

1913.

Present : Pereira J.

KANTHAPPU v. ARUMUGAM

679—P. C. Kayts, 21,385

Criminal trespass—Assertion of right—Entry having the effect of intimidating or annoying.

An essential element of the offence of criminal trespass is the intention to intimidate, insult, or annoy persons in occupation of the land entered, and so where the object of a person in entering into a parcel of land was the assertion of a right, the mere fact that the actual assertion of that right had the effect of intimidating, insulting, or annoying the occupant did not convert the original entry into one with the intention mentioned above.

THE facts appear from the judgment.

H. J. C. Pereira and Selvadurai, for accused, appellant.—The accused was merely acting in the exercise of a *bona fide* assertion of right in preventing the complainant's servant from digging up the stones in the land in dispute. It cannot be said that he acted with the intention of intimidating or insulting or annoying the complainant or his servant.

H. A. Jayewardene (with him *Wadsworth*), for the respondent.—The land was in the possession of the complainant. If the accused wanted to assert his right he should have gone to Court, and not disturb the possession of the complainant. It is not necessary that the prosecution should prove that accused had an intention to intimidate or annoy the complainant. The Court will presume that the accused knew what the consequences of his act would be. Counsel cited *Suppiah v. Ponniah*.¹

Cur. adv. vult.

October 3, 1913. PEREIRA J.—

In this case, having read and considered the evidence carefully, I am not prepared to say that the object with which the accused entered upon the land referred to by the complainant was not a *bona fide* assertion of right. According to the evidence of the police headman, there is some low ground between the complainant's land and the land to the north of it, and an important fact is that this low ground "is in dispute between the complainant and accused." So says the headman. He further says: "The first accused said that the part where the stones were dug was part of the low ground,

¹ (1909) 14 N. I. R. 475.

and should not be touched. He did not claim it as his." A point is made by the prosecution of this last sentence, but it counts for nothing in view of what the headman has already said, namely, that the low ground "is in dispute between the complainant and the accused." The Magistrate, who visited the spot, says that the place where the stones were dug lies to the south of the low ground as far as its limits can be seen, and he holds in his judgment that there are parcels of land on the north and south belonging to the accused and the complainant, respectively, and that between the two lies a piece of land "about the ownership of which there is a long-standing dispute. Now, the crucial question is not whether the exact spot where the stones were dug was in the possession of the complainant, but with what mental attitude the accused interfered with the complainant in digging up the stones. An essential element of the offence of criminal trespass is the intention to intimidate, insult, or annoy persons in occupation of property entered. Now, it is clear that, apart from his object of preventing the complainant's servant from digging up stones, and thus preventing an interference with his own real or fancied rights, the accused had no inducement to enter upon the land referred to. It is not suggested that he had anything to gain by merely molesting the complainant's cooly. If the entry into the land was with the intention of asserting a right, the mere fact that the assertion of that right had the effect of intimidating, insulting, or annoying the occupant does not convert the original entry into one with the intention of intimidating, insulting, or annoying the occupant. I think that in view of the facts found by the Magistrate, that there has been a long-standing dispute between the complainant and the accused in connection with the low-lying land between their respective properties, and that the spot where the stones were dug was in this low-lying land, or somewhere in the vicinity, it is impossible to say that the accused did not enter on the spot in the assertion of what he believed was his right. I set aside the conviction and acquit the accused.

Set aside.

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PEREIRA J.

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v.
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