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

ABRAHAM, Appellant, *and* HUME, Respondent

S. C. 997—M. C. Hatton, 15,724

*Criminal trespass—Right of public meeting in private premises—Superintendent of a plantation—Is in " occupation " of the whole estate—Right of resident labourers to invite outsiders—*Mens rea*—Penal Code, ss. 433, 69, 72, 88.*

The complainant, who was the Superintendent of a tea estate, had refused to grant permission to the accused, who was the President of a Labour Union, to hold a meeting on the estate. Despite the Superintendent's refusal, the accused entered the estate and held the meeting in the temple premises on the estate at the alleged invitation of the labourers who were resident on the estate. There was evidence that the complainant was annoyed by the conduct of the accused.

In a prosecution for criminal trespass—

Held, that the whole of the estate, including the temple and its precincts, was in the occupation of the Superintendent and that the accused was guilty of criminal trespass.

R. v. Selvanayagam (1950) 51 N. L. R. 470 distinguished.

Per DIAS S.P.J.—A person cannot be said to have a *bona fide* claim of right in regard to an alleged " right " which in fact has no existence in law. Under our criminal law, which is codified, the defence known to the English law as a " *bona fide* claim of right " does not exist apart from sections 69 and 72 of the Penal Code.

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

This case was referred to a bench of two Judges in terms of section 48A of the Courts Ordinance, at the instance of Dias S.P.J.

S. Nadesan, with *S. P. Amarasingham*, for the accused appellant.

H. V. Perera, K.C., with *G. E. Chitty* and *Vernon Wijetunge*, for the complainant respondent.

Cur. adv. vult.

May 31, 1951. DIAS S.P.J.—

This is an appeal by one S. Abraham who is the District President of the Ceylon Plantation Workers' Union of Hatton against his conviction for criminal trespass under s. 433 of the Penal Code and a sentence of two months' rigorous imprisonment.

When the case first came up before me, learned counsel on both sides agreed that having regard to the importance of the case and the issues involved, it was desirable that it should be heard by a bench of two Judges. The matter was therefore referred to his Lordship the Chief Justice who in terms of s. 48A of the Courts Ordinance made order accordingly.

The facts on which the charge was based are as follows:—Chapleton Estate is a tea plantation of 593 acres with a resident labour force of 620 labourers. The person in occupation as the agent of the owner is the Superintendent, P. F. Hume.

On March 20, 1950, the appellant, as District President of the Ceylon Plantation Workers' Union, wrote P 1 to Hume, as follows:—" I shall be thankful if you will kindly give me permission to hold a meeting on your estate on March 26, 1950, at 10 a.m., as we intend to elect a committee for the new year. I have instructed the present committee to meet you and get your approval for the meeting. I assure you that the meeting will be conducted in an orderly and peaceful manner ". Hume replied refusing to grant the permission asked for.

Hume's reasons for refusal are immaterial. He explained that there are two rival unions which had members on this estate, namely, the Union to which the appellant belonged and the Ceylon Indian Congress Union. As trouble was anticipated, the Ceylon Estate Employers' Federation, of which the proprietor of Chapleton Estate is a member, had refused to have any dealings with the Ceylon Plantation Workers' Union, and all superintendents belonging to the Employers' Federation had been instructed not to have any dealings with the union to which the appellant belonged. It is in evidence there had once been a riot between the two rival Labour Unions.

Despite the refusal of Hume the appellant decided to enter Chapleton Estate and hold the meeting. The appellant acted as he did because he considered that Hume's refusal was unreasonable. Hume says that for some days previous to the date of the meeting he heard a rumour going round the estate that the meeting was going to be held with or without his permission. Obviously a person in the situation in which Hume was placed has a duty not only to maintain discipline amongst his large labour force, but also to take steps to prevent a breach of the peace in case the two rival unions clashed. He, therefore, informed the police, and Police Sergeant Usoof on March 26, 1950, patrolled the estate.

The sergeant says that at about noon on the day in question he saw the appellant on the estate holding a meeting. He asked the appellant to leave as the superintendent had refused permission to hold the meeting. The appellant refused to leave. Hume then came to the spot and enquired from the appellant what he was doing on the estate after he had refused the appellant permission to hold the meeting, and requested him to leave. The accused replied that he had come there on the invitation of the labourers and added " Do what you want. You can take me to Court. I am going to hold the meeting ". Hume says that the attitude of the appellant was one of defiance and he became extremely annoyed. Fearing a breach of the peace should he remain there, Hume then left followed by jeers and shouts from the crowd which had assembled. The police sergeant corroborates Hume. The only contradiction between their evidence is that Hume says that the meeting was held " near the Temple " on the estate, while the sergeant said that it was held " in the Kovil (Temple) premises ", which in my view appears to be a distinction without much difference.

The appellant gave evidence on his own behalf. He admitted that he entered the land without permission and continued to remain after he had been requested by the superintendent to leave. He said " I applied for permission. It was unreasonably witheld, ... There was no intention on my part to annoy anybody by going there ". Under cross-examination he said " I cannot show anything in the Trade Unions Ordinance (Chapter 116) which entitled me to enter into private property . . . . I realize that an estate is private property; that I must obtain permission before I enter it. In this instance I asked for permission which was refused . . . . We hold the meetings on the estates to enable women labourers to attend the meetings ". It is to be noted that the majority of Indian female labourers not being Muslims do not observe purdah, and it is a well known fact that they go out of the estates on their lawful occasions.

The Magistrate convicted the appellant and, holding that the facts in his opinion merited exemplary punishment, sentenced the appellant to undergo a term of two months' rigorous imprisonment.

What is the justification of the appellant for entering this land after being told that he should not do so, and in defiantly remaining on the land after being told by the person in occupation and by the police to leave the place ?

Counsel for the appellant argued that labourers resident on estates as human beings have certain fundamental rights recognized by law. He contended that labourers have the right to invite outsiders to their weddings, funerals and other social functions on the estates. They have the right to form societies and invite outsiders to address them. It is urged that the lines in which they live, and the temple on the estate where they worship and its precincts are not in the occupation of the owner of the land or of his superintendent, and that therefore this appellant committed no offence in entering the land and addressing the labourers either " near " the estate Temple, or " in the temple precincts ". Counsel however concedes that a distinction should be drawn between the labour force on an estate and the staff of a bungalow or business place in a city like Colombo. He agrees that the appellant would not have the right to enter the latter, whereas he lawfully can do so in the former. I am unable to see the distinction. In fact, I am of opinion that learned counsel's view cannot be supported in law.

The law of Ceylon recognizes the right of private individuals to have *dominium* over property. Ownership or *dominium* is the sum total of all the real rights which a person can possibly have to and over a corporeal thing, subject only to the legal maxim " *Sic utere tuo ut alienum non laedas* " (So use your own property as not to interfere with the *legal rights* of others). Subject to this proviso, the owner may use *or misuse* his property in any way he thinks fit, even though actual damage may thereby result to others, provided he does not interfere with their *legal rights*. A landowner's rights therefore consist in the exclusive possession of his ground, and he will therefore be entitled to interdict others from trespassing upon the same, and to recover compensation for the same in

damages for a *civil* trespass, or charge the trespasser *criminally* in such countries where trespass is a criminal offence, unless the rights of the owner have been restricted by servitude or some like fetter.

Furthermore, one of the characteristic features of Liberty as understood within that body known as the Commonwealth of Nations is what is called " The Rule of Law " or " The Supremacy of the Law ". These expressions compendiously include at least three distinct though kindred conceptions of Liberty:

(1) They mean in the first place that no man is punishable, or can be made to suffer in body or goods except for a distinct breach of the law established in the ordinary legal manner before the ordinary Courts of the land. (2) They mean in the second place not only that with us *no man is above the law*, but (what is a different thing) that here, every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. (3) Finally, they mean that the general principles of Liberty such as the Right to Personal Freedom, the Right of Public Meeting, &c., are with us not guaranteed by any written law, but are the result of the judicial decisions determining the rights of private persons in particular cases brought before the Courts. *The general principle is that a man may act as he pleases, so long as he does not break some positive law by so doing.*

Professor Dicey asks: " Does there exist any general right of meeting in *public* places ? The answer is easy. No such right is known to the law of England . . . . An assembly convened . . . . for a lawful object, assembled *in a place* which the meeting *has a right to occupy*, and acting in a peaceable manner which inspires no sensible person with fear—is a lawful assembly whether it be held in Exeter Hall, in the grounds of Hatfield or Blenheim, or in the London parks. With *such a meeting* no man has the right to interfere . . . . But the law which does not prohibit open-air meetings does not, speaking generally, provide that there shall be spaces where the public can meet in the open air, either for political discussion or for amusement . . . . If A wants to deliver a lecture, to make a speech, or to exhibit a show, he must obtain some room or field which he can *legally* use for his purpose. *He must not invade the rights of private property, i.e., commit a trespass* . . . . A man has a right to hear an orator as he has a right to hear a band or to eat a bun. *But each right must be exercised subject to the laws against trespass*, against the creation of nuisances, against theift . . . . Every man has a right to worship God after his own fashion; but if all the landowners of a parish refuse ground for the building of a Wesleyan Chapel, parishioners must forgo attendance at a Methodist place of worship ". There being no general right of meeting in *public* places, it follows, *a fortiori*, that there is no general right of meeting in *private* premises or *private* property.

Sir Ivor Jennings in his book " The Law and the Constitution " (3rd edition) pages 253-255 says with regard to " Freedom of Assembly "— " The result is that a meeting can *lawfully* be held *only on private premises with the consent of the owner*, or on a public open space, or in a park in which there is no right of way—and even then, only with the consent of the local authority and subject to its by-laws ".

Berriedale Keith in his book on Constitutional Law (7th edition) at pages 540-451 says: "The right of public meeting is not specifically provided for by statute. It means merely that people may meet together when and where they please *so long as they do not by so doing commit a trespass* or a nuisance, or so long as the meeting does not constitute an unlawful assembly. *With regard to trespass, little need be said.* It is obvious that, even if there be no other place available for the purpose of public meeting *that fact would not justify the infringment of another's private rights;* and all persons who commit a trespass for the purpose of holding a meeting are liable to be mulcted in damages", and I may add punished by the criminal law where Criminal Trespass is an offence.

In the light of these authorities it is therefore impossible to hold either that the labourers on estates have such rights as are claimed for them, or that outsiders like this appellant have the legal right to enter private property in the manner in which he has done in this case. It may, no doubt, be that the owner of an estate or the superintendent cannot enter into a labourer's lines and invade his privacy. The reason for that is that by custom, good manners and by virtue of the contract existing between the master and his servant in such cases, the labourer's lines are to be regarded as his castle, and even the master may not invade the privacy of his labourer. That does not mean however that the labourer has any legal title to the lines he occupies or an unrestricted right to invite all and sundry for a drink or a game of cards in his lines.

It was argued that if the superintendent could invite his friends, so could the labourer. The answer to that question is obvious. The friends invited by the superintendent are as a rule unlikely to indulge in unlawful gaming, quarrelling or knifing, whereas if every labourer on an estate is by law entitled to invite whom he pleased, not only would he be able to invite to the estate tea and rubber thieves and other undesirables who can pilfer the owner's property, but unlawful gaming, quarrels, battle, murder and sudden death may also be the result. Therefore, it is the undoubted right of the owner of the property by virtue of his *dominium* either himself or through his agent, the superintendent, in the interests of discipline, to regulate those who are allowed to enter his land, whether they come to see the labourers or the superintendent. Should the master act oppressively or arbitrarily in these matters, it must not be overlooked that there is s. 88 of the Penal Code which would entitle a Court to refuse to take notice of a criminal trespass on the principle *de minimis non curat lex*.

It was further contended that the place where the meeting was held was not in the occupation of superintendent Hume. I cannot agree. The whole of Chapleton Estate was in the occupation of Hume including the temple and its precincts. Just as an owner may not invade the privacy of his labourer at certain times and seasons, even so, Hume no doubt may not disturb worshippers at the temple. But subject to that, the ownership of this land necessarily means that every square inch of it is in the lawful occupation of the owner's agent. Furthermore, this appellant committed a trespass when he in defiance of Hume's refusal entered the land through the entrance or whatever place he obtained

access to the land, and in going through this land to the place of meeting. Furthermore, when the appellant defiantly refused to leave and continued to remain on the estate after being asked to leave, he committed a further trespass. The evidence establishes that in either case he acted intentionally.

It is impossible to hold in this case that the appellant had or could ever have entertained the idea that he was *bona fide* exercising a claim he believed he had to enter on or remain on the land. P 1 and the other evidence negative this. Under our criminal law which is codified, the defence known to the English law as a " bona fide claim of right " does not exist apart from ss. 69 and 72 of the Penal Code—*Weerakoon v. Ranhamy* [1]. I further hold that a man cannot be said to have a *bona fide* claim of right in regard to an alleged " right " which in fact has no existence in law. If the argument addressed to us on behalf of the appellant is sound, then persons who are not estate labourers have the right at their mere whim and caprice to invade a private land in order to hold a meeting on the land despite the fact that the person in occupation had prohibited them from doing so. The authorities which I have cited indicate that no such right can exist in law. If the law is to be changed, that must be done by the Legislature, and not by judicial decision.

The judgment of the Privy Council in *R. v. Selvanayagam* [2] was cited. I do not think that case has much relevance to the facts of this case. I respectfully agree that the law of criminal trespass must not be utilised as a short cut to decide a civil dispute. This principle does not arise in this case. In *R. v. Selvanayagam* [2] a labourer whose ancestors for several generations had lived in a house on an estate was given notice to quit. When the accused refused to quit, he was charged with criminal trespass for remaining on the land to the annoyance of the conductor or superintendent whom the Government Agent placed on the land which had been compulsorily acquired by the Crown. Clearly, the accused in that case was acting "under a *bona fide* claim of right to continue in occupation " of the house he lived in, and he did not annoy any person in occupation of his lines, as he himself was the occupier.

In the case before me there is direct evidence that the acts of the appellant annoyed Hume, the person in occupation. Not only was there annoyance, but he was insulted, when his own labour force jeered at him when the appellant refused to leave the land. I would go further and say that had not Hume left the scene at the time he did, there might have been a breach of the peace or a riot ending in bloodshed. The latter P 1 which the appellant wrote to Hume indicates that he realized full well that he could not lawfully enter the land without permission. His conduct thereafter clearly shows that he knew what he was doing. The appellant therefore committed the offence with which he was charged.

I am of opinion that this conviction is right and must be affirmed. I cannot agree that the sentence is excessive. This is a case where a sentence of imprisonment is called for.

The appeal is dismissed.

[1] *(1921) 23 N. L. R. 33*

[2] *(1950) 51 N. L. R. 470.*

GUNASEKERA J.—

The evidence of Mr. Hume that he was in occupation of the entire estate was not challenged in cross-examination or contradicted by other evidence. On the contrary it appears that the appellant himself treated him as the person in occupation of the estate when he sought his permission to hold a meeting there.

The place where the meeting was held is described by Mr. Hume as " a spot on the estate in front of the Hindu Kovil " and as a " part of the estate ". Under cross-examination he agreed that it was " near the temple, which is fairly close to the lines of the labourers ". Its proximity to the temple was such that the police sergeant referred to it as " the Kovil premises of Chapelton Estate ". Upon this description of the place Mr. Nadesan based an argument that it was a part of the estate that was not in Mr. Hume's occupation; for the reason that the Kovil and the ground immediately adjacent to it must be regarded as having been set apart for the use of the labourers. While it does appear to be probable that the Kovil, which stood on the estate, was intended for the use of such of the labourers as might wish to use it for purposes of religious worship, there is nothing in the evidence to suggest that it did not belong to the owner of the estate on which it stood or that the labourers could use it otherwise than by the owner's leave. The mere fact that the labourers were permitted by the owner to use any particular portion of the estate for some special purpose would not by itself be sufficient to shew that that portion was not in the occupation of the Superintendent.

Mr. Nadesan also contended that the resident labourers being entitled to live in " line rooms " on the estate had an incidental right to invite to the estate anyone they wished to invite; and that, having been invited by one of these labourers, the appellant committed no trespass by entering the estate or holding a meeting there. There is no evidence as to the terms on which resident labourers had been allotted rooms in the labourers' lines, and there is nothing to suggest that these terms involved such a derogation of the Superintendent's control over the estate; nor is there evidence that the labourer who invited the appellant to hold a meeting was resident on the estate. It is quite clear that the appellant entered the estate and remained there as a tresspasser, and his own admission show that he knew that he was committing a trespass:

> " I realise that an estate is private property, that I must obtain permission before I enter into it. In this instance I asked for permission which was refused."

He did not even suggest in his evidence that he acted under the belief that Sinniah Kangany's invitation to him to hold a meeting on the estate entitled him to go there.

The learned Magistrate appears to have inferred from the appellant's conduct that he intended to annoy Mr. Hume, and to have rejected his evidence that he had no intention " to annoy anybody by going there ". The appellant went into the estate knowing that he had been

refused permission to enter it and conscious that his entry was a trespass. Having entered the estate he held a meeting there, which was attended by about a hundred labourers, although he knew that the Superintendent objected to the holding of that meeting; and he did not desist even when the latter protested against his conduct and asked him to leave. His reply to this lawful demand was: "Do what you want. You can take me to court. I am going to hold this meeting"; and his truculence appears to have encouraged the assembled labourers to shout and jeer at the Superintendent. Mr. Hume says that he was "extremely annoyed" by the appellant's conduct and he asked the police sergeant if he would request the appellant to leave. The sergeant did so but he too failed to persuade him. He then advised Mr. Hume to go away, fearing a possible breach of the peace if he did not, and escorted him to his bungalow.

It seems to me that the Magistrate could properly hold that a natural and probable consequence of the appellant's conduct would have been to annoy Mr. Hume, and it was open to him to presume that the appellant intended that consequence. This presumption the Magistrate appears to have drawn, and the appellant's denial that he intended to annoy anybody "by going there" has been insufficient to create in the Magistrate's mind a doubt as to whether the appellant entered the estate or remained there with intent to annoy Mr. Hume. I see no reason to hold that the Magistrate has erred in arriving at this finding of fact. I would therefore affirm the conviction.

The sentence passed by the learned Magistrate is an unusually severe one for a first offence of criminal trespass, but it was an offence that was attended by aggravating circumstances, and it may well have resulted in rioting and bloodshed but for the self-control exercised by the Superintendent. I am unable to say that there is ground for interfering with the Magistrate's exercise of his discretion.

I agree that the appeal should be dismissed.

Appeal dismissed.