

1958

Present : Weerasooriya, J.

S. CHITRAVELU, Appellant, *and* S. I. POLICE, KANTALAI,
Respondent

S. C. 226—M. C. Trincomalee, 18,856

Criminal trespass—Ingredients of offence—"Occupation"—Distinction between occupation and possession—Penal Code, ss. 427, 434.

In dealing with a charge of criminal trespass, it is necessary for the Court to bear in mind the distinction between occupation and possession.

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

S. Rajaratnam, for the accused-appellant.

R. Abeysuriya, Crown Counsel, for the Attorney-General.

July 3, 1958. WEERASOORIYA, J.

The appellant in this case was convicted of the offence of house trespass punishable under section 434 of the Penal Code and sentenced to 3 months rigorous imprisonment.

The amended charge on which the case went to trial reads as follows: "On 27.3.57 you did commit house trespass by entering into house No. 637 Unit 18 in the custody of H. Sapu Aratchi, Colonization Officer, Unit 18, Kantalai, with intent to cause annoyance to the said H. Sapu Aratchi and thereby committed an offence punishable under section 434 of the Penal Code."

It will be observed that in the definition of criminal trespass in section 427 of the Penal Code, a necessary ingredient of the offence is that the property in respect of which the entry has been made is *in the occupation* of another, but in the charge as framed there is no allegation that house No. 637 was in the occupation of the aforesaid H. Sapu Aratchi (who, according to the evidence, was the Colonization Officer in whose charge the house was at the relevant time). Furthermore, the prosecution evidence itself would appear to indicate that, far from the accused having entered this house on the 27th March, 1957, he had come into occupation of it nearly a year before.

In dealing with a charge of criminal trespass, it is necessary for the Court to bear in mind the distinction between occupation and possession as pointed out by the Privy Council in *King v. Selvanayagam*¹. This the learned Magistrate seems to have failed to do. His finding is that "on the evidence there is no doubt at all that the Colonization Officer was in lawful possession of the colony cottage and I am of opinion that the charge against the accused has been substantiated and proved beyond reasonable doubt". Not only has he misdirected himself as to the particular ingredient of the offence of criminal trespass to which I have referred earlier, but there is also no finding by him that as a result of what the accused did on the 27th March, 1957, annoyance was caused to the Colonization Officer as alleged in the charge.

I set aside the conviction of the accused and the sentence passed on him and acquit him.

Appeal allowed.

¹ (1950) 51 N. L. R. 470 at 474.

1958

Present: Sansoni, J., and T. S. Fernando, J.

T. D. MENDIS, Petitioner, and V. RAJASEGARAM, Respondent

*S. C. 354—Application to have the plaintiff's appeal to the Privy Council dismissed for non-prosecution**Privy Council—Dismissal of appeal for non-prosecution—Appellate Procedure (Privy Council) Order, 1921, Rule 11—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 25.*

On February 2, 1958, plaintiff obtained final leave to appeal to the Privy Council and elected to print the record of the case in Ceylon. He failed, however, to comply with the requirements of rule 11 of the Appellate Procedure (Privy Council) Order, 1921. Nor did he apply to enlarge the time prescribed by rule 11. Further, he did not pay the fees called for by the printers.

On September 13, 1958, the defendant made the present application for the dismissal of the appeal for non-prosecution.

Held, that the appeal fell within rule 25 of the Schedule to the Appeals (Privy Council) Ordinance and should be dismissed for non-prosecution.

APPPLICATION to have an appeal to the Privy Council dismissed for non-prosecution.

H. W. Jayewardene, Q. C., with *A. S. Vanigasooriyar* and *P. Ranasinghe*, for the Defendant-Petitioner.

S. J. V. Chelvanayakam, Q. C., with *S. Sharvananda*, for the Plaintiff-Respondent.

Cur. adv. vult.

November 20, 1958. SANSONI, J.—

This is an application by the defendant to have the plaintiff's appeal to the Privy Council dismissed for non-prosecution. Final leave to appeal was granted on 13th February 1958 and the plaintiff elected to print the record in Ceylon. He should therefore have delivered the prints to the Registrar for examination and certification by 13th April as required by rule 11 of the Appellate Procedure (Privy Council) Order, 1921. He did not do so, nor did he apply to enlarge the time prescribed by rule 11. Certified copies of the record were forwarded to the printers on 24th July and the printers requested the plaintiff's proctor to pay a sum of Rs. 12,000 being the cost of printing. Although that request was made in July, the payment has not been made yet.

This application by the defendant to have the appeal dismissed was filed on 13th September. Notice was issued on the plaintiff who filed objections on 16th October. The only explanation offered regarding

the non-payment of the printers' charges is that this application is pending. No explanation has been offered regarding the failure to apply for an extension of the time prescribed by rule 11. The prayer to the statement of objections asks for an extension of six months to deliver the prints of the record to the Registrar.

The matters I have set out show plainly that the plaintiff has failed to exercise due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to England, and the case falls within rule 25 of the Schedule to the Appeals (Privy Council) Ordinance, Cap. 85. Not only did the plaintiff fail to apply within the period of two months prescribed by rule 11 already referred to, but he waited a further six months thereafter to make an application for an extension of time, and he seems to have been goaded into activity only by the filing of the present application by the defendant. Nearly two months have elapsed since the printers called for their fees, but no payment had been made at the time the present application was filed. If the plaintiff chooses to act in this casual manner he runs the risk of having his appeal dismissed for non-prosecution, and that is the order I would make on this application.

I declare the plaintiff's appeal to stand dismissed for non-prosecution. The defendant is entitled to the costs of this application and the costs already incurred by him in connection with the plaintiff's appeal to the Privy Council.

T. S. FERNANDO, J.—I agree.

Application allowed.

