have appreciated this. Their Lordships are not prepared to hold that the appellant, in refusing to give up his two rooms, thereby no doubt increasing the difficulties of the superintendent, intended to induce, or contemplated that he would induce, in the mind of the superintendent an emotion so inappropriate to a Government officer and so unprofitable as annoyance ; but even if the appellant did anticipate that Rajapakse would be annoyed it is perfectly clear from his evidence that his dominant intention was to remain on the estate where he and his family had lived for generations and not to find himself homeless. Entry upon land, made under a *bona fide* claim of right, however ill-founded in law the claim may be, does not become criminal merely because a foreseen consequence of the entry is annoyance to the occupant. To establish criminal trespass the prosecution must prove that the real or dominant intent of the entry was to commit an offence or to insult, intimidate or annoy the occupant, and that any claim of right was a mere cloak to cover the real intent, or at any rate constituted no more than a subsidiary intent. Their Lordships are not in agreement with the contrary view which Mr. Justice Wood Renton seems to have entertained in *Suppaiya v. Ponniah* [1]. They prefer the view of Dalton A.C.J. in *Wijeymanne v. Kandiah* [2]. The case of *Forbes v. Rengasamy* [3] on which the courts in Ceylon relied is distinguishable because in that case the accused did not give evidence as to his real intention and the court thought that his conduct had been defiant.

The appellant asked for costs against the Crown on the ground that recourse to the criminal law was entirely unwarranted. It is very rare for their Lordships to allow costs in a criminal matter, and although they think that in this case recourse to a criminal court was not justified, the application found some support in previous decisions of the Supreme Court and was successful in two courts. In the circumstances their Lordships will adhere to their usual practice and make no order as to costs.

For the above reasons their Lordships will humbly advise His Majesty that this appeal be allowed and the conviction and sentence upon the accused passed by the magistrate of Kegalla on the 28th of June, 1946, be set aside.

Appeal allowed.

1950 *Present :* **Nagalingam J.**

FERNANDO *et al.*, Appellants, *and* CHANDRADASA *et al.*, Respondents

S. C. 506-508—M. C. Kurunegala, Nos. 472, 53,709 and 53,706

Omnibus—Carrying of passengers in excess of authorized number—No valid licence at date of alleged offence—Effect—Motor Car Ordinance, No. 45 of 1938, sections 111 (2) and 158.

The conductor of an omnibus cannot be convicted, under section 111 (2) of the Motor Car Ordinance, of carrying passengers in excess of the authorised number if, at the date of the alleged offence, the licence in respect of the omnibus had not been issued by the Motor Commissioner's Department.

[1] *(1909) 14 N. L. R. 475.* [2] *(1933) 35 N. L. R. 244.*
[3] *(1940) 41 N. L. R. 254.*

APPEALS from three judgments of the Magistrate's Court, Kurunegala.

N. M. de Silva, for accused appellants.

A. C. M. Ameer, Crown Counsel, for the Attorney-General.

July 13, 1950. NAGALINGAM J.—

These are three appeals from the Magistrate's Court, Kurunegala, in which the accused-appellants have been convicted for carrying passengers in excess of the authorised number, an offence punishable under section 158 of the Motor Car Ordinance, No. 45 of 1938. The facts are that in each of these cases the appellants, who are bus conductors on three different buses, were detected conveying passengers in excess of the number that the omnibus was licensed to carry for the previous year, namely, the year 1949, the dates of the alleged offences being dates in the year 1950 and the dates were certainly prior to the 31st of March, 1950. It would appear that subsequent to the dates on which the alleged offences were detected the omnibuses were licensed, but there is no evidence to show that the licences so issued had reference to a date anterior to the date of their actual issue. In the result, the position in which the prosecution found itself in trying to maintain the case against the accused was that at the date of the alleged offences there was no valid licence in operation in respect of any of the omnibuses.

The learned Magistrate has seen his way to convict the accused, basing his judgment upon a very broad proposition, namely, that if he did acquit the accused, then the position would be that an omnibus in respect of which a licence had been issued could not be overloaded without the bus conductor incurring a penalty, but that where an omnibus was plying for hire without obtaining a licence and if there was overloading, the conductor cannot be said to have committed an offence. There can be little doubt that this would seem to be the unfortunate result of the law as it stands at present. In considering a penal statute, it must not be so construed as to hold that an offence not within both the letter of the statute and the spirit of it has been created by it.

It is obvious in this case that at the date of the alleged offence there was no valid licence in respect of the omnibus. The omnibus did not in fact carry a licence for the year 1950. The licence if it had been issued would have been carried on the omnibus and if so carried would have given notice to the bus conductor as to the maximum number of passengers that were permitted to be conveyed in it. The bus conductor who may have worked on the bus on the date of the alleged offence may have been entirely ignorant of what the licence for the previous year contained. It is pointed out that in point of fact there was the licence issued for the year 1949 on the bus, but that was not a licence that was in force for the year 1950 and must be regarded merely as waste paper which had no significance whatsoever to any one who may have perused it. The result

is that the accused persons could not be said to have exceeded any number which had been prescribed as the maximum limit for the conveyance of passengers.

The provision under the law is that where omnibuses are to be licensed from the month of January applications for such licences should be forwarded in September the previous year. There is no reason to suppose that no such applications had been made in respect of these omnibuses. If so, the delay in issuing the licences must be attributed entirely to the fact that the Motor Commissioner's Department was for reasons best known to the Department, not in a position to issue the licences not merely before January 1 of the following year but even as late as the date of the detection of these offences. The solution would seem to be that the Department should have an increased personnel who would be able to license these vehicles effectively before the commencement of the subsequent year, or, if that be not possible, an amendment of the law should be made so as to penalise offences of this nature by a reference to the number of passengers carried on the omnibus in the previous year.

So far as these accused are concerned, there can be little doubt that the convictions against them cannot be sustained. I therefore set aside the convictions and acquit the accused.

Appeals allowed.

1949 *Present* : **Pulle J.**

MAJEED *et al.*, Appellants, *and* MANNAMPERUMA (P.S.), Respondent

S. C. 913-914—M. C. Hatton, 13,733

Protection of Produce Ordinance (Cap. 28), Section 4—Charge of unlawful possession of tea leaf—Particulars which such charge should contain.

A proper charge under section 4 of the Protection of Produce Ordinance should set out particulars of the circumstances from which one can reasonably suspect that the produce was not honestly in the possession of the person accused.

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

Colvin R. de Silva, with *M. M. Kumarakulasingham*, for accused appellants.

E. R. de Fonseka, Crown Counsel, for Attorney-General.

Cur. adv. vult.