

1914.

Present : Pereira J.

MEDDUMME APPU v. WEGUNDAHAMY.

628—P. C. Matale, 2,063.

Criminal trespass—Intention to commit an offence or to intimidate, insult, or annoy—Unlawful assembly.

In the offence of criminal trespass, unlike that of unlawful assembly, the intention of the alleged offenders to commit an offence or to intimidate, insult, or annoy the person in occupation of the property trespassed upon is an essential ingredient.

THE facts appear from the judgment.

A. St. V. Jayewardene, for accused, appellant.—The learned Magistrate convicts the accused as he trespassed on a land in the possession of the complainant, and considers the plea that the accused acted in the assertion of a *bona fide* claim of right as no justification. The entry on a land to assert a *bona fide* claim of right has always been held to afford a valid defence to a charge of criminal trespass. See P. C. Panadure, 36,529,¹ where the Chief Justice, while convicting the accused of hurt to the complainant who was in possession, acquitted them of criminal trespass, as they were asserting a *bona fide* claim of right. See also 2 S. C. D. 17, 3 S. C. D. 47.

The facts in *Suppaiya v. Ponniah*² negated the possibility of there being a *bona fide* claim of right, as the accused had lost all title to the land in some cases to which he was a party. The facts in this case clearly show that the accused has a good and valid title to the land, and that he acted *bona fide*.

Wadsworth, for respondent, relied upon *Suppaiya v. Ponniah*.¹ It is clear from the findings of the Police Magistrate that the accused did not act in the *bona fide* assertion of his right. The Penal Code refers to occupation, and not to possession, in defining criminal trespass.

Cur. adv. vult.

July 31, 1914. PEREIRA J.—

In this case the appellant (the first accused) has been found guilty, along with the second, of criminal trespass. His defence was that the land said to have been trespassed upon belonged to him, and that he entered it and cut the branches of certain cocoa trees in the *bona fide* assertion of his right to the land. The Magistrate says that the

¹ S. C. C. Min., April 3, 1912.

² (1909) 14 N. L. R. 475.

whole question is one of possession, not of title, that if the complainant showed that he was in possession of the land, it is immaterial whether the accused had any *bona fide* right or not, and that they entered the land and did acts of interference which constituted criminal trespass. This, in my opinion, is hardly a correct view to take. In a charge of unlawful assembly against five or more persons, on the ground of their common object having been to take possession of property by means of criminal force or show of criminal force, the fact that their intention was the *bona fide* assertion of a right would be no defence, but in the case of criminal trespass, the intention to commit an offence or to intimidate, insult, or annoy any person in occupation of the property trespassed upon is an essential ingredient. In the case of *Suppaiya v. Ponniah*¹ it was held that an unlawful act of trespass committed with an intention to intimidate or annoy was criminal trespass, even if the trespasser had some ulterior object in committing it, and that the intention to intimidate or annoy would be presumed from foreknowledge that intimidation or annoyance would be the natural result of an act. The case, so far as I understand it, does not go beyond laying down that the nature of the actual acts of the accused on the land trespassed upon, and his manner of entry into the land, and other similar circumstances, may be taken as fair *indicia* for the detection of his real intention. In case No. 36,529 of the Police Court of Panadure² his Lordship the Chief Justice observed as follows: "I am fully alive to the importance of suppressing with a strong hand attempts to take possession of property by force. But the principle of law is well settled, that when the entry into the land is with the *bona fide* intention of asserting what is believed to be a legal right, the offence does not amount to an act of criminal trespass." My own views on the matter will be found in my judgment in the case of *Kanthappu v. Arumugam*.³ Dealing with the case as against the first accused in appeal, and as against the second accused in revision, I set aside the conviction, and remit the case to the Court below for a definite finding on the question as to whether the accused entered into the land referred to above in the *bona fide* assertion of a right, or with any of the intentions mentioned in section 427 of the Penal Code, and conviction or acquittal accordingly. Each party may be allowed to call further evidence.

Sent back.

1914.

PERERA J.

Meddumme
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¹ (1909) 14 N. L. R. 475.

² S. C. C. Min., April 3, 1912.

³ (1913) 17 N. L. R. 152.