1933 *Present:* **Dalton A.C.J.**

WIJEYMANNE *v.* KANDIAH.

409—P. C. Trincomalee, 7,846.

Criminal trespass—Proof of intent to annoy—Primary motive of accused.

Where an accused is charged with entering the premises in the occupation of a person with the intention of molesting a servant, intending or knowing that he would thereby annoy the occupier,—

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.

APPEAL from a conviction of the Police Magistrate of Trincomalee.

N. E. Weerasooria (with him *Kariapper*), for accused, appellant.

Aelian Pereira, for complainant, respondent.

August 21, 1933. DALTON A.C.J.—

The appellant has been convicted on a charge of criminal trespass. The charge was that he on January 20, entered into the premises in the occupation of L. H. Nicholas with the intention of molesting his ayah, intending or knowing that he would thereby annoy the said Nicholas and other persons in the occupation of that house. He appeals against the conviction on the ground that there is no evidence that he intended to annoy either Nicholas or any other person in occupation of the house and hence it is not proved he has committed the offence charged.

[1] *27 N. L. R. 410.*

There is no doubt accused was caught on the premises of Nicholas on the evening of January 20 about 8 P.M. There is also reason to think he was attempting to visit the ayah on the premises. No other reason is put forward by the prosecution for his presence there, and there is evidence to show he had been seen on the premises on a previous occasion very early in the morning and ran away when seen. Whether or not the ayah welcomes his attentions does not appear, but it was not suggested to her when she gave evidence, that she was annoyed at accused's attentions although she says she did not encourage him. The case for the prosecution as disclosed by the evidence alleges an intention to annoy only Nicholas, the master of the house.

If this is a case of the accused paying attention to the ayah, and attempting to visit her secretly on her master's premises, as the Magistrate finds it to be, then it is fairly obvious that the very last person he would wish to see on the premises or to know of his visits would be the master of the house. An essential element of the offence as charged is the intention to intimidate, insult, or annoy. Mr. Pereira, in support of the conviction, argues that accused must have known Nicholas would be annoyed if he was discovered. Discovery, he says, was a possible result following upon his going on the premises, and therefore accused must be taken to have intended what was a possible result of his act. He relies upon the case of *Emperor v. Lakshman Raghunath* [1] cited by Wood-Renton J. in *Suppaiya v. Ponniah* [2]. The conclusions however of Fulton J. when applied to the facts of this case seem to me to be against counsel's contention. What is stated there, amongst other things, is that 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. The case being considered by Wood-Renton J. was one in which an entry was made under a *bona fide* claim of right, which he in his judgment distinguishes from cases of house-trespass by night for the purpose of pursuing an intrigue. In the latter cases he points out that the real primary motive of the trespasser is something quite different from an intention to annoy, and the offence whatever else it may be is not criminal trespass with intent to annoy, even if annoyance may in fact be in some measure foreseen as possible or probable result of it.

The same matter is considered by Bertram C.J. in *King v. Essanhamy* [3]. He points out that when a man does an act he may have several intents at once. In his view what is meant when a person is charged with trespassing on premises " with intent to intimidate, insult, or annoy any person therein " is that he has a substantial intent in one of these directions.

Applying these authorities to the facts of this case, I am satisfied that no intent to annoy Nicholas as set out in the charge, or any other person on the premises, has been proved, and therefore the conviction must be set aside, the appeal being allowed.

Set aside.

[1] *26 Bombay 558.*

[2] *14 N. L. R. 475.*

[3] *5 C. W. R. 196.*