Present : Wood Renton J.

Sept. 8, 1909

SUPPAIYA *v.* PONNIAH *et al.*[1]

P. C. Matale, 31,154.

Criminal trespass—Intention to intimidate or annoy—Bona fide *claim of right*—*Penal Code, s. 433.*

An unlawful act of trespass committed with an intention to intimidate or annoy is criminal trespass, even if the trespasser had some ulterior object in committing it. Intention to intimidate or annoy will be presumed from foreknowledge that intimidation or annoyance will be the natural result of an act.

Wood Renton J.—When once an act of unlawful interference with the possession of property, under circumstances disclosing a real intention to intimidate or annoy the possessor, has been established, the offence of criminal trespass has been committed; and in such a case I should not be disposed to whittle away the effect of the law by curious refinements as to whether an ulterior object that the trespasser may have had in view constituted his primary or only his secondary intention. Nor do I see why, in regard to criminal trespass alone, the ordinary rule of law and of common sense, that a man may fairly be held to have intended the natural consequences of his acts, should be excluded.

THE facts are fully set out in the judgment.

Bawa, for accused, appellants.

Hayley, for respondent.

Cur. adv. vult.

September 8, 1909. Wood Renton J.—

This case offers a typical illustration of a far too common sequel to a land action in Ceylon. The appellants, Ponniah and Dorakannu, together with three others, were convicted in the Police

[1] This report is taken over from *Balasingham's Report* (*Vol. 4, p. 157*), where I had reported it before I was appointed Editor of the *New Law Reports*.

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Court of Matale of criminal trespass. Ponniah was sentenced to pay a fine of Rs. 100, and to give security in Rs. 250 for good behaviour for six months. Dorakannu to pay a fine of Rs. 10. The facts as found by the learned Police Magistrate, are these. In 1904 Kirigalpottewatta, the land on which the criminal trespass was effected, was sold to Ponniah by one Boulton. At the time of, and for some years previous to, this sale the complainant had been in possession. Ponniah thereupon instituted an action against the complainant and some others in the District Court of Kandy (S. C. 238 D. C. F. Kandy, No. 17,343) claiming a declaration of title to the land in question. After two trials and several appeals to the Supreme Court the case dismissed. Ponniah thereuopn obtained a deed from one Muttiah, an added party in the case (D. C. Kandy, No. 17,343), for an undivided half of the land, and proceeded to assert his alleged title otherwise than with the sanction and assistance of the courts of law. On January 29 in the present year he commenced tentative operations. He came to the land with a party of ten or twelve others, did a little weeding, and plucked some coconuts, in spite of the protest of the complainant, who was in possession of the land, and had a right to possess it as the result of the civil litigation, and went away. The complainant obtained a report from the Arachchi, but, on his advice, took no immediate proceedings, as little damage had been done. Emboldened by the success of his preliminary foray, Ponniah returned to the land on February 5 with a gang of ten or fifteen men, including the second appellant, Dorakannu, who is apparently his servant, and the third, fourth, and fifth accused. The gang was armed with sticks and guns. At the time of the raid the complainant, his wife Papathie, and several coolies were working on the land. Ponniah pushed the woman, and told her to stop working. When the complainant protested, Ponniah said : " I have purchased the land ; if you have any right, you had better go to Court." The complainant offered no resistance, being intimidated, as he said, by the presence of the armed gang, but went direct to the Police Court and filed the information in the present case. On February 8 Ponniah reaped the fruits of his victory. He came back to the land with a cart, plucked about 1,200 coconuts, and took them away.

The defence of these high-handed proceedings that has been urged in appeal is the familiar plea of a *bona fide* claim of right. From a careful examination, both, of the evidence in this case and of the record in D. C. Kandy, 17,343, which I have called for and persued, I think that the learned Police Magistrate was fully justified in concluding that Ponniah knew that he had, in any event, no presently enforceable right to the possession of the land in dispute, or of its produce, as against the complainant, and that he intended to take unlawful possession of it by intimidation. I should myself be disposed to put the case against him much higher, as the result of

my own examination of the evidence. But I purposely leave it on the level of the findings of the Police Magistrate, as I desire to answer the question, which is constantly coming before us in the Appeal Court, whether under such circumstances a plea of *bona fide* claim of right is available. I put aside at once as irrelevant to the issue such cases as *Sourjah v. Fernando.*[1] I had occasion recently in 406, Municipal Court, Colombo, No. 3,464,[2] to call for the record in that case. It was a prosecution by the Municipal Council for alleged encroachment. The defendant adduced evidence raising a strong *primâ facie* case of title, and the Supreme Court naturally and, if I may say so, properly, held that the matter was not one for adjudication before a criminal tribunal. It is obvious that that decision can find no application here. Of the second group of cases with which I was pressed in appeal, *Queen Empress v. Rayapadayachi*[3] may be taken as an example. These are cases of house trespass by night for the purpose of prosecuting an intrigue, and the *ratio decidendi* is that, as the real primary motive of the trespasser is something quite different from an intention to annoy, his offence, whatever else it may be (and under the Indian Penal Code such house trespass does, under certain circumstances, amount to a criminal offence—see *Balmakand Ram v. Ghansan Ram*,[4] *Permanundo Shaha v. Brindabun Chung*[5]), is not criminal trespass with intent to annoy under section 441, even if annoyance may, in fact, be in some measure foreseen as a possible or probable result of it. It is unnecessary to discuss these authorities here, where we have a positive finding—and ample evidence to support it—of an intention to intimidate.

I come now, in the last place, to the Indian cases bearing directly on the plea of *bona fide* claim of right. I have examined all of those to which I could obtain access here. In my opinion they show conclusively that the plea of *bona fide* claim of right is not open to an accused person in the position of Ponniah. I will give an illustration first of the class of circumstances under which that plea is, and then of the class of circumstances under which it is not, recognized by the Indian Courts. In *In re Gobind Prasad*,[6] Gobind Prasad, Chawrasi his wife, and his brother Kalika had jointly mortgaged certain undivided property to Ram Datan Das. The mortgagee foreclosed. Chawrasi and Kalika appealed. The appeal succeeded, but the decree held good against Gobind Prasad, and the property was delivered to the mortgagee in the execution of that decree. Chawrasi remained in possession in *bona fide* assertion of her rights, and Gobind Prasad did likewise, honestly believing that the grounds of Chawrasi's successful appeal applied equally to him, and also that, as the property was joint, he was entitled to remain, so as to assert

[1] *(1908) 2 Weer 17.*
[2] *S. C. Min., Aug. 24, 1909.*
[3] *(1896) I. L. R. 19 Mad. 240.*
[4] *(1894) I. L. R. 22 Cal. 393.*
[5] *(1895) Ib. 994.*
[6] *(1879) I. L. R. 2 All. 465.*

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the right of his co-owners. Straight J. held that neither Chawrasi nor her husband could be convicted of criminal trespass. Under similar circumstances, no Court in Ceylon would hesitate to apply the same rule. But the category to which the present case really belongs is illustrated by the Indian case of *Golap Pandey v. Boddam*.[1] During the pendency of a civil suit against Mr. Boddam, certain persons, on behalf of the plaintiff, went on to his premises for the purpose of making a survey, and for getting materials for a hostile application against him. They went—some of them armed—without Mr. Boddam's permission, and in his absence, and when his servants objected to their action, they persisted in the trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they acted. The High Court held that they were guilty of criminal trespass. Trevelyan J. and Beverley J. disposed summarily, and in the following terms, of the plea that no offence had been committed, as the object of the intruders was only to survey the premises :—

> No doubt that was their primary object, but when we find them going on to the premises in Boddam's absence, and without his leave, and taking three swords with them, we think it clear that they intended to intimidate Mr. Boddam's servants into not opposing their entering upon the premises, which, from their relation with Mr. Boddam, they must have known he would have objected to their entering. It is true that they seem to have to some extent attempted to avoid discovery, but when accosted by Mr. Boddam's servants they persisted in their trespass, and endeavoured to prevent opposition by the false statement that they had been sent by the orders of the Bengal Government. The trespass was most unwarrantable, and if it were to be tolerated, that while two persons are litigating as to a property, one may go armed on to the property of which the other is in possession, for the purpose of getting materials for an hostile application, breaches of the peace would be frequent.

I know of no Indian case that in any way conflicts with this decision. On the contrary, there are authorities that go further. In *Reg. v. Ram Dyal Mundla*,[2] Markby J. held that forcible entry on land in the possession of another is criminal trespass, although the accused claim the land irrespective of the question in whom the title to the land is ultimately found to be. In *Emperor v. Lakkshman Raghunath*[3] accused No. 1, who held a decree against a judgment-debtor, went with his son, accused No. 2, and a Civil Court bailiff to execute a warrant. Finding the door of the judgment-debtor shut, they entered his compound by passing through the complainant's house, without his consent and notwithstanding his protest. The High Court of Bombay held that they were guilty of criminal trespass, for when they entered the complainant's house in spite of his protest, they must have known that they would annoy him.

[1] *(1889) I. L. R. 16 Cal. 715.* [2] *(1867) 7 W. R. Crim. 28.*
[3] *(1902) I. L. R. 26 Bom. 558.*

"It cannot be disputed," said Fulton J., "that mere knowledge of the possibility of annoyance resulting from an act of trespass is not sufficient to bring the case within the definition, but at the same time it must be remembered that the word 'intent' cannot be read as if it were identical with 'wish' or 'desire'. There may be no wish to annoy, but if annoyance is the natural consequence of the act, and if it is known to the person who does the act that such is the natural consequence, then there is an intent to annoy. Most acts in the common course of natural events and human conduct lead to a series of results, and if these results are foreseen by the person doing the acts, they cannot be said to be caused unintentionally. The ultimate object may be something different, but the person intends all the intermediate results, which he knows will happen in the natural course of events, even though he may regret that they should happen. When it is uncertain whether a particular result will follow, there may be no intent to cause that result, even though it may be known that the result is likely. But it seems impossible to contend, when an act is done with a knowledge amounting to practical certainty, that a result will follow, that it is not intended to cause that result."

I have, in the main, confined my examination of the case law in regard to the plea of *bona fide* claim of right to Indian authorities, because it is with the supposed Indian law on the subject that on the strength of one passage in Mayne (*Criminal Law of India*, 3*rd ed.*, *pp.* 794–5) and another in Starling (*Indian Crim. Law*, 8*th ed.*, *p.* 629) we are constantly pressed in appeal. I have endeavoured to show that under the Indian decisions an unlawful act of trespass—to confine ourselves to the class of cases now under consideration—committed with an intention to intimidate or annoy is criminal trespass, even if the trespasser had some ulterior object in committing it: and that foreknowledge that intimidation or annoyance will be the natural result of an act is treated as equivalent to intention. The current of local judicial authority in regard to the meaning of intention is in the same direction. See *e.g.*, *Wilson v. Gault*,[1] *Rodrigo v. Fernando*,[2] *Veronia v. Pedro Santia*,[3] and there are unreported decisions also on the point. When once an act of unlawful interference with the possession of property, under circumstances disclosing a real intention to intimidate or annoy the possessor, has been established, the offence of criminal trespass has been committed: and in such a case I should not be disposed to whittle away the effect of the law by curious refinements as to whether an ulterior object that the trespasser may have had in view constituted his primary or only his secondary intention. Nor do I see why, in regard to criminal trespass alone, the ordinary rule of law and of common sense, that a man may fairly be held to have intended the natural consequences of his acts, should be excluded.

[1] *(1808) 3 N. L. R. 211.* [2] *(1899) 4 N. L. R. 176.*
[3] *(1885) 7 S. C. C. 35.*

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I have no doubt but that, in the case of each appellant, the conviction must be affirmed. I have anxiously considered the question of the sentences. The case is a bad one in itself, and it belongs to a peculiarly mischievous type. Ponniah was well aware (i.) that the complainant has a right to the possession of the land, and (ii.) that he himself had no right to it under his deed from Muttiah. Instead of seeking assistance from the courts of law, when he found that his intrusion was resented, he had recourse to one of those impudent and dangerous attempts to substitute armed violence for civil litigation as a mode of acquiring property, which are intolerable in a civilized community. If his operations had been resisted by the complainant, the almost inevitable sequel would have been a trial for grievous hurt or murder in the Assize Court ; and then, when a prosecution is instituted, he falls back on the well-worn defence of *bona fide* claim of right. The plea is one that, in cases of this character, I regard with profound distrust. The ordinary villager knows well that the civil tribunal is at his door ; and, as the mass of litigation in the Colony shows, he displays no coyness in invoking its aid when he thinks that he has a real grievance against his neighbour. It is for the most part claims that are known to be either unfounded or exceedingly doubtful that are sought to be enforced in Ceylon without due process of law. But whether his claim be good or bad, it is essential to the orderly administration of justice, and to the safety of human life in this Colony, that the villager should be taught that he must look for its enforcement to the arm of the law alone. The imposition of a fine on people of the stamp of Ponniah is of little value as a deterrent to them or to others. They regard it merely as the result of an untoward turn in the wheel of a civil or *quasi*-civil litigation, with which every man who goes to law must reckon, and which is amply made up for by the annoyance that they have succeeded in causing to their opponents. What is needed in such cases as this is punishment—punishment extending both to the principal offender and to his henchman, whose fine is invariably paid by his master, and who, if only a fine is imposed, enjoys the luxury of taking part in a fray, and of gratifying incidentally any private grudges of his own with absolute impunity. The original non-summary proceedings in this case were abandoned on the direction of Crown Counsel. It remains, however, a most serious case of criminal trespass. I set aside the entire sentences passed on the appellants. The fines must be returned. Ponniah will undergo three months' and Dorakannu one month's rigorous imprisonment. It might serve a useful purpose if the proper authorities should see fit to direct that the result of this appeal should be made widely known in all the country districts through the agency of the Police Courts and the superior headmen.

Conviction affirmed ; sentence enhanced.