the facts in *Selliah v. De Kretser*[3] Samerawickrame, J., held that the accused remained on the estate unlawfully, contumaciously and in defiance of the Superintendent and the intention to annoy could be inferred.

It was submitted by learned Counsel for the complainant-respondent that the facts of the present case can be distinguished from *Namanathan v. McIntyre* (supra) because the accused in this case did not state in evidence that he was dependent on his mother. It can, however, fairly be assumed, in the absence of other evidence, that such was the case. I am therefore inclined to take the view that on the facts of the present case it has not been established beyond reasonable doubt that the appellant continued to remain on the estate with the intention of annoying Murray.

Before I conclude this judgment, I wish to make some observations about the provisions of the Estate Labour (Indian) Ordinance (Ch. 133) to which reference has been made by both Counsel in the course of their submissions. The provisions of this Ordinance might provide a clue as to why, in situations similar to the present case, the estate authorities are compelled to permit persons like the appellant to continue to remain on the estate. This Ordinance was intended to safeguard the interests of the Indian immigrant labourer who came to the Island at the end of the last century to work primarily on the tea plantations in Ceylon. Among other matters for the benefit of the labourer, the Ordinance ensured the protection of the family unit. When the husband's services were terminated, the law provided for the termination of the services of the wife and children as well, so that on the discharge of one member of the family the entire family could leave the estate. There was, therefore, as far back as 1889, a recognition by the legislature that the family of the Indian immigrant labourer was to be preserved and it must be assumed that the estate employers accepted in principle that when the services of a single member of the Indian family were terminated the services of the other members of the same family could also be lawfully terminated. In the same context, I think that when a member of the family continued to be employed on the estate, other members who are dependent on

[1] *(1956) 58 N. L. R. 190.* [2] *(1951) 52 N. L. R. 449.*
[3] *(1967) 70 N. L. R. 263 at 264.*

him or her are also entitled to remain on the estate and be maintained by the earning member of the family. These are the hazards of employment which must necessarily be accepted by employers when they employ Indian immigrant labour.

For the reasons set out in my judgment, I quash the conviction and allow the appeal. It was agreed by Counsel on both sides that my decision in the present case will cover the decision in the connected case— S. C. 963/69 M. C. Nuwara Eliya 38789—and I make order allowing the appeal in that case as well.

*Appeal allowed.*