1946 *Present :* Jayetileke J.

SELVANAYAKAM KANGANY, Appellant, *and* HENDERSON, A. G. A., KEGALLA, Respondent.

941—M. C. Kegalla, 12,301.

Criminal trespass—Meaning of "occupation" in section 427 of Penal Code—Occupation may be by oneself or through agent—Difference between occupation by tenant and occupation by servant after expiry of notice to quit—Intention to annoy—Penal Code, ss. 427, 433.

The Superintendent of a tea and rubber estate gave due notice to the accused, who was a labourer occupying two line-rooms of the estate, that his services would no longer be required and that he should vacate the rooms. The accused refused to vacate the rooms and was, thereupon, charged under section 433 of the Penal Code with having committed criminal trespass by unlawfully remaining in the two rooms with intent to annoy the Superintendent.

It was established that the Superintendent was in paramount occupation not only of the estate but also of the line rooms and that he had the right to allot any rooms in the lines to the labourers and to change the rooms occupied by the labourers as he wished.

The accused's defence was that he was born and bred on the estate, that the estate was his home, and that he intended to remain on the estate till he was able to build a house to move into. There was, however, no evidence that the accused paid any rent for the rooms which he occupied or that he was permitted to occupy them as a reward for his services. The accused's occupation of the rooms was, in fact, ancillary to the performance of the duties which he was engaged to perform.

Held (i.) that the Superintendent was in occupation of the two rooms within the meaning of section 427 of the Penal Code. The occupation that is entitled to protection under the section may be by oneself or through an agent ;

(ii.) that the accused's occupation of the rooms was not as tenant but as servant ;

(iii.) that the accused, by remaining in the rooms after his services were terminated, was guilty of criminal trespass. If annoyance to the Superintendent was the natural consequence of the accused's act and if the accused knew that it was the natural consequence, then there was an intention to annoy.

APPEAL against a conviction from the Magistrate's Court, Kegalla.

H. V. Perera, K.C. (with him *S. Nadesan* and *C. S. Barr Kumarakulasinghe*), for the accused, appellant.—The conviction is bad on the following grounds :—(1) The accused-appellant is a tenant. (2) The line-rooms which the accused-appellant refused to leave were in the accused-appellant's occupation and not in the occupation of Rajapakse, the Superintendent of the estate. (3) It cannot be said that accused-appellant intended to annoy Rajapakse by remaining in the lines. (4) There is no intention to annoy anyone in any way.

As regards (1). In the Privy Council case of *The Calcutta Corporation v. The Province of Bengal* [1] Lord Porter in his judgment makes it clear that where a servant occupies a particular house of the master for the convenience of both of them the possession by the servant is that of

[1] *(1944) A. I. R. (P. C.) 42 at 45.*

tenant unless the servant is required to occupy it for the better performance of his duties though his residence is not necessary for that purpose or if his residence there is necessary for the performance of his duties though not specifically required.

On this aspect of the case there is the unchallenged testimony of the accused that he was born in these particular line rooms, lived there all his life and that his father before him lived there. The accused was a labourer in the estate employed by the present owner on the same terms as under the previous owner. There is no evidence as to what those terms were. The terms of service may and do actually vary in different estates.

The natural inference on these facts, on the authority of the Privy Council case cited (*supra*), is that the accused is a tenant as there is no evidence of circumstances or facts which negatives tenancy as required by that case. Further the accused was allowed the free use of the particular line-rooms. The use of the rooms without payment of rent may be taken to be part payment for his services. See *Hughes v. The Overseers of the Parish of Chatham*[1].

If the accused is a tenant he is not guilty of criminal trespass even if he is in unlawful possession. In such a case there is always the civil remedy available to the owner.

As regards the second ground of appeal, occupation as contemplated by section 427 must be exclusive—Gour: *Penal Law of India, Article 3565.* On the facts it is clear that it is the accused who is in occupation and not Rajapakse. Even if both accused and Rajapakse are in occupation such occupation would not be sufficient under section 427. The offence must be confined to trespass against apparent occupation, not against person in possession as understood by Roman-Dutch Law. See *Rawther v. Mohideen*[2].

Occupation is different from mere user. Occupation by accused of these rooms is very different from mere user allowed to coachman, driver, &c.

As regards criminal intention, the intention necessary to be proved in a case of criminal trespass such as this is the intention to annoy by remaining unlawfully. The word "thereby" in the section makes that position clear. The finding of the Magistrate is that the fact of accused remaining in the line-rooms after the expiry of the notice caused annoyance to Rajapakse. Whether the requisite intention is there is a question of fact in each case. The intention of the accused in this case is clear and obvious. The accused remained because it was his home. It is not necessary to look further for his intention. Counsel cited *Pitche Bawa v. Abdul Cader*[3]; *Jirasinghe v. Setunge*[4]; *Ebels v. Perianan*[5].

C. Nagalingam, Attorney-General (with him *H. A. Wijemanne, C. C.*), for the complainant, respondent.—On the facts the position is clear. Rajapakse in his evidence stated that he was in occupation of the entire estate including the particular line rooms, that he could allot any room to any labourer and could change rooms occupied by any

[1] *(1843) E. R. 479.*
[2] *(1911) 1 Bal. Notes of Cases 2.*
[3] *(1909) 3 Weer 47.*
[4] *(1944) 29 C. L. W. 96.*
[5] *(1939) 4 C. L. J. 119.*

labourer as he (Rajapakse) pleased. That position was not challenged by the accused in cross-examination. The relationship between Rajapakse and the accused has been established as that of master and servant and nothing more than that. If the accused was a tenant it was for the accused to establish that fact. This has not been done. The prosecution cannot prove a negative, *i.e.*, that the accused was not a tenant.

Occupation does not mean actual physical occupation but means actual control. Tenant in English Law has a much wider meaning than in our law. See Defintions in Morsely and Whitly's *Law Dictionary* and in Stroud.

Under both English and Roman-Dutch Law rent in some form or other is an essential ingredient in the contract of tenancy. *Vide* Wille's *Landlord and Tenant* pp. 4 and 56 ; *Crous v. Crous* [1] ; *Hughes v. The Overseers of the Parish of Chatham (supra) at p. 483.*

In this case no rent was paid or deducted out of the wages of the accused. Resident and non-resident labourers were paid at the same rates. The accused was in the line-rooms with leave and licence and he occupied the rooms *precario*. See *Maharaj v. Maharaj* [2] ; *Rubin v. Botha* [3] ; *Dobson v. Jones* [4], *Lumley v. Hodgson* [5].

Test of occupation is the actual control—*King v. Inhabitants of Cheshunt* [6], *Dobson Knight v. Jones* [7], *McMahon v. David Lawson, Ltd.* [8] *Fox v. Dalby* [9], *Speldewinde v. Ward* [10], *Gabriel Silva v. Amaris Silva* [11].

In all cases where occupation is necessary for service or is in the interests of the master there is no tenancy. See *Rex v. Stock* [12] ; *Bertie v. Beaumont* [13] ; *The King v. The Inhabitants of Kelstern* [14] ; *Westminster Council v. Southern Railway Co.* [15] ; *Read v. Cathermole* [16] ; *Clark v. The Overseers of the Parish of St. Mary Bury St. Edmunds* [17].

Intention in the case of criminal trespass is both a question of law and of fact. Where, as in this case, the prosecution relies on an intention to annoy there is a sufficient compliance with section 427 if annoyance is actually caused and the annoyance is the natural consequence of the accused's remaining and the accused had foreknowledge that by remaining he would cause annoyance to the complainant. There can be no doubt that the accused acted in concert with others and that he had the criminal

[1] *S. A. L. R. 1937 C. P. D. 250.*
[2] *(1936) N. P. D. 128 referred to in 1939 Digest of South African Case Law, 208.*
[3] *(1911) S. A. L. R. Appellate Division 568 at 576.*
[4] *(1844) 5 M. and G. 116 at 121.*
[5] *(1812) 16 East 101.*
[6] *(1818) 106 E. R. 174.*
[7] *(1844) 134 E. R. 502.*
[8] *(1944) 1 A. E. R. 36 at p. 42.*
[9] *L. R. (1874) 10 C. P. 285.*
[10] *(1903) 6 N. L. R. 317.*
[11] *(1929) 7 Times 32.*
[12] *(1818) 168 E. R. 751.*
[13] *(1812) 104 E. R. 1001.*
[14] *(1816) 105 E. R. 1001.*
[15] *(1936) A. C. 511.*
[16] *(1937) 1 K. B. D. 613.*
[17] *(1857) L. J. 26 C. P. 12.*

intention as is required by section 427. See *Suppiah v. Ponniah* [1], *De Vos v. Ernst* [2], *Perianan Kangany v. Ebels* [3], *Anthony Appuhamy v. Wijetunge* [4], *Forbes v. Rengasamy* [5].

H. V. Perera, K.C., in reply.—Occupation is a question of fact in each case. If a man lives in a house for a long and continued period of time one may properly draw the inference that he is in occupation of it. See *Words and Phrases Judicially Defined Vol. IV., page 13.*

[JAYETILEKE J. read a passage from the judgment of Lord Halsbury in *Quin v. Leathem* [6] to the effect that general observations must be read with reference to particular facts decided in a particular case and asked why the observations in that passage should not be applied to the statements of the law in *Calcutta Corporation v. Province of Bengal* (*supra*)].

They should be applied if one seeks to apply that decision. But the observations in the Privy Council case are relied on only as general principles of law. It is not necessary for the accused that he should be tenant; it is sufficient if he is in occupation. Counsel cited *Westminster Council v. Southern Railway Co.*[7].

Cur. adv. vult.

August 30, 1946. JAYETILEKE J.—

The accused in this case was convicted under section 433 of the Penal Code with having committed criminal trespass by unlawfully remaining in two line-rooms of Knavesmire Estate with intent to annoy Mr. Rajapakse, the Superintendent of the estate, and sentenced to undergo three months' rigorous imprisonment. Criminal trespass is defined thus in Section 427 :—

> " Whoever enters into or upon property in the occupation of another with intent to commit an offence or to intimidate, insult or annoy any person in occupation of the said property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence is said to commit criminal trespass."

The section, as it originally stood, made it an offence for a person to enter upon property in the " possession or occupation " of another person. By Ordinance No. 16 of 1898 the section was amended by the deletion of the word " possession ". In *Rawther v. Mohideen* [8] Wood Renton J. said—

> " The word ' occupation ' used in section 427 was formerly used in conjunction with and preceded by the word ' possession ' which was deleted by section 5 of Ordinance No. 16 of 1898, the clear intention of the Legislature being that the offence should be confined I think to a trespass committed against persons in apparent occupation of premises, and not extended to a trespass against a person in the unascertained character of the rights involved in the word ' possession ' as known to the Roman-Dutch Law, to avoid the very evil which has occurred here, *i.e.*, the trial of questions of title in a Criminal Court.

[1] (*1909*) *14 N. L. R. 475.*
[2] (*1912*) *15 N. L. R. 213.*
[3] (*1939*) *16 C. L. W. 15.*
[4] (*1938*) *3 C. L. J. 164.*
[5] (*1940*) *41 N. L. R. 294.*
[6] (*1901*) *H. L. at 506.*
[7] (*1936*) *A. C. 511 at 529, 532, 533.*
[8] (*1911*) *1 Bal. Notes of Cases, p. 2.*

It is true no doubt that the occupation may be constructive also as in case of a tenant absent from the house or garden of which he is a tenant when the trespass is committed ; but in my opinion the word ' occupation ' as used in the section implies the existence of a tenure entered upon either by owner or tenant or under a *bona fide* claim of right, or as a caretaker through whom also an owner or tenant might be in constructive occupation ".

The occupation that is entitled to protection under the section may be by oneself or through an agent.

The main point that arises for decision in this case is whether Mr. Rajapakse was in occupation of the two rooms at the date material to the prosecution. The question must be considered and answered in regard to the position and rights of the parties in respect of the premises and in regard to the purpose of the occupation.

The facts of the case may be summarized as follows :—

Knavesmire Estate belonged to one Ibrahim Lebbe. It is about 800 acres in extent of which 270 acres are planted in tea and 460 in rubber. It had a large number of line-rooms within its confines which were occupied by about 500 labourers. The accused, who worked in the factory as a labourer, occupied two of the line-rooms with his wife and children. Mr. Henderson, the Assistant Government Agent of Kegalla, took steps under the Land Acquisition Ordinance (Chap. 203) to acquire the estate for the Crown for village expansion, and on December 6, 1945, Mr. Abeywardene, the Land Officer of Kegalla, took possession of the estate on behalf of His Majesty and signed a vesting certificate under section 12 (1) of the Ordinance. The regularity of the proceedings under the Ordinance was not questioned at the argument before me and I think that I am entitled to presume that all things required by the Ordinance had been properly done. Section 12 (1) of the Ordinance reads—

12. (1) At any time the Government Agent has made an order under section 9 or a reference under section 11 and has notified the same to the Governor*. it shall be lawful to the Governor to direct that the land be taken possession of by some officer of the Crown for and on behalf of His Majesty. And the said officer shall sign a certificate substantially in Form A in the Schedule and the said land shall thereupon vest absolutely in His Majesty free from all encumbrances.

* Delegated to the Executive Committee of Local Administration—*Gazette* No. 8,060 of June 22, 1934.

In the first place the sub-section says that the certificate shall actually vest the property in His Majesty, and, in the second place, it declares that the vesting shall be an absolute vesting. The effect of the certificate seems to be to wipe out all claims that any person may have had to or in respect of the estate and to give the Crown a conclusive title to the estate.

Mr. Henderson says that when the Crown took possession of the estate there was a labour force on the estate and the Crown continued to employ the labour force. At the end of January, 1946, Mr. Rajapakse, who was appointed Superintendent, took charge of the estate. The evidence is very scanty as to what precisely Mr. Rajapakse did after he took charge.

He says that he took up his residence on the estate on February 1, that from that date he was in actual physical occupation of the entire estate, which would include all the buildings within its confines, and that he paid all the labourers including the accused at Wages Board rates. What one can gather from this evidence is that he got the labourers to work and paid them the wages fixed by the Wages Board without making any deduction in respect of the rooms they occupied. It is true that in cross-examination he said that the accused's wages included free housing accommodation, but his evidence in re-examination shows that that is a mistake. He does not seem to have discussed with the labourers any terms or conditions of service but he says that he had the right to allot any rooms in the lines to the labourers and to change the rooms occupied by the labourers as he wished. It must be noted that his evidence that he had actual physical occupation of the estate and that he had the right to allocate the line rooms as he wished has not been challenged in cross-examination or denied by the accused when he gave evidence on his own behalf.

On March 1, 1946, Mr. Henderson published a notice in the *Gazette* that he would consider applications from landless residents of certain villages named therein for working the estate on Co-operative lines. Towards the end of March he selected 243 persons, and noticed them to turn up for work on the estate on June 1. He had to provide accommodation for them on the estate pending the constructing of houses, presumably, on the lots allotted to them. In order to provide the allottees with work and accommodation Mr. Henderson got Mr. Rajapakse to give notice in writing to the resident labourers that their services would not be required after May 31, 1946, and that they should vacate the rooms occupied by them on or before that date. The notice P 7 was served by Mr. Rajapakse personally on the accused on April 30, 1946. On May 31, 1946, Mr. Rajapakse paid the accused the wages due to him and tendered to him a discharge certificate. He informed the accused that the Labour Inspector, who was present at the time, would find work for him on another estate. The accused accepted his wages but refused to accept his discharge certificate. None of the labourers vacated the rooms occupied by them and Mr. Rajapakse was unable to find accommodation for more than 12 to 15 of the allottees who turned up for work on June 1. Thereupon, Mr. Rajapakse charged the accused and the other labourers with trespass with intent to annoy him.

The accused's defence seems to be that he was born and bred on the estate, that the estate is his home, and that he intended to remain on the estate till he is able to build a house to move into.

After a careful review of the evidence the learned Magistrate arrived at the following conclusions :—

(1) That the accused occupied the rooms in the capacity of a servant for the more satisfactory performance of his duties and not in the capacity of a tenant.

(2) That Mr. Rajapakse was in occupation of the whole estate including the buildings standing thereon.

(3) That the occupation of the rooms by the accused after his services were terminated was unlawful.

(4) That the accused continued to occupy the rooms with intent to annoy Mr. Rajapakse.

Mr. Perera, in a very interesting and forcible argument, submitted that the learned Magistrate had gone wrong both on the facts and on the law. He candidly admitted that there was no evidence to support a contract of tenancy. But he contended, relying on the following passage in the judgment of Lord Porter in *Calcutta Corporation v. The Province of Bengal* [1], that the possession of the accused must be taken to be that of a tenant :—

> " The general principles upon which a tenancy as opposed to an occupation as servant is created are not in dispute. The mere fact that it is convenient to both parties that a servant should occupy a particular house and that he is put in possession of it for that reason does not prevent the servant from being a tenant : his possession is that of a tenant unless he is required to occupy the premises for the better performance of his duties though his residence is not necessary for that purpose or if his residence there be necessary for the performance of his duties though not specifically required—*per* Brett J. [2] ".

The learned Attorney-General pointed out that these observations were made in a case in which the facts showed indubitably that the servant not only paid rent for the house he occupied but had also the right to sub-let it. He contended that that passage must be read as applicable to the particular facts proved and relied, in support of it, on the following words of Brett J. in the judgment referred to in that passage—

> " The result of these three cases seems to be this, that, where a person situate like the respondent is permitted (allowed if so minded) to occupy premises by way of reward for his services or as part payment, his occupation is that of a tenant ".

With reference to observations of a general character in a judgment Lord Halsbury said in *Quin v. Leathem* [3].—

> " Now before discussing the case of *Allen v. Flood* and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case is which such expressions are found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted as a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all ".

[1] *(1944) A. I. R. (P. C.) page 42 at page 45.*
[2] *(1875) 10 C. P. page 285 at page 295.*
[3] *(1901) House of Lords at page 506.*

Under both English and Roman-Dutch law no contract of letting and hiring is valid unless the sum to be paid as hire is fixed by the parties or in accordance with custom. (*Vide* Morice : *English and Roman-Dutch Law, page 148*). That being so, I think there is much force in the learned Attorney-General's submission that the observation of Lord Porter must be taken to apply to a case where the servant pays rent in some form or other. This view has the support of the judgment in *Dobson v. Jones*[1] where Tindal C.J. said :—

> " We stated that the relation of landlord and tenant would not be created by the appropriation of a certain 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 : upon the same principle as the coachman who is placed in rooms by his master over the stable, the gardener who is put into a house in the garden, or the porter who occupies a lodge at the parish gate, cannot be said to occupy as tenants, but as servants merely where possession and occupation is strictly and properly that of the master. "

In this case there is not a tittle of evidence that the accused paid any rent for the rooms that he occupied or that he was permitted to occupy them as a reward for his services. He had no right to sub-let the premises or to make any profit from his occupation. If he was a tenant one would, at least, have expected him to say so when he gave evidence on his own behalf. If the test of probability is applied to the facts of this case I think there is every reason to suppose that the accused's employer could never have intended that the accused should be a tenant, because, though the relation of master and servant may be determined at any time, yet, if the accused happened to get a tenancy, he may defy his employer and refuse to vacate the premises. It is impossible to infer the relationship of landlord and tenant from the facts of this case and I think the proper conclusion to be drawn is that the accused's occupation of the two rooms was not as tenant. Even if his occupation must be taken to be that of a tenant it seems to me that the presumption has been amply rebutted. In the case of manual labourers the character of the work which they have to perform is, in general, work which requires their presence on the employer's premises. This is particularly so in tea estates where the leaf has to be plucked and manufactured daily, and on rubber estates where the trees have to be tapped and the latex coagulated and rolled into sheets daily. The work of labourers employed on tea and rubber estates is of such a character that residence on the estate is essential for its performance. It is, presumably, for this reason that owners of tea and rubber estates expend large sums of money in constructing lines to house the labourers. In this connection I may refer to the following observations of Goddard L.C.J. in *Bomford v. South Worcestershire Area Assessment Committee and Pershore Rural District Rating Authority*[2].

[1] *(1844) 5 M. and G. p. 116 at p. 121.*

[2] *(1946) 2 A. E. R. at page 81.*

" When I turn to the case as counsel for the respondent invited us to do, the first fact that is stated in the case is this :—

The appellant is a farmer and occupies two cottages for the accommodation of agricultural workers employed by him on his land. The cottages are not let to the agricultural workers who reside therein by virtue of their employment.

They are therefore what are commonly called service tenants, but, in fact, must be regarded as in the position of licensees, because if they leave the farmer's employment they have to leave the cottages and can be ejected from the cottages."

In my view the accused's occupation was ancillary to the performance of the duties which he was engaged to perform. The second point taken by Mr. Perera was that Mr. Rajapakse was not in occupation of the two rooms. In *Westminister Council v. Southern Railway Co. & W. H. Smith & Son and Westminister Council and Kent Valuation Committee v. Southern Railway Co. and Puleman Car Co.*[1] Lord Russell of Killowen said :

" The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation by himself or his servants) retains to himself the general control over the occupied parts, the owner will be treated as being in rateable occupation ; f he retains to himself no control, the occupiers of the various parts will be treated as in rateable occupation of those parts."

It is true that these observations were made in a case in which the court had to consider whether the occupation was by the owner or the person in actual occupation within the meaning of the rating statutes but I cannot discover any difference in principle between that case and this. The evidence in this case shows that the previous owner had appropriated to the use of the labourers the line-rooms on the estate. After the Crown acquired the estate the use to be made of the appropriated premises was subject to the general control of Mr. Rajapakse. As I said before he reserved to himself the right to allocate the rooms as he wished. The reservation of such a predominating right must necessarily prevent the occupation of the rooms by the labourers to be exclusive. The only reasonable inference to be drawn from these facts is that Mr. Rajapakse was in paramount occupation not only of the estate within whose confines the line-rooms are situate but also of the line rooms. He occupied the whole estate for the purpose of his business of working it and for the purpose of that business he retained the control of the lines. The labourers had no occupancy rights over the line rooms but only a licence to use them. Their occupation is merely that of servants and is in law the occupation of the master. (Vide—*Dobson v. Jones* [2] ; and *Bertie v. Beaumont* [3].

The third point taken by Mr. Perera was that the intention of the accused in remaining on the estate could not be said to annoy Mr. Rajapakse. On this question one is not without assistance from the

[1] *(1936) A. C. page 511 at page 530.*
[2] *(1844) 5 M and G. p. 116 at p. 121.*
[3] *16 East at page 36 ; 104 E.R. at 1002.*

reported cases. The cases are many in number. The effect of the cases which begin with *Suppiah v. Ponniah*[1] in 1909 and continue in a stream to the present day is that it the annoyance is the natural consequence of the accused's act and if he knows that it is the natural consequence then there is an intention to annoy. It is not necessary to refer in detail to the cases. I refer to only two of them by way of example, *Anthony Appuhamy v. Wijetunga*[2] and *Forbes v. Rengasamy*[3] where the facts were similar to the facts of the present case. In the former case de Kretser J. said :

> " Foreknowledge that annoyance will result is good evidence of an intention to annoy. Knowledge of the possibility of annoyance is not enough but if annoyance is the natural consequence of the act and the person who does the act knows that that is the natural consequence, then there is the intention to annoy."

In the latter case, Keuneman J. said :

> " 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 end or the middle of December, 1939, the accused came to the Superintendent and said that 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 was on several occasions warned that he must leave the estate but he refused to accept his discharge certificate and he refused to leave the estate. The refusal to accept the discharge certificate is significant as without it the accused cannot obtain work 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 estate with the intention of annoying the Superintendent, and I think the finding is justified. "

In this case it would not take much to persuade me that the accused's object in remaining on the estate was to annoy Mr. Rajapakse. I may also add that in the two cases I have referred to almost all the questions I have dealt with came up for consideration and the learned judges decided them in precisely the same way in which I have done.

Having carefully considered this case I am of opinion that the judgment delivered by the learned Magistrate was correct.

Finally Mr. Perera urged that the sentence passed on the accused was undûly severe. On the facts of this case I am unable to say that it is. If a person deliberately and obstinately refuses to obey the law he is no martyr, but a law breaker, and deserves no more than justice.

The appeal is, accordingly, dismissed.

Appeal dismissed.

[1] *(1909) 4 Bal. 157.*
[2] *(1938) 3 Ceylon Law Journal Reports, page 164.*
[3] *(1940) 41 N. L. R. page 294.*