1967 *Present :* **Manicavasagar, J.**

G. NAMANATHAN, Appellant, *and* A. R. McINTYRE, Respondent

S. C. 1520—M. C. Badulla, 16769

Criminal trespass—Intention to annoy—Proof—Penal Code, ss. 433, 434.

The accused-appellant, who was unmarried and 23 years old, was employed as a labourer on an estate, and occupied a line room which was allotted to his father, who was also a labourer on the same estate. After his services were terminated, he continued to remain in his father's line room after he was given notice to quit the estate. He was charged with criminal trespass on tho basis that his presence on the estate was unlawful and was intended to annoy the Superintendent (complainant) who was in occupation of the entire estate. The evidence showed that the accused was born on this estate and that he lived in the line room with his parents who looked after him.

Held, that, in the absence of evidence that the accused had an intention to annoy, tho essential ingredient of criminal trespass was not proved. Proof that the complainant was annoyed was not sufficient.

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

Bala Nadarajah, for the Accused-Appellant.

R. A. Kannangara, with *M. Underwood*, for the Complainant-Respondent.

April 21, 1967. MANICAVASAGAR, J.—

This is an appeal by the accused from the verdict of the Magistrate of Badulla convicting him of two offences, namely, criminal trespass and house trespass, punishable under sections 433 and 434, respectively, of the Penal Code.

The facts are common to both charges and are as follows : the appellant who is unmarried and 23 years old was employed as a labourer on Broughing Estate, Welimada, and occupied room No. 6 on the Estate lines which is allotted to his father who too is a labourer on the estate. The room is occupied by the parents of the accused and his brothers and sisters, all of whom are workers on the estate.

In April, 1960 the services of the appellant were discontinued by McIntyre the Superintendent of the estate who gave him notice to quit. The appellant thereupon ceased to work on the estate, and took his grievance to the Labour Tribunal : this dispute remains undecided for

reasons which it is sufficient to say the Labour Tribunal is not to be blamed. The non-determination of this however is not relevant to the decision of the matter now before me. On 10.3.65 the Superintendent gave notice to the appellant to quit the estate within a month of the notice, but the appellant continues to remain in the line room, which, as I said, had been allotted to his father.

The charges against the appellant were on the basis that his presence on the estate is unlawful, and was intended to annoy the Superintendent who is in occupation of the entire estate.

McIntyre in his evidence said, that the presence of the appellant on the estate causes annoyance to him and he has no right to live in the line room of the estate as only labourers working on the estate are permitted to occupy the line rooms.

The appellant in his evidence said, that he was born on this estate. This fact is admitted. He said that he has no place to go to and that he lives in this line room with his parents who look after him. This evidence stands uncontradicted and was not challenged : he went on to say that even if he is not reinstated in his employment he has to remain on the estate as his parents live there.

In my view the evidence taken as a whole does not point to the appellant's living in the line room being unlawful or that it is his intention to annoy the Superintendent. The offence of criminal trespass created by section 427 requires proof that the offender intends by his action to annoy the person in occupation, in this instance, the Superintendent. This is a question of fact to be inferred from the circumstances of each case. A relevant and important circumstance in this case is that the appellant lives in a line room which has been allotted to his father and that he is dependent on his parents for his subsistence : his occupancy of the room is by reason of his being the son of the allottee, and not a term of his contract of employment.

Mr. Kannangara for the respondent submits that the intention to annoy may be inferred from two circumstances : firstly, that in the action brought in the Court of Requests of Badulla by the owners of the estate to evict the appellant, the latter had in his pleadings denied the title of the plaintiffs and put them to the strict proof of it, and, secondly, in the course of his evidence he said that he will live on the estate till he dies.

These two circumstances do not, in my view, justify the inference which Counsel seeks to place on them. The evidence of the appellant on which Counsel relies must be taken in conjunction with the rest of his evidence which makes it quite clear that the appellant stays in the line room for the reason which I have stated earlier. In regard to the pleadings I am not surprised that the lawyers for the appellant demanded that the owner should establish their title : the deed of title pleaded in the plaint as the title of the one-half owner does not give the name of the transferor and the date of the transfer : regarding the other half-owner who is dead the 2nd plaintiff claims to be his executor and trustee but gives no particulars at all : the lawyers for the defendant were quite justified in calling for proof in the absence of these details.

The bare fact that the appellant continues to live in a line room allotted to his father, though he has been noticed to quit the estate, does not, in view of the evidence of this appellant which seems reasonable, point to his presence on the estate being unlawful or that his intention is to annoy McIntyre : the latter may well be annoyed because the appellant continues to be on the premises, but the essential ingredient in an offence of criminal trespass is whether the appellant had an intention to annoy. I think the appellant's intention to remain in the line room is because he is dependent on his parents and has no place to live in. That appears to be the dominant purpose in his remaining there, and in the absence of any other circumstance which points to an intention to annoy, the verdict of conviction must be set aside.

I accordingly set aside the conviction and acquit the appellant of the charges.

There are two other cases which are before me, namely, S.C. 1522/66 M. C. Badulla 16771 and S.C. 1521/66 M.C. Badulla 16767 in both of which the Counsel stated the matter in issue is similar to the instant appeal.

The conviction of the accused in each of these cases is also set aside, and he is acquitted of the charges against him.

Appeal allowed.