1940

Present : **Keuneman J.**

FORBES *v.* RENGASAMY.

336—M. C. Hatton, 210.

Criminal trespass—Labourer resident on estate—Remaining on lines after notice to quit—Intent to annoy—Contract of service—Termination of contract—Position of labourer as servant not tenant—Legality of notice.

An Indian labourer who was employed on an estate and who was allowed free housing accommodation was given notice by the Superintendent, terminating his contract of service, and was warned several times that he must leave the estate on the expiration of the notice.

He refused to leave the estate or to accept his discharge ticket.

Held, that the accused remained on the estate with the intention of causing annoyance to the Superintendent and was guilty of criminal trespass.

Notice given on December 2, 1939, terminating the contract of service on January 2, 1940, is a valid notice.

Where residence on the estate is in the interest of the estate and such residence is conducive to that purpose and for the more effectual performance of the service, the labourer resides in the capacity of a servant and not a tenant.

APPEAL from a convicion by the Magistrate of Hatton.

L. A. Rajapakse (with him *K. S. Aiyer and* H. W. Thambiah), for accused, appellant.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen*), for complainant, respondent.

May 23, 1940. KEUNEMAN J.—

The accused was charged and convicted under section 433 of the Penal Code for committing criminal trespass on January 3, 1940, by unlawfully continuing to remain on Thornfield estate with intent to annoy the complainant who is the Superintendent of the estate. He was sentenced to one month's rigorous imprisonment. He now appeals.

Several points of law were argued by his Counsel. Most of these points have been raised in a previous case (*Ebels v. Periannan*[1]) and have been decided by de Krestser J. but as the matter has been fully argued before me again, I shall myself deal with the arguments.

[1] *4 C. L. J. 119 ; 16 C. L. W. 15.*

One point raised may be disposed of shortly. It is contended that the month's notice terminating the accused's service was illegal in that the notice was given on December 2, 1939, terminating on January 2, 1940. It was contended that notice must be given before the commencement of a month, and terminate at the end of that month. But section 5 of Chapter 112—the Estate Labour (Indian) Ordinance—reserves the right to both labourer and employer to determine the contract of service *" at the expiry of one month from the day of giving such notice "*. Similar words in Ordinance No. 11 of 1865 have been interpreted by a Bench of two Judges in *Burne v. Munisamy* [1]. I hold that the notice in this case was a good notice, and that the contract of service terminated on January 2, 1940.

The further argument addressed to me is that the accused was a monthly tenant of the room in which he lived, and that he was entitled to notice to quit the room, given before the commencement of a month, and terminating at the end of that month.

Two English cases have been cited to me on this point by the appellant's Counsel, namely, *Hughes v. The Overseers of the Parish of Chatham* [2] and *Marsh v. Eastcourt* [3]. In the former case Tindal C. J. stated: " There is no inconsistency in the relation of master and servant with that of landlord and tenant. A master may pay his servant by conferring on him an interest in real property, either in fee, for years, at will, or for any other estate or interest . . . . As there is nothing in the facts stated to show that the claimant was *required* to occupy the house for the performance of his services, or did occupy it *in order to* their performance, or that it was *conducive* to that purpose more than any house which he might have paid for in any other way than by his services; . . . ., we cannot say that the conclusion at which the revising barrister has arrived is wrong. " The revising barrister had held that the servant occupied the house in the capacity of tenant, and was entitled to be on the list of voters.

The latter case was decided under the County Electors Act, 1888. The claimants were labourers residing in cottages on the farms of their employers. They were permitted but not required to live in the cottages on the terms that they were to give up the possession when their employment ceased, and were either charged a reduced rent or had the rent deducted from their wages. The rates were paid by the employers and the names of the claimants appeared in the rate-book as occupiers. It was held that the facts showed an occupation by the claimants not by virtue of service but as householders. Wills J. stated: " The labourers were not required to reside in the cottages, but were allowed to reside in them as a privilege. It would be an abuse of language to call residence under such conditions occupations by virtue of service. "

Appellant's Counsel also referred me to *Halsbury's Laws of England (Hailsham Edition), vol. 22, page 117, paragraph 196,* which runs as follows:—

" Where it is necessary for the due performance of his duties that a person should occupy certain premises, or where he is required to

[1] *21 N. L. R. 193.* [2] *5 Manning & Granger 54.* [3] *24 Q. B. D. 147.*

occupy premises for the more satisfactory performance of his duties, although such residence is not necessary for that purpose, such person occupies in the capacity of servant; but where a person is merely permitted to occupy premises, whether as privilege, or by way of remuneration of part payment for his services, he occupies as tenant and not as servant . . . ."

It continues—

"Occupation by the servant is occupation by the master, and a servant has neither estate nor interest in the premises he occupies in that capacity."

In the case cited by respondent's Counsel, *Smith v. The Overseers of Seghill* [1], Mellor J. stated: "It appears that the appellants and other workmen are only entitled to occupy the houses during the time of their services at the colliery; the occupation terminates at the time the service terminates. Still the appellants are tenants though not tenants for any fixed time". Lush J. also said: It is true that the holding is not for any fixed term; the tenure is co-existent with the service; but it may still be that during the period of the service the colliers occupy in the character of tenants".

Another aspect of this matter is to be found in *Dobson v. Jones* [2] There Tindal C.J. said that "the relation of landlord and tenant could not be created by the appropriation of a particular house to an officer or servant as his residence, where such appropriation was made—with a view, not to the remuneration of the occupier, but to the interest of the employer, and to the more effectual performance of the service required from such officer or servant", and he instanced the case of a coachman, a gardener, or a porter.

In the present case, it is in evidence that Thornfield estate falls within the class of estates paying acreage fees. It is also one of the estates which provide "free housing accommodation"—to use the words of Schedule C of the Rules (*vide* Subsidiary Legislation, vol. 1, p. 591)—included in the wages. The evidence for the defence itself establishes that in practice all Indian labourers (the accused is one) reside on the estate, but there are stray cases where Tamil labourers reside in villages and go to the estates for work". I think it is clear that residence on the estate is in the interest of the estate, and that such residence is conducive to that purpose and the more effectual performance of the service. The labourer's position is more akin to that of the coachman, the gardener, or the porter.

Further, there is no evidence that any particular room is appropriated to the accused. It is in evidence here that the accused, as well as his father, his mother, and other members of the family, have been allotted two rooms. Though housing accommodation is provided, if the exigencies of the service require it, there seems to be nothing to prevent the Superintendent from removing labourers to different rooms or even to different lines. I hold that the accused was not a tenant of the premises, but that his residence in the room was in his capacity as servant. Even if he was a tenant, his tenancy terminated when his contract of service was legally ended, and his subsequent residence was a trespass.

[1] *(1875) L. R. 10. Q. B. 422.* [2] *5 Manning & Granger 112.*

I do not think that there is any substance in the further point that the Superintendent was not " in occupation of " the lines. I hold that as representative of the owners in full charge of the estate, he was in such occupation.

The last matter urged was that the intention to annoy the Superintendent has not been proved. In this case there is evidence to show that the accused was warned that he must leave the estate on the expiration of the term of the notice and that about the middle or end of December, 1939, the accused came to the Superintendent and said he had not been able to get employment elsewhere and that he could not go on January 2. He was informed that he must leave on that date. He has on several occasions been warned to leave the estate, but he refused to accept his discharge ticket, and refused to leave the estate. The refusal to accept the discharge ticket is significant, as without it the accused cannot obtain employment elsewhere. This tends to show that the excuse made by the accused was not a genuine one. The accused has not given evidence in this case as to his intention in remaining on the estate. His conduct was calculated to cause annoyance, and, in fact, has done so. The Superintendent said that the accused's attitude was one of defiance. In the circumstances, the Magistrate has come to the conclusion that the accused continued to remain on the premises with the intention of annoying the Superintendent, and I think the finding is justified.

The application for revision has not been persisted in and is dismissed.

As regards sentence, I see no reason to alter the sentence, but I order that the period of detention pending appeal should be taken into account in calculating the month, and if the whole period spent in prison by the accused, whether subject to rigorous imprisonment or not, is equal to, or more than, one month, he is entitled to be released. Subject to this the appeal is dismissed.

Appeal dismissed.