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SPELDEWINDE v. WARD.

P. C., Nuwara Eliya, 16,017.

1903.

February 23  
and 26.

*Criminal trespass—Penal Code, s. 493—Ejection under writ of District Court—  
Re-entry of person ejected—Intention to annoy the owner—Unoccupied  
land.*

The Fiscal, in pursuance of a writ of execution, ejected A from a land decreed to be the property of B, and put B's agent C in possession. C occupied it for a few days and went away, when A re-entered.

*Held*, that A. was rightly convicted of criminal trespass.

**T**HE complaint against the accused was that on the 15th May, 1902, the Fiscal, in pursuance of a decree pronounced in the District Court of Kandy in case No. 12,924 and of the writ of possession issued thereon, delivered over the land mentioned in the writ, which was a plot of patana and scrub land of about

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3 acres in extent, to a representative of the Secretary of State for War (who was the plaintiff in the District Court case), after removing therefrom the accused, who was the defendant in the said case; that Sergeant Hannan, who took charge of the land on behalf of the Secretary of State for War, was in possession till the 18th June, 1902, when he left the property; that on the 20th June the accused re-entered the premises with his family and cattle, and has continued there with intent to annoy the Secretary of State for War, and that thereby he has committed criminal trespass punishable by section 433 in the Penal Code.

The accused did not wish to cross-examine any of the witnesses for the prosecution, nor call any witnesses on his own behalf, but contended that, as Sergeant Hannan quitted the premises and there was no one in occupation thereof, he went in and stayed in the house, having no other place to go to, and that merely remaining on the property without right or title was not criminal trespass, because he had no intent, nor was any intent proved on his part when he entered the property or after such entry, "to intimidate, insult, or annoy any person," as set forth in section 427, which defines the nature of criminal trespass.

The Police Magistrate held that, after the ejection of the accused and the letting in of the Secretary of State for War, the property must be taken to be in the possession of the Secretary of State for War, and that the re-entry of the accused was in itself evidence of intent to annoy the Secretary of State for War.

The Magistrate found the accused guilty and sentenced him to pay a fine of Rs. 50.

The accused appealed.

The case was argued before Moncreiff, J., and Middleton, J., on the 23rd February, 1903.

*Dornhorst*, for appellant.—The offence laid must be proved. There is no evidence of criminal intent. *Mayne's Criminal Law of India*, 734 (1896); *Starling's Indian Criminal Law*, 531 (1893); re *Govind Prasad*, I. L. R. 2 All. 465, where Mr. Justice Straight said: "I cannot agree in the argument that where an entry upon property is in itself illegal, that is sufficient to establish one of the criminal intents required by section 441. Because an act is illegal in the sense that it is a breach of a man's duties and obligations under the Civil Law to obey and submit to any process that is sought to be enforced against him by executions or otherwise, it does not follow as a necessary consequence that that act is criminally unlawful and therefore punishable. The intent

with which the act is done, must be established by clear and convincing evidence of such character and description as the particular nature of the case requires." *Pulle v. Gunasekere* (1 S. C. R. 77); *Smith v. Ahamado* (1 C. L. R. 17). The accused, having no other house to go to, found the land unoccupied and entered it. His intention was not to annoy any person, but only to find a habitation for himself.

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*Elliott, for respondent.*—The War Office is the owner of the property, and it was in occupation at the time of the re-entry of the accused. Stroud's *Judicial Dictionary*, s: v. "occupation," and cases quoted thereunder. Annoyance was intended, because he went knowing that the land not his. In view of the opinion expressed by Lawrie, J., in *Dasanayaka v. Tamby Chetty* (1 S. C. R. 257), that the penal provision of section 326 of the Civil Procedure Code does not apply to the offence of hindering a judgment-creditor from taking complete possession after the officer has delivered possession, it did not seem advisable to move under section 326. *Abeyedire v. Marikar* (2 N. L. R. 19). If necessary the charge may be laid under section 326 and the conviction affirmed.

*Cur. adv. vult.*

26th February, 1903. MONCREIFF, J.—

I think this conviction should be affirmed. The appellant was ejected from premises situated at Nuwara Eliya, and belonging to the Secretary of State for War. This was done in pursuance of a decree, which was affirmed on appeal by this Court on the 29th October, 1901. In that case the appellant had no merits, and the law was held to be against him. I think his action was intentionally vexatious.

On the 16th May Sergeant Hannan was, in pursuance of the decree in No. 12,924, D. C., Kandy (reported in 2 *Browne*, 256), put into possession of the premises on behalf of the Secretary of State for War. He quitted the premises on the 18th May, and shortly thereafter the appellant resumed possession. The appellant never had any shadow of title to remain on the land or to re-enter it. He knew he would be ejected, but he also knew that the process of law is slow; and, having remained on the land until the hearing of this appeal was approaching, he again left it.

He was convicted and sentenced to pay a fine of Rs. 50, or in default of payment to undergo one month's rigorous imprisonment, on a charge of committing criminal trespass, within the meaning of section 433 of the Penal Code.

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MONCREIFF,  
J.

It was urged (1) that although he did enter upon the premises shortly after Sergeant Hannan left them, they were not in the occupation of anybody; (2) that he did not enter with intent to annoy or insult any person in occupation of the premises. From the circumstances of the case, I have no doubt of the intention to annoy, nor do I see any reason for the pretence that the land was unoccupied. It is useless to contend that land is unoccupied because, for their own reasons, the owners of it leave it without a caretaker, and without making any use of it for some months. The land belongs to the Secretary of State for War, and was left as it was because there was an intention of building upon it. Any number of illustrations might be given to show the absurdity of the contention that the land was unoccupied. While affirming the conviction I remit the fine, and send the case back in order that the Magistrate may bind the appellant over to keep the peace on such terms as he may think advisable.

I would add that I am not disposed to think that the complainant could not proceed under sections 325 and 326 of the Civil Procedure Code.

MIDDLETON, J.—I agree.

