Present : Akbar J.

HENAYA *v.* BANDIYA.

878—P. C. Kandy, 26,502.

Criminal trespass—Charge read out from summons—Intent not set out—Plaint specifying intent of accused.

Where, in a case of criminal trespass, the charge was read out from the summons, which did not specify the intent with which the accused entered the land,—

Held, that the conviction was irregular.

APPEAL from a conviction by the Police Magistrate of Kandy.

L. A. Rajapakse, for appellant.

Navaratnam, for respondent.

January 17, 1929. AKBAR J.—

This is an appeal by the accused against a conviction for the offence of criminal trespass and sentence of a fine of Rs. 50. The counsel for the appellant raises an objection to the conviction which, I think, goes to the root of the whole case. It is clear from the authorities, namely, cases reported in *3 C. W. R. 42* and *3 C. W. R. 292,* that a conviction on a charge of criminal trespass in which the intent with which the accused entered the land is not set out is defective. In this case the Police Magistrate, read out the charge from the summons, but the copy of the summons in the record is to the effect that the accused committed criminal trespass by entering into the land of the complainant with intent to commit an offence. The Police Magistrate himself recognizes in his judgment this defect. The opening paragraph of his judgment is as follows :—

> " The charge is one of criminal trespass with intent to commit an offence. The accused were charged from the summons, and this is how the summons reads, but it has not been fully copied out from the plaint, which reads ' with intent to commit an offence or to intimidate, insult, or annoy the complainant.' "

He winds up his judgment by saying that the action of the accused annoyed the complainant and forced him into this action.

Counsel for the respondent himself admitted that this was a serious defect and that the conviction should be set aside, but he strenuously contended, on the authority of the first named case I

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AKBAR J.

Henaya v. Bandiya

have mentioned, that the case should be remitted for a fresh trial. It will be seen from the authority in *3 C. W. R. 42* that I have a discretion in the matter whether I should acquit the accused altogether, or remit the case for a fresh trial. From the evidence led, I think it will only lead to a waste of time if the case is remitted for a fresh trial.

The dispute is with regard to the identity of the land which has devolved on the accused from one Kira, and the identity of the land which has been leased to the complainant, also by Kira.

According to the evidence accused derives his title from Kira to a lot of land which Kira obtained by right of purchase ; the lot in question originally belonging to one G. Ukku who, by a deed dated May 31, 1911, sold that land to Kira, and Kira sold the eastern portion to one W. Ukku, the mother-in-law of the first accused. The first accused entered on this field and worked it at the request of W. Ukku. The deed is marked D 2 and it definitely states that Kira derived title to the lot by deed of transfer dated May 31, 1911, and that it is one pela paddy sowing in extent, and that the western boundary is the field belonging to Dingira Waduwa, who is admitted by Kira to be the father of Kira.

Complainant derives his title from certain leases from Kira, and in documents P 2 and P 6 the land is described as being 15 lahas in extent and that Kira derived title by paternal inheritance from his father Dingira, but Kira states in evidence in cross-examination that all that he derived from his father he transferred, in 1916, to Loku Banda and Ukku Banda, who sold it to Menika Mason, and that as a result of litigation between him and Menika, Menika was placed in possession thereof. All this tends to show, on the complainant's own deeds, that he has no right to be in possession of any land belonging to Kira. The Police Magistrate bases his decision on the meaning of the word " Urakotakumbura."

This case shows, to my mind, the danger of deciding civil disputes by a short cut through the Police Court. The accused, to my mind, entered into possession of the lot in assertion of a *bona fide* claim of right, and no useful purpose will be served by my sending this case back for a new trial.

In my opinion, the disputes which have arisen between the parties can only be settled in the Civil Court, on proper issues framed in the case. I therefore set aside the conviction and discharge the accused.

Set aside.