

~~C. L. T. C-2~~

25, 1950

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UNIVERSITY OF LONDON
 W. C. 1.
 No 38 of 1946 MAR 1951
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

In the Privy Council.

ON APPEAL
 FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

SINNASAMY SELVANAYAGAM - - - - - *Appellant*

AND

THE KING

(A. K. J. Henderson, Assistant Government Agent—
 Complainant) - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

INSTITUTE OF ADVANCED
 LEGAL STUDIES,
 25, RUSSELL SQUARE,
 LONDON,
 W.C.1.

HY. S. L. POLAK & CO.,
 DANES INN HOUSE,
 265 STRAND, W.C.2,
Solicitors for the Appellant.

BURCHELLS,
 9 BISHOPSGATE, E.C.2,
Solicitors for the Respondent.

In the Privy Council.**ON APPEAL***FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.*

BETWEEN

SINNASAMY SELVANAYAGAM - - - - -

AND

THE KING

(A. K. J. HENDERSON, Assistant Government Agent
Complainant) - - - - -

UNIVERSITY OF LONDON

W.C. Appellant

14 JUL 1953

INSTITUTE OF ADVANCED
LEGAL STUDIES

Respondent

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,

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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

SINNASAMY SELVANAYAGAM -

Appellant

AND

THE KING

(A. K. J. HENDERSON, Assistant Government
Agent—Complainant)

Respondent.

10

RECORD OF PROCEEDINGS

No. 1.

SUMMONS.

Summons to an Accused Person.

12301.

IN THE MAGISTRATE'S COURT OF KEGALLE.

To¹ Selvanayagam Kg. (Lower Division)
of Knavesmire Estate, Undugoda.

¹ (Name, designation and residence of Accused)

In the Magistrate's Court of Kegalle.

No. 1.
Summons,
5th June
1946.

WHEREAS complaint hath this day been made before the Magistrate in and for the said division of Kegalle, for that you did on the first day of June, 1946 at² Undugoda within the division aforesaid,³ commit criminal trespass by unlawfully continuing to remain on Knavesmire Estate, property of the Crown in the occupation of D.R.M. Rajapakse, Superintendent of the said Estate, with intent thereby to annoy the said Rajapakse and that you thereby committed an offence punishable under section 433 of the Penal Code: (Cap. 15): These are therefore to command you in His Majesty's name to be and appear in person *with your witnesses* (if any), on 12-6-46 next, at 9 o'clock in the forenoon, at the Magistrate's Court at⁴ Kegalle to answer to the said complaint and to be further dealt with according to law.

20

² (Place where offence committed)
³ (State shortly the offence charged, and name and residence of complainant)

30

⁴ (Village and town)

Given under my hand this fifth day of June, 1946 at Kegalle in the division aforesaid.

Signed (Illegible).
C.C.

*In the
Magistrate's
Court of
Kegalle.*

If you wish to call any witness who is unwilling to attend you should apply at once to a Magistrate of this division for a summons to compel him to do so.

No. 1.
Summons,
5th June
1946,
continued.

Affidavit of Service of Summons.

(not printed.)

No. 2.
Report by
A. K. J.
Henderson,
5th June
1946.

No. 2.

REPORT by A. K. J. Henderson.

12301.

IN THE MAGISTRATE'S COURT OF KEGALLA.

A. K. J. HENDERSON, Asst. Government Agent,
Kegalla - - - - - Complainant 10

v.

SELVANAYAGAM KG. (Lower Division) of Knaves-
mire Estate, Undugoda - - - - - Accused.

This 5th day of June 1946.

I A. K. J. Henderson, Assistant Government Agent, Kegalla in terms of section 148 (1) (b) of the Criminal Procedure Code (Chapter XVI) hereby report to court that the accused above-named on or about the 1st day of June 1946 at Undudoga within the Jurisdiction of this Court did commit criminal trespass by unlawfully continuing to remain on Knavesmire Estate property of the Crown, in the occupation of D. R. M. Rajapakse, Superintendent of the said Estate, with intent thereby to annoy the said Rajapakse and thereby committed an offence punishable under section 433 of the Penal Code Chapter XV. 20

(Sgd.) A. K. J. HENDERSON,
Complainant.

Drawn by me
(Sgd.) E. ASHLEY PERIES,
Crown Proctor.

No. 3.
COURT PROCEEDINGS.

*In the
Magistrate's
Court of
Kegalle.*

5.6.46.

Issue summons for 12.6.46.
(Intd.) A.W.N.,
Magistrate.

No. 3.
Court
Proceedings
5th, 12th
and
20th June
1946.

12.6.46.

Complt. : A. K. J. Henderson pt.

10 Accd. : Selvanayagam Kangany pt.
ss. served.

Mr. Peries for the Complainant.

Mr. Suraweera for the accused.

Accused charged from summons
states " I am not guilty."
Trial on 27th June.

Cite Prosecution witnesses.

Bail accused in Rs.warned.

(Intd.) A.W.N.

20.6.46.

20 Proctor for accused moves for summons
on witnesses in list filed dated 15.6.46.

Order Issue summons on witness No. 2 to 6 on batta being deposited for those entitled for same.

Proctor for accused to state the grounds how evidence of witness No. 1 is material.

(Intd.) A.W.N.

20/6.

20.6.46.

30 Proctor for complainant moves for a summons on the accused to
produce in court on the trial date original of the notice to quit served
on him by the Superintendent of the Estate.

Issue summons for 27/6.

(Intd.) A.W.N.

Mag.

*In the
Magistrate's
Court of
Kegalle.*

*Prosecution
Evidence.*

No. 4.
A. K. J.
Henderson,
27th June
1946,
Examina-
tion.

No. 4.

EVIDENCE of A. K. J. Henderson.

27-6-46.

Complt. : A. K. J. Henderson pt.

Accd. : Selvanayagam Kangany son of Sinnasamy pt.

Mr. P. T. Gunasekera Crown Counsel with Mr. Wejemane Crown Counsel instructed by Mr. A. Peries, Crown Proctor for the Complainant.

Mr. Advocate S. Nadasen with Messrs. Advocates N. Nadarasa and A. Vythilingam instructed by Mr. Suraweera for the accused.

Mr. Gunasekera calls.

A. K. J. HENDERSON, Sworn, Asst. Government Agent, Kachcheri, Kegalla.

10

I am the A.G.A. for Kegalla District. I know the estate known as "Knavesmire Estate" which lies within my division. A notice was published in the Government Gazette dated 27th April 1945 bearing No. 9397 which I produce marked P.1. The notice P.1 states the public purpose for which it was proposed to acquire the land is for village expansion.

I also produce marked P.2 a certified copy of certificate under section 12 of the Land Acquisition Ordinance.

20

Shown original of P.2. I produce the original of P.2 marked P.3. P.3 is signed by Mr. Abeywardene the Land Officer, Kegalla District and is dated 6th December 1945. I am familiar with signature of Mr. Abeywardene. I identify his signature. He is an officer of my Kachcheri. When the Government took possession of the estate under the Land Acquisition Ordinance, there was a labour force on the estate. The Government continued to employ the labour force. All lands other than those under the Conservator of Forests come within my charge as Assistant Government Agent. I put a Superintendent in charge of Knavesmire Estate. I put Mr. D. M. Rajapakse in charge of the estate as Superintendent. Mr. Rajapakse took charge in the beginning of February 1946. The land was acquired for village expansion. I took steps to give effect to the acquisition. I issued a notice calling for applications from persons to be put on the land for working the estate on co-operative lines.

30

I produce marked P.4 one of the originals of the notice that was issued by me dated 1.3.46. I caused this notice P.4 to be published in the villages. P.4 was produced by duplicating process.

I sent Mr. Rajapakse as Superintendent in February 1946.

Shown P.5. It is my letter dated 30.1.46 to Mr. Rajapakse. It is signed by me. I informed him of his selection as Superintendent of this Estate in this letter P.5.

40

The inquiries referred to in P.4 were held on the dates mentioned therein on Knavesmire Estate. I gave instructions to the Superintendent on 18.3.46 to issue notices to all the labourers employed in the estate to quit by the end of April. I proceeded with my inquiries to select the allottees. 350 people attended the inquiries and I selected 243 allottees. I wanted to provide the allottees with work on the 1st May 1946. I received a verbal report from Rajapakse about the notice he gave. I gave him instructions. I instructed him to issue fresh notices. Rajapakse

50

saw me on 28th April and I asked him to give fresh notice to the labourers. The fresh notice was that the labourers were to quit at the end of May 1946. Shown P.6. This is the form of notice which I approved. I produce the form of notice approved by me marked P.6 (Mr. Nadesan for accused tenders the original of the notice served on this accused). (Mr. Gunasakera marks the notice P.7.) I wanted to give the selected allottees work on 1st June 1946. They were asked to come on 1st June 1946. Rajapakse had to find accommodation on the estate for the allottees and give them work. On 1st June 1946 Rajapakse reported to me that the labourers
 10 had not left though they were noticed to leave. Except for 11 or 12 new families it was not possible to find accommodation for the rest of the allottees.

Cross-examined.

Mr. Abeywardene took charge of the land on behalf of A.G.A. Kegalla. The Executive Committee of Local Administration did not authorise anyone to take possession of the land. The acquisition was authorised by the Local Administration Executive Committee. No such authority was given to my knowledge by the Executive Committee of the Local Administration to take possession of this land. As far as I am aware of there
 20 was no direction by the Executive Committee of Local Administration to Mr. Abeywardene.

I produce letter dated 26.11.45 from Minister of Local Administration to A.G.A. Kegalla marked P.8 giving direction about the taking possession of this land Knavesmire Estate. Shown P.1 and P.2. Notices were sent out in English similar to P.4 to the D.R.O. and the Chief Headmen for publication in the villages. The notices were published in Sinhalese. They were not published in Tamil. There may be Tamil or Muslim villagers in these villages. I issued the notices in English and Sinhalese. I do not know if the notice P.4 was published on this estate. No Tamil
 30 speaking people from the villagers applied for allotments. I am not aware that Rangalla consists largely of Muslims. I had asked the Superintendent on 18.3.46 to give notice to the labourers on the estate. The original of my letter is with the Superintendent. I asked Rajapakse to give notice to all labourers on the estate to quit. The Superintendent gave notice to the Tamil labourers of the estate. I got a copy of the notice given by the Superintendent about a month later. I did not get a Tamil copy. I had a discussion with Rajapakse before the present notices were sent. The discussion was on 28.4.46. I told him to serve fresh written notices on the labourers. Mr. Rajapakse told me that the labourers on whom
 40 earlier notice had been given did not intend to quit. No individual notice had been given on the 1st occasion. He did not tell me why the labourers did not intend to leave. After individual notices were served on the labourers, at various discussions Rajapakse told me that it was difficult to get good work done by the labourers who were asked to quit.

The notice to quit expired on 31.5.46. I met Rajapakse after 31.5.46 ; he told me the labourers were causing him considerable nuisance. I discussed the matter with him. I met Rajapakse about a week ago. After the complaints in court had been filed. I met Rajapakse on the 1st June.

Rexd. Nil.

50

(Sgnd.) A. W. NADARAJAH,
 Mag. 27.6

*In the
 Magistrate's
 Court of
 Kegalle.*

*Prosecution
 Evidence.*

No. 4.
 A. K. J.
 Henderson,
 27th June
 1946,
 Examination,
 continued.

Cross-
 examination.

*In the
Magistrate's
Court of
Kegalle.*

No. 5.

EVIDENCE of D. R. M. Rajapakse.

D. R. M. RAJAPAKSE affd. 41 years, Superintendent, Knavesmire Estate, Undugoda.

*Prosecution
Evidence.*

No. 5.
D. R. M.
Rajapakse,
27th June
1946.
Examina-
tion.

I assumed duties on 1.2.46 after the Government had acquired Knavesmire Estate. I produce letter marked P.5 which I received from Henderson, A.G.A. Kegalla, dated 30-1-46. I received my formal letter of appointment dated 26 June 1946, which I produce marked P.9, this letter is from the Chief Secretary of Ceylon.

I know Knavesmire Estate before I assumed duties. I have visited 10
the estate as a visiting Agent for the former owner Mr. Ibrahim Lebbe Marikar. Knavesmire Estate is about 800 acres including reservations. It has tea and rubber, about 270 acres of tea and about 460 acres of rubber on it. The working labour is about 500 labourers and all are resident labourers. There are some Sinhalese village labourers who come from outside. All the labourers were paid at Wages Board rates. The wages depended on the number of days worked. I had control over the allocation of rooms. I know this accused. He was one of the resident labourers. The accused was the tea factory Kanakapulle. He was in charge of tea 20
factory labourers. Accused had accommodation in the estate lines. I believe accused occupied 2 rooms. His family lives with him. I have authority to allot any rooms I choose to the accused. That was so regarding all the labourers. I could allot any rooms and change the rooms of labourers as I desired. I resided on the estate myself. I was in actual physical occupation of the estate. I live in the Superintendent's bungalow on the estate. All the labourers' lines were on the estate within the boundary of the estate. Every part of the estate including the buildings were in my charge and under my control. On 28-4-46 I got instructions from Mr. Henderson to give notice to terminate the services 30
of the labourers. I had printed notices prepared shown P.7. It is one of the notices. I signed the notice. The printed notice was addressed to each labourer by name. I made arrangements for the notice to be served severally on the labourers. The Office Assistant of the Kegalla Kachcheri Mr. Selvadurai and Land Clerk Mr. Arumugam and another clerk Mylvaganam, myself, my clerk W. A. de Silva and Upper Division Conductor Arumugam and Upper Division Watcher Thomas went to the muster ground on the Upper Division on 30-4-46 morning and called all the labourers and their dependants to come to the muster ground. All the labourers turned up. All the Upper Division labourers came. I served 40
them with notices. Thereafter in the afternoon we went to the lower division. The service of notices on the labourers of the lower divisions was done partly in the tea factory and partly in the rubber factory. Accused was served with notice in the tea factory. Accused had a gang of labourers on his own. At the tea factory the labourers were called and notice was read out by Mr. Selvadurai and notices were then served individually by calling the names from the Register and as each labourer came a notice was tendered to him. The accd. came and he was served with the notice and he received the notice. The same procedure was adopted in the rubber factory.

Shown P.7 notice served on accused.

(Mr. Gunasekera puts in translation of P.7 marked P.7A.)

50

On 31.5.46 I paid the labourers in the estate office, which is the usual place for payment. Accused came and he was paid and he received his pay. The discharge ticket was tendered and accused refused to accept the same. I have still his discharge ticket with me. I made it a point to tender the discharge ticket to each labourer when they were paid and accused refused to accept the discharge ticket. Mr. Deen the Labour Inspector was present on the pay day and addressed the labourers. I addressed the labourers. I said that the Labour Inspector was present and would find work for the labourers in other estates. It will cost some money for the labourers to move out. I told the labourers that the Superintendents of the estate who were to employ them would pay their expenses. I addressed each labourer as he came up to receive his pay. On 1.6.46 accused did not leave. None of the labourers left. All the labourers are on the estate. I am aware of the inquiry held by the A.G.A. Kegalla to select allottees to give them work on 1.6.46. I was to give them work and accommodation. I proposed to put the new allottees in the lines on the estate. I was unable to give accommodation for a very few new allottees. I have not been able to give accommodation to the new labourers since accused and the other labourers are still in the lines. I was able to give work only for 7 resident families among the new labourers. I have been able to put about 12 to 15 persons only in the lines. On 1-6-46 I was able to give accommodation for only 4 persons. Since 1st June I have not been able to work the estate as before. I am not able to take full tea and rubber crop. The estate is growing wild into weed. I am still Superintendent. The actual loss to the estate is Rs.1,000/- per day since I have not been able to work the estate. The fact that accused is still remaining on the estate without leaving is causing me annoyance. The presence of the accused on the estate has annoyed me and is annoying me.

*In the
Magistrate's
Court of
Kegalle.*

*Prosecution
Evidence.*

*No. 5.
D. R. M.
Rajapakse,
27th June
1946,
Examina-
tion,
continued.*

30

Cross-examined.

*Cross-
examina-
tion.*

I did not threaten to assault the accused or other labourers. I did not instruct anybody to refuse to give food to accused or the labourers. I complained to the A.G.A. Kegalla that I was annoyed. I was Visiting Agent of the Estate for a month. Mr. Marikar paid me Rs.1,200/- as Visiting Agent. I had nothing to do with the labourers as Visiting Agent. I paid 2 visits as visiting agent on this estate. I did not know of any special conditions of employment of the labourers on the estate prior to my assuming duties as Superintendent. I do not know the special conditions on which the accused was employed on the estate. I cannot say whether accused's father worked on the estate for 40 years and died and was buried on the estate. I do not know if accused occupies the same room as his father did. I do not know if accused has a wife. I do not know accused's mother. I do not know if accused has a vegetable garden in front of line room. I do not know if accused has a tamarind tree, orange tree and jumboo tree. I do not know who planted the trees. I did not ask the accused what were the terms of his employment when he came to the estate. I am aware of the inquiry held by the Land Officer to consider the claims of some of the resident labourers. The resident labour force was about 500 and the non-resident labour force was about 50 when I assumed duties.

*In the
Magistrate's
Court of
Kegalle.*

*Prosecution
Evidence.*

No. 5.
D. R. M.
Rajapakse,
27th June
1946,
Cross-
examina-
tion,
continued.

Before 31-5-46 the non-resident labour force did not increase. The non-resident labourers did the same type of work as the resident labourers. The non-resident labourers worked as well as the resident labourers. The accused was employed in the tea factory. There were few non-resident labourers picking tea who worked in the factory. The accused come for work at 7 a.m. and work till 4 p.m. in the factory. The labourers at the other places came for work at 9 a.m. and left at 12.30 p.m. Both resident and non-resident labourers did the same thing. The work done by the resident and non-resident group was the same. I have visited estates where there was more non-resident labour than resident. The work was alright provided the supervision was alright. Generally I have found no difference in the work done by resident and non-resident labourers. We paid four or five pensioners on this estate. They were dependents of the workers. I cannot say definitely where the pensioners are living on the estate. I cannot say whether they have line rooms of their own. It depends on the proprietor's wish whether to allow pensioners to live on the estate or not. Conditions vary from estate to estate. I know that returns have to be sent to the Registrar-General under the Indian Immigration Labour Ordinance Regulations. We have to give returns of the number of unemployed Indians on the estate. I have to send particulars of working and non-working residents. The non-workers live with their relations who are workers. I am aware that housing accommodation has to be given to the Indian labourers on the estate. Accused's wages included free housing accommodation. The labourers have cattle on the estate. They also have goats. The labourers use their milk for themselves. I have seen labourers in Up-Country have pedigreed cattle. I have a cow now. I purchased my milk from a Sinhalese Kangany residing outside. I have not seen resident labourers selling milk. The work on the estate is of two types : One is check-roll work, and the other is contract work. We have given a few weeding contracts to the labourers after the usual work or to be done on Sundays. I gave the contract to the labourers themselves. I was asked to give notice to the labourers on the estate in March 1946. I put the notice in Tamil. I gave notice to the Tamil labourers to leave the estate. There were 4 Sinhalese families resident on the estate. I did not put up notice in Sinhalese.

The four Sinhalese families were selected for allotments. The total Sinhalese families resident on the estate were four families. They had been selected as allottees. So there was no need to put up Sinhalese notices. I put up a notice to say that the Tamil labourers on the estate should leave. Some of these notices have been torn. I put them up at various places. There is one Sinhalese woman married to an Indian labourer on the estate. She is one Podi-Menika alias Pohhammah.

Re-examination.

Re-examined.

The non-resident labourers were paid at the same rate as resident labourers. No deduction was made from the resident labourers. Both were paid at the same rate. I cannot say with whom the pensioners reside. There is no non-worker residing in any line allotted to him.

I am a Sinhalese. Jumboos are common fruits. Tamarind trees grow from seeds thrown about.

(Sgd.) A. W. NADARAJAH, 50
Mag.

No. 6.

EVIDENCE of M. Salvadurai.

M. SALVADURAI affd. Office Assistant, Kachcheri, Kegalla.

I am the Office Assistant of the Kegalla Kachcheri. On 30-4-46 I went to Knavesmire Estate and was present at the three musters held. All the labourers were present. Shown P.7 I read out the notice in terms of P.7. This is the notice I read out. I am a Tamil and I am familiar with the language. A notice like P.7 was handed to each labourer.

Cross-examined.

10 Shown D.1 translation of P.7. D.1 is a correct translation of P.7.

Re-examined.

Shown P.7A—translation of P.7.

(Sgd.) A. W. NADARAJAH,
Mag. 27.6

*In the
Magistrate's
Court of
Kegalle.*

*Prosecution
Evidence.*

No. 6.

M.
Salvadurai,
27th June
1946,
Examina-
tion.

Cross-
examina-
tion.

Re-examin-
ation.

No. 7.

EVIDENCE of D. J. Deen.

D. J. DEEN affd. Inspector of Kegalla and Avissawella.

20 I am Labour Inspector of Kegalla and Avissawella Division. On 31-5-46 I went to Knavesmire Estate. I watched proceedings. I was there with Rajapakse. Rajapakse addressed the labourers. Rajapakse said that labourers had been offered work on other estates. He said that travelling expenses were offered by the Government. I have been to the estate once before on 12-4-46. I went there to register the names of the labourers to find employment for them elsewhere. They were under notice to quit. I found that work was available for them in the Kelani Valley. I told the labourers themselves on this estate.

Cross-examined.

30 I cannot remember if I informed the accused. I informed the Kanganies on this estate. Dehiowita, Degalessa Group, Dewalekande Group, Deber Estate, Urdepola, Kosgahakanda and other estates, all rubber estates, were willing to take these labourers. Sapumlkande is tea estate and wanted 50 labourers.

Re-examined.

I arranged employment for 400 of these labourers on these other estates on 12-4-46. Later some other estates wanted labour. The estates were mainly rubber and had some tea. Most of the estates are company owned estates. They have estate lines.

(Sgd.) A. W. NADARAJAH,
Mag. 27-6.

No. 7.
D. J. Deen,
27th June
1946,
Examina-
tion.

Cross-
examina-
tion.

Re-examin-
ation.

*In the
Magistrate's
Court of
Kegalle.*

No. 8.

PROSECUTION COUNSEL'S ADDRESS.

Prosecution closed.

No. 8.
Prosecution
Counsel's
Address,
27th June
1946.

Mr. Gunasekera addresses court and states that all the elements necessary to sustain the charge have been proved by the evidence placed on record by the prosecution. He submits that the intention of the accused must be inferred by court from the facts and circumstantial evidence he has led. He states that he has led proof of the number of facts which manifest the intention of the accused. Mr. Gunasekera in support of his argument cites the following cases :—

14 N.L.R. 475.
15 N.L.R. 213.
3 C.L.J. 164.
16 C.L.W. 15.
41 N.L.R. 294.

10

(Sgd.) A. W. NADARAJAH,
Mag. 27.6

*Defence
Evidence.*

No. 9.

EVIDENCE of Sinnasamy Selvanayagam.

Defence.

20

No. 9.
Sinnasamy
Selvanaya-
gam,
27th June
1946.
Examina-
tion.

Mr. Nadasem calls :—

SINNASAMY SELVANAYAGAM affd., 32 years Kanakapulle, Knavesmire Estate, Undugoda.

I am the accused. My father was working on this estate. My mother also worked on the estate. My parents were married on the estate. My mother's father worked on the estate and he died and was buried on the estate. My father died 10 years ago. He worked for 40 years on the estate. He died and was buried on the estate. My mother is still living on the estate. My wife was born on Levant Estate, Yatiyantota. I married in Ceylon. I was born on Knavesmire estate. I do not know from which village in India my father came. To my knowledge my parents have never gone to India. I do not know if I have any relatives in India. I do not consider any other place as my home except Knavesmire Estate. I, my wife, and mother occupy 2 rooms on the line in the estate. My father occupied the same line room. I have garden plots in front and in the rear of my line room. I have jak trees and arecanuts. I have grown fruit trees, tamarind, orange and jumboo trees. My father planted all these trees. I and my parents have enjoyed the produce of these trees.

30

Cross-
examina-
tion.

Cross-examined.

I am a Tamil. I am not a Sinhalese. I am Tamil born in Ceylon. I have no connection with India. I am a Ceylonese. It is wrong to call me an Indian labourer. I am not claiming any land on the estate. I do not claim the line room or the land on which the line room is built. I am occupying the same line room occupied by my father, I claim the room as

40

my own. I claim two rooms. I say I am the owner. I claim it from my father and he got it from his father. I claim the two rooms as my own rooms. I remain in the line rooms since I am the owner. I have children. I cannot donate the rooms to my children. I got a notice to quit from the Superintendent. I have not quitted the premises. I want to build a house and leave. If I go to another estate the same trouble will recur. I am not leaving since I have no house of my own to live in. If I go to another estate I will be asked to quit like this. I am staying behind because I have no other place to go. I was not told by the Superintendent that

10 work will be available on another estate. Even if work is available I do not want to go, since I will have to face the same fate. I claim a right to stay on the estate, since for generations we have lived on this estate. I am 32 years old now. I have no interest in India. I know Government has acquired this estate. I was not asked to lodge a claim before the acquisition proceedings. The only home I know is Knavesmire. I have no interest in the surrounding villages. I have two adjoining rooms which has a verandah. One room is 20 feet. I have grown vegetables in my plot. One plot is about 20 feet long. The other plot is about 80 feet long. In the vegetable plot I have fruit trees. My father planted the tamarind

20 tree and jak tree about 40 years ago. I am 32 years of age. I planted the orange tree about 15 years ago. I bought orange plant in village. I did not discuss the notice to quit with other people. I am aware of other labourers receiving their notices. I received notice on 28-4-46. I did not discuss with other labourers. I made up my mind not to leave. I did not tell the other labourers that I was not leaving. I was not aware that other labourers also did not intend to leave. I did not want my discharge ticket. I did not consult others about the discharge ticket. I refused the discharge ticket on my own. On the day I was paid my wages I refused to accept the discharge ticket. I had not discussed it earlier.

30 I received notice to quit on 29-4-46. I knew that discharge ticket will be given me on 31-5-46. I did think about the discharge ticket. I was worried as how to leave the place. Yes, I discussed with relatives and friends about the discharge ticket. We decided not to receive the discharge tickets. I and others decided not to leave the estate, because we did not like to go to any other estate and have the same fate on being asked to quit. I know that tea and rubber could not be worked without labour. I knew that if I and other labourers did not leave, other labourers selected could not be brought. The labourers selected can come and do their work. They would have no place to reside. My object

40 is not to prevent others coming in. I am still in the same room. I do not know if the estate is not worked well.

Re-examined.

I discussed the matter of notice to quit with 10 or 15 persons. I want to build a house out on my own and live there. I do not claim the estate land or the line room, where I now live as my own. I do not claim ownership. Outside labour can come and work even though I live in the lines.

(Sgd.) A. W. NADARAJAH, Mag. 27-6

*In the
Magistrate's
Court of
Kegalle.*

*Defence
Evidence.*

No. 9.
Sinnasamy
Selvanaya-
gam,
27th June
1946,
Cross-
examina-
tion,
continued.

Re-examin-
ation.

*In the
Magistrate's
Court of
Kegalle.*

No. 10.

DEFENCE COUNSEL'S ADDRESS.

Defence closed.

No. 10.
Defence
Counsel's
Address,
27th June
1946.

Mr. Nadasen reads in evidence D.1 (translation of P.7) and addresses Court :

Mr. Nadasen submits that there is no proof on record about the accused's tenure of service on this estate and that he was not put there by Superintendent Rajapakse.

Mr. Nadasen argues that the accused is in occupation of his line rooms as a tenant and not as a servant and therefore the ordinary process of a civil court to eject him should be put in process and that accused should not be prosecuted in a criminal court for criminal trespass. 10

In support of his contention that accused is occupying these premises as a tenant and not as servant, Mr. Nadesan cites the following cases :—

1. (1875) 10 L.R. (Q.B.) 422, *Smith v. Overseers of Seghil*.
2. (1883) 11 Q.B.D. 145 C.A., *Martin v. West Derby Assessment Committee*.
3. (1889) 24 Law R. (Q.B.) 147, *Marsh v. Estcourt*.
4. (1904) 1 K.B. 84, *Dover v. Prosser*.
5. (1913) Law Times 121, *Wray v. Taylor Bros*. 20

Mr. Nadesan refers to article of criminal trespass and Indian labourers appearing at page XVII of 4 Ceylon Law Journal. Mr. Nadesan seeks to distinguish this case from the cases reported in—

4 C.L.J. 119, *Ebels v. Periammen* and 41 N.L.R. 294.

Since the facts in this case are different to the facts in these cases.

Mr. Nadasen refers to Schedule C to Chapter 111 in Volume I. Subsidiary Legislation at page 591.

(Sgd.) A. W. NADARAJAH

Mag. 27/6.

No. 11.
Verdict and
Sentence,
27th June
1946.

No. 11.

VERDICT AND SENTENCE.

30

Verdict

I find the accused guilty and convict him.

I sentence the accused to two months R.I.

Sgd. A. W. NADARAJAH.

Mag. 27/6.

Reasons for my finding will be delivered tomorrow in court on 28-6-46. Accused to be present then. In event of appeal accused to furnish certified bail in 300/300.

Sgd. A. W. NADARAJAH. 40

Mag. 27/6/46

4.10 p.m

No. 12.
COURT PROCEEDINGS.

*In the
Magistrate's
Court of
Kegalle.*

27-6-46 at 5 p.m.

Accd. : S. Selvanayagam files petition of appeal against the order of this court.

No. 12.
Court
Proceedings
27th June
1946.

(1) Accept and forward record to S.C. in due course.

(2) Bail has been ordered in Rs.300/300 in the event of an appeal.

10 (3) Issue notice of appeal on complainant-Respondent.
Returnable 11-7-46.

Int. A.W.N.
Mag.
27/6

No. 13.
REASONS.

No. 13.
Reasons,
28th June
1946.

28-6-46

Compl. : A. K. J. Henderson }
Accd. : Selvanayagam Kangany } pt
Mr. Suraweera for the accused.

20 Mr. A. Peiries for the Complt.

The reasons for my finding delivered in open Court in the presence of complainant and his Proctor and in the presence of the accused and his Proctor.

A. W. NADARAJAH.

M. C. Kegalla
No. 12301

Mag. 28-6

Reasons.

30 The accused Sinnasamy Selvanayagam of Knavesmire Estate, Undugoda, is charged by Henderson the Assistant Government Agent, Kegalla with committing criminal trespass by unlawfully continuing to remain on Knavesmire Estate, property of the Crown, in the occupation of D. R. M. Rajapakse, Superintendent of the said estate, with intent thereby to annoy the said Rajapakse and that thereby the accused had committed an offence punishable under section 433 of the Penal Code, Chapter XV of L.E.C.

The facts of the prosecution case are briefly as follows :—

40 The Knavesmire Estate which is about 800 acres in extent situated at Undugoda in the Kegalla District had recently been acquired by the Crown under the provisions of the Land Acquisition Ordinance (Chapter 203 L.E.C) and the Executive Committee of Local Administration directed the Land Officer, Kegalla to take possession of the said estate for and on behalf of His Majesty. There was a labour force resident on the estate at the time the Crown took over the possession of this estate. The Land Officer Abeywardene took possession of the estate.

The Assistant Government Agent Henderson then selected one Rajapakse as the Superintendent of this estate and Rajapakse was duly appointed by the Governor as Superintendent of Knavesmire Estate as from 1-2-46.

*In the
Magistrate's
Court of
Kegalle.*

No. 13.
Reasons,
28th June
1946,
continued.

This estate has been acquired for village expansion and Henderson the A.G.A. Kegalla called for applications from persons to be placed on this land for the estate to be worked on co-operative lines. Having selected the persons to be placed on this land Henderson instructed Rajapakse the Superintendent to serve notices on the labourers on the estate to quit the estate.

Accordingly Rajapakse had notices printed and he served individual notices on all the labourers on the estate on 30-4-46 to quit the estate. The labourers were paid on 31-5-46 and were tendered their discharge tickets. The labourers declined to accept their discharge tickets and have 10 refused to quit.

This accused Selvanayagam is a resident labourer on the estate. He was duly served with notice to quit and was paid off on 31-5-46 and tendered the discharge ticket which he declined to accept. He is still remaining on this estate and is in occupation of line rooms on the estate. His remaining on the estate is said to cause annoyance to the Superintendent Rajapakse and accused is now charged with committing criminal trespass.

The accused's defence to put it briefly is that he was born and bred on this estate and that his home is Knavesmire Estate. He states that he has no other place to go to and till such time as he is able to build his own 20 house on his own land he intends to remain on this estate.

On the charge of Criminal Trespass in this case the prosecution has to prove that—

- (1) Complainant or his Agent is in occupation of the property.
- (2) Accused is unlawfully remaining on the estate.
- (3) That accused is unlawfully remaining on the estate with the intention of annoying Rajapakse who is in occupation of the property.

The complainant in this case is Henderson the Assistant Government Agent, Kegalla and his Land Officer Abeywardena attached to his Kachcheri 30 has duly taken possession of this estate. P.2 the certificate of acquisition issued by Abeywardena has been produced. P.3 is the original of this certificate. P.8 is the direction issued to the A.G.A. Kegalla by the Executive Committee of Local Administration under the provisions of the Land Acquisition Ordinance (Chapter 203) to take possession of the land.

Rajapakse was selected as the Superintendent of this estate and his letter of appointment has been filed marked P.9. Rajapakse now resides on the estate, occupies the Superintendent's bungalow and has taken complete charge of the estate and its working. He is in actual and physical occupation of the whole of Knavesmire Estate and everything on it. I 40 hold that prosecution has proved that Rajapakse the Superintendent is in occupation of the whole estate and all the buildings thereon.

(2) The accused is a Kanakapulle on the estate and is occupying two line rooms. He is a resident labourer and was on the estate when the Crown acquired the estate for the purpose of village expansion. The Crown took over the estate and Henderson says that the Government continued to employ the labour force. The accused is one of those who was on the estate and whom Rajapakse continued to employ on the estate. The accused was duly served with notice to quit to leave the estate. The notice served on the accused has been produced marked P.7 with two 50 translations of it marked P.7A and D.1. The notice was served by Rajapakse on the accused on 30.4.46. The accused himself admits the service

of notice to quit P.7 on him. In terms of the notice P.7 accused should have quitted the estate on or before 31.5.46, which he has not done. Is his continuing to remain on the estate unlawful? According to the prosecution accused is a labourer on the estate and his employment has been terminated by the notice served on him. The accused was paid his wages on 31.5.46. He was tendered his discharge ticket and he declined to accept the same. Prosecution maintain that since accused's services have been terminated he has no right to stay on the estate any further and that his remaining there is unlawful.

*In the
Magistrate's
Court of
Kegalle.*

—
No. 13.
Reasons,
28th June
1946,
continued.

10 Counsel for the accused very strenuously and warmly argued that though accused's services as a labourer may have been terminated, yet accused continues to remain in occupation of the line room as a tenant and as such the trespass is merely the trespass of an overholding tenant and the relief for complainant should be by way of civil suit to eject the accused and not an action for criminal trespass in a criminal court of law. In support of his contention Counsel for accused cited a series of decisions of the courts of law of England. The matter for determination is whether the accused occupied the line rooms in the capacity of a servant or in the capacity of a tenant.

20 The prosecution has placed evidence to prove that accused is the Kanakapulle in charge of the tea factory and that he has to go to work from 7 a.m. till 4 p.m. The other labourers come for work at 9 a.m. and leave at 12.30 p.m. The accused is paid at the same rates for non-resident labourers and no deduction is made for the occupation of the premises. These facts make it quite apparent that accused is occupying the premises for the more satisfactory performance of his duties and he occupies the premises in the capacity of a servant and not in the capacity of a tenant. The occupation by accused of the premises must be reckoned with the surrounding circumstances in the case. At the time when Rajapakse
30 assumed duties as Superintendent on 1.2.46 he states that there were about 500 resident labourers and about 50 non-resident labourers. The Crown continued to employ them on that basis till they were served with notice to quit. All these labourers including the accused occupied the premises on the estate in the course of their employment and as such they occupied it as servants. The occupation of the rooms by the accused is subservient and necessary to his employment on the estate. The accused is the Kanakapulle of the tea factory situated in the estate and accused resides on line rooms in the estate and he has to go for work as early as
40 are strictly ancillary to the performance of the duties which accused has to perform as tea factory Kanakapulle and accused's occupation of the premises is that of a servant. It would be idle to contend that it was otherwise.

Vide 41 N.L.R. 294 *Forbes v. Rengasamy*.

I hold that the accused is occupying the line rooms in his capacity as a servant and since his employment has been terminated by due notice and being paid off his wages, the continued and subsequent residence of accused in the said premises is unlawful.

50 The series of English cases cited by Counsel for the accused have no application to the set of circumstances and facts in this case. The prosecution has thus proved the second element that accused is unlawfully remaining on the estate.

*In the
Magistrate's
Court of
Kegalle.*

No. 13.
Reasons,
28th June
1946,
continued.

The next (3rd) element to be proved by the prosecution is that accused is unlawfully remaining in the estate, with the intention of annoying the Superintendent in occupation of the estate. The intention of the accused is the most essential element of the offence.

To ascertain what is the intention of the accused let us first consider the nature of the accused's act. The accused is refusing to quit from two rooms he occupies, which he himself knows has to be given to the selected new labourers, who have to come in and reside and work the estate. The accused refuses to leave the rooms not because he cannot find employment elsewhere, for in point of fact he has been offered work and expenses for moving out, but because he wants to build a house for himself on land which he has to acquire and possess as his own. Till such time as his wishes can materialise he is not prepared to quit. Let us now consider the effect produced on the mind of Rajapakse who is in occupation. He has to find accommodation for about 243 selected new labourers who are to reside on this land and work the estate. On 1.6.46 he was able to find accommodation for only 4 persons. The estate is not able to be worked so that the full crop of tea and output of rubber could be collected for the estate. The loss incurred is about Rs.1,000/- per day. He is still the Superintendent of the estate. 10

Apart from considering the nature of the act complained of and the results that have flowed from it, proof of intent can be given by other acts manifesting that intention. The accused was given notice and he was aware that he would be given the discharge ticket on the day he was to be paid off 31.5.46. Accused had discussed the matter with 10 or 15 persons his relatives and friends. They decided not to receive the discharge tickets. The accused in point of fact refused to receive his discharge ticket. The accused does not claim any right to any part of the estate or to the line rooms. 20

All these circumstances warrant the conclusion that the intention of the accused was to cause annoyance to Rajapakse. The evidence placed by the prosecution justifies the inference as a fact that accused possessed the intention to cause annoyance to Rajapakse, and in fact has done so. I hold that the prosecution has proved facts from which it is manifest that intention to annoy was substantially present in the mind of the accused. The accused's assertion that he regards Knavesmire as his home and that for two generations he and his people have lived on this estate does not give rise to any bona fide claim of right to stay on the land to exclude the presumption of a criminal intent on his part. 30

The prosecution has proved all the necessary elements to sustain the charge under section 433 of the Penal Code. I find the accused guilty and convict him. 40

I have given my best and anxious thought to the question of sentence and having taken into consideration all the circumstances of the case, I feel that the occasion calls for a jail sentence. The way in which and end for which accused has committed the offence has aggravated the offence. The accused is trespassing and holding on to premises which he knows should be given over to others who have to occupy the premises and work the estate. The accused till he can find at his leisure his own new home does not propose to leave the premises. The accused is holding on to the premises for his own and as a part of the concerted action by the innumerable other fellow labourers on the estate, as is manifest by the evidence placed on record. 50

The accused's act by itself has been productive of the most serious inconvenience to his erstwhile employer Superintendent Rajapakse and to the present owners of the property, the Crown.

In view of these aggravating circumstances, I sentence the accused to two months' rigorous imprisonment.

Sgd. A. W. NADARAJAH,
Magistrate, Kegalle,
28.6.46.

*In the
Magistrate's
Court of
Kegalle.*

No. 13.
Reasons,
28th June
1946,
continued.

10

No. 14.

PETITION OF APPEAL.

Tendered on 27.6.46

Sgd. D. A. C. SENARATNE
C.C. 27/6.

*In the
Supreme
Court.*

No. 14.
Petition of
Appeal,
27th June
1946.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

M. C. Kegalla

Case No. 12301

S. SELVANAYAGAM, Accused - Appellant

v.

A. K. J. HENDERSON, Complainant - Respondent.

20 To the Honourable the Chief Justice and other Judges of the Supreme Court.

This 27th day of June, 1946.

The humble petition of appeal of the appellant above-named states as follows :—

1. The appellant was charged with having committed an offence punishable under section 433 of the Ceylon Penal Code read with section 427 of the same code by remaining on Knavesmire Estate after notice to quit given by one Rajapakse the Superintendent of the said estate. The learned Magistrate after trial convicted the appellant and sentenced him to
30 two months' rigorous imprisonment.

2. Feeling aggrieved with the said conviction and sentence the appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal :—

(a) The said conviction and sentence are against the law and contrary to the weight of evidence in the case.

(b) The act of the appellant in remaining on the estate does not in law amount to criminal trespass.

*In the
Supreme
Court.*

No. 14.
Petition of
Appeal,
27th June
1946,
continued.

(c) The intention of the accused must be proved and there is no evidence that the primary intention of the accused was to annoy the Superintendent.

(d) The Superintendent, Mr. Rajapakse, cannot be said to be in occupation of the line rooms of the estate within the meaning of section 427 of the Ceylon Penal Code.

(e) The tenancy of the line rooms occupied by the accused must be separated from his contract of service and separately determined.

(f) The evidence established that the accused is an overholding 10
tenant and cannot be convicted of a charge of criminal trespass.

Wherefore the appellant prays that Your Lordships be pleased to quash the conviction and sentence and acquit the accused.

Drawn by me

Sgd. SELVANAYAGAM

Sgd. G. STANLEY SURAWEERA

Accused-Appellant.

Proctor S.C.

No. 15.
Judgment,
30th
August
1946.

No. 15.
JUDGMENT.

S.C. No. 941/1946

M.C. Kegalle No. 12301.

Present : Jayetileke, J.

20

Counsel : H. V. Perera, K.C., with Nadesan and Barr Kumarakulasingham for accused-appellant. C. Nagalingam, Attorney-General, with Wijemanne, Crown Counsel, for complainant-respondent.

Argued on : 19th, 20th and 21st August, 1946.

Decided on : 30th August 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 30 two 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 40 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 *Rowther vs. Mohideen* (1) 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 person 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.

*In the
Supreme
Court.*

No. 15.
Judgment,
30th
August
1946,
continued.

10 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
20 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 summarised 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 Kegalle took steps under the Land Acquisition Ordinance (Chapter 203) to acquire the estate
30 for the Crown for village expansion and on 6th December 1945, Mr. Abeywardene, the Land Officer of Kegalle, 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:—

40 "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 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. 8060 of 22nd June 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
50 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.

*In the
Supreme
Court.*
No. 15.
Judgment,
30th
August
1946,
continued.

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 1st February, 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 10 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 this 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- 20 examination or denied by the accused when he gave evidence on his own behalf.

On 1st March 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 1st June. He had to provide accommodation for them on the estate pending the construction of houses, presumably, on the lots allotted to them. In order to provide the allottees with work and accommodation Mr. Henderson got 30 Mr. Rajapakse to give notice in writing to the resident labourers that their services would not be required after 31st May, 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 30th April, 1946. On 31st May, 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 accom- 40modation for more than 12 to 15 of the allottees who turned up for work on 1st June. 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 50 in the capacity of a tenant.

2. That Mr. Rajapakse was in occupation of the whole estate including the building 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
10 of tenancy. But he contended, relying on the following passage in the judgment of Lord Porter in *Calcutta Corporation vs. The Province of Bengal* (2) 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
20 necessary for that purpose or if his residence there be necessary for the performance of his duties though not specifically required ” per Brett, J. (3).

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
30 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 the observations of a general character in a judgment Lord Halsbury said in *Quin vs. Leatham* (4)—

“ Now before discussing the case of *Allen vs. 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
40 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 in 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.”

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
50 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 observations of Lord Porter must

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continued.

be taken to apply to a case where the servant pays rent in some form or another. This view has the support of the Judgment in *Dobson vs. Jones* (5) 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 10 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 20 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 30 to perform is, in general, work which requires their presence on the employers' 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 the 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 vs. South Worcestershire Area Assessment Committee and 40 Pershore Rural District Rating Authority* (6).

“ 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 licencees, because if they leave the farmer's employment they have to leave the cottages 50 and can be ejected from the cottages.”

In my view the accused's occupation was ancillary to the performance of the duties which he engaged to perform. The second point taken by Mr. Perera was that Mr. Rajapakse was not in occupation of the two rooms. In *Westminster Council vs. Southern Railway Co and W. H. Smith and Son* and *Westminster Council and Kent Valuation Committee vs. Southern Railway and Pullman Car Co.* (7) Lord Russell of Killowen said :—

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10 “ The general principle applicable to the cases where persons occupy parts of a larger 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 ; if he retains to himself no control, the occupation 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 20 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. 30 Their occupation is merely that of servants and is in law the occupation of the master. (*Vide Dobson vs. Jones* (5); and *Wake vs. Tinkler* (8).)

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 reported cases. The cases are many in numbers. The effect of the cases which begin with *Suppiah vs. Ponniah* (9) in 1909 and continue in a stream to the present day is that if 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 40 cases. I refer to only two of them by way of example, *Anthony Appuhamy vs. Wijetunga* (10) and *Forbes vs. Rengasamy* (11) 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 :—

50 “ In this case there is evidence to show that the accused was warned that he must leave the estate on the expiration of the

*In the
Supreme
Court.*

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continued.

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 2nd January. 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." 10

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 that in precisely the same way in which I have done. 20

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 unduly 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 he deserves no more than justice.

The appeal is, accordingly, dismissed.

- (1) 1 Bala, Notes of Cases page 2. 30
- (2) 1944 A.I.R. page 42 at page 45.
- (3) (1875) 10 C.P. page 285 at page 295.
- (4) (1901) House of Lords at page 506.
- (5) 5 M. & G. page 116 at page 121.
- (6) (1946) 2 A.E.R. at page 81.
- (7) 1936 A.C. page 511 at page 530.
- (8) 16 East page 101.
- (9) 4 Bala 157.
- (10) 3 Ceylon Law Journal Reports page 104.
- (11) 41 N.L.R. page 294. 40

(Sgd.) E. G. P. JAYETILEKE,

Puisne Justice.

No. 16.

ORDER IN COUNCIL granting Special Leave to Appeal to His Majesty in Council.

*In the
Privy
Council.*

AT THE COURT AT BUCKINGHAM PALACE

The 21st day of December, 1946.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. ALEXANDER

EARL OF LISTOWEL

SIR ALAN LASCELLES

No. 16.
Order in
Council
granting
Special
Leave to
Appeal to
His
Majesty in
Council,
21st
December
1946.

WHEREAS there was this day read at the Board a Report from the
10 Judicial Committee of the Privy Council dated the 4th day of December
1946 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of Sinnasamy
Selvanayagam in the matter of an Appeal from the Supreme Court
of the Island of Ceylon between the Petitioner Appellant and Your
Majesty Respondent setting forth (amongst other matters) : that
the Petitioner prays for special leave to appeal against a Judgment
of the Supreme Court dated the 30th August 1946 dismissing an
20 Appeal against a Judgment of the Magistrate's Court of Kegalla
dated the 27th/28th June 1946 by which the Petitioner was found
guilty of the offence of “ criminal trespass ” under Sections 427/433
of the Penal Code of Ceylon and sentenced to two months' rigorous
imprisonment : that the Petitioner is resident now as he has always
been in a building consisting of two rooms situate on a tea and
rubber estate known as The Knavesmire Estate which is about
800 acres in extent : that the Estate was in private ownership
until 1945 when it was acquired by the Crown under the Land
Acquisition Ordinance (Chapter 203) for the purpose of village
30 expansion : that on the 6th December 1945 the Land Officer of
Kegalla took possession of the Estate for and on behalf of the Crown
and a certificate to that effect under Section 12 of the Ordinance
was duly signed : that it is not disputed that the effect of this
Certificate was to vest the land absolutely in the Crown free from
all incumbrances : that at the time of its acquisition by the Crown
there were resident on the Estate about 400 Tamil labourers (the
Petitioner among them) and four Sinhalese families : that on the
1st February 1946 one Rajapakse was appointed as Superintendent
of the Estate and came to reside in the Superintendent's bungalow
40 on the Estate : that the Government issued instructions to the
Superintendent who on the 30th April 1946 served on each of the
Tamil resident labourers a Notice in Tamil informing him that
his employment would terminate on the 31st May 1946 and requiring
him to deliver up possession of the premises occupied by him on
or before that date : that in accordance with the Notice the employ-
ment of the Petitioner and of the other members of the resident
labour force came to an end on the 31st May 1946 and on that date

L.S.

*In the
Privy
Council.*

No. 16.
Order in
Council
granting
Special
Leave to
Appeal to
His
Majesty in
Council,
21st
December
1946,
continued.

all of them were paid their wages for the past month : that the Petitioner refused to give up possession of the premises which he occupied : that criminal proceedings were set in motion and on the 27th June 1946 the Petitioner was found guilty of the offence of criminal trespass : that the Petitioner appealed to the Supreme Court and on the 30th August 1946 his Appeal was dismissed : that the Petitioner submits that his assertion of a *bona fide* claim to continue in the occupation of a building situate on land admittedly owned by the Crown has wrongfully led to his being prosecuted for the offence of "criminal trespass" and that in any event he was wrongfully convicted of the said offence as none of its constituent elements was present or was proved to have been present : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the Supreme Court dated the 30th August 1946 or for such further or other relief as to Your Majesty in Council may seem meet :

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of the Island of Ceylon dated the 30th day of August 1946 :

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Island of Ceylon and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

EXHIBITS.

Exhibits.

P.1.

EXTRACT from the Ceylon Government Gazette No. 9397 of April 27, 1945.

Having been duly directed by the Executive Committee of Local Administration, acting under the provisions of "The Land Acquisition Ordinance (Cap. 203)", section 5, to take order for the acquisition of the following lands, required for a public purpose, namely, acquisition of private land for village expansion, to wit:—

P.1.
Extract
from the
Ceylon
Government
Gazette
No. 9397,
27th April
1945.

PRELIMINARY PLAN NO. A 473. VILLAGE—RANGALLA.

10	Lot.	Name of Land.	Description.	Name of Claimant.	Extent.		
					A.	R.	P.
	1	Knavesmire estate	Rubber 30 to 40 years old, contain 13 and parts of 2 permanent buildings, 2 water tanks and part of Aerial Tramway	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	145	3	29
VILLAGE—PITTEGAMA.							
20	2	Knavesmire Estate	Rubber 30 to 40 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	23	2	0
VILLAGE—RANGALLA.							
	6	Pitadeniya	Waste land contains 1 caju tree 10 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta and disputed by M. A. Ran Naide of Rangakka	0	0	13
	7	Udupitiya	Chena	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by E. Kira of Rangalla	0	0	32
	8	Do.	Do.	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by B. Poona of Rangalla	0	0	20
30	9	Do.	Garden contains 5 jak trees and 1 mango tree 12 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by M. Rankira of Rangalla	0	0	21
	10	Do.	Chena contains 2 caju trees 12 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by E. Babi & S. Laminduwa (jointly) both of Rangalla	2	0	25
40	10½	Himbutugala	Rubber contains 5 rubber trees 15 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by K. P. Appuhamy of Punehela, Bulathkopitiya	0	0	3
	11	Do	Rubber 25 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by Dissanayake Arachchillage Mohottiappu of Rangalla	0	1	7
	17	Estate road	Estate road contains part of Aerial Tramway	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	1	0	31

<i>Exhibits.</i>	Lot.	Name of land.	Description.	Name of Claimant.	Extent.			
					A.	R.	P.	
P.I. Extract from the Ceylon Govern- ment Gazette No. 9397, 27th April 1945, <i>continued.</i>	18	Estate road	Estate road contains part of Aerial Tramway	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	2	0	29	
	19	Knavesmire Estate	Rubber & tea over 30 years old, and chena contains 14 perman- ent buildings, 6 lat- rines, 2 water tanks and part of Aerial Tramway	Do.	355	3	29	10
	VILLAGE—KENDAWA.							
	21	Knavesmire Estate	Rubber over 30 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	29	3	33	
VILLAGE—TUNBAGE.								
	22	Knavesmire Estate	Rubber and tea over 30 years old, and budded rubber 3-4 years old, high jungle and chena contains 1 permanent building	Do.	115	1	35	20
	23	Estate road	Estate road	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	0	3	18	
VILLAGE—LAWALA.								
	24	Estate road	Estate road	Do.	1	3	5	
	25	Knavesmire Estate	Tea & Rubber over 30 years old contains 13 permanent buildings, 3 temporary latrines, 3 tanks, 2 masonry wells, 4 working plumbago pits and part of Aerial Tramway	Do.	101	1	7	30
PRELIMINARY PLAN NO. A 474. VILLAGE BURULLAWALA.								
	1	Udagoda Estate	Rubber 30-40 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	43	2	37	
	4	Do.	Do.	Do.	10	0	16	
	5	Do.	Do.	Do.	2	2	19	40
	6	Do.	Rubber 30-40 years old	Do.	31	0	27	
	8	Do.	Do.	Do.	7	2	34	
	9	Do.	Do.	Do.	18	0	30	
	10	Do.	Rubber 30-40 years old contains 5 per- manent buildings, 4 latrines and rock	Do.	97	0	34	

Lot.	Name of Land	Description.	Name of Claimant.	Extent.			<i>Exhibits.</i>	
				A.	R.	P.		
18	Udagoda Estate	Rubber 30-40 years old, 2 permanent buildings part of road and rock	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	52	0	1	P.1. Extract from the Ceylon Government Gazette No. 9397, 27th April 1945, continued.	
29	Do.	Rubber 20-40 years old and 1 masonry tank	Do.	85	3	6		
10	30½ Ditto River Island	Rubber 30-40 years old	Do.	0	0	3		
31	Udagoda Estate	Rubber 30-40 years old, contains 5 permanent buildings 2 permanent latrines, 2 permanent sheds and 1 masonry tank	Do.	16	3	7		
32	Do.	Rubber 15 to 20 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by M. R. Somapala and Manikkurage Kiribaiya of Moradana	0	1	26		
20		VILLAGE MORADANA.						
33	Estate road	Estate road	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	1	1	14		
35	Udagoda Estate	Rubber 30 years old	Do.	0	1	33		
39	Do.	Do.	Do.	0	0	3		
40	Do.	Do.	Do.	0	3	37		
41	Do.	Rubber 30 years old and chena	Do.	9	2	27		
30	42	Do.	Rubber 30 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta disputed by Wijesundara Mudiyanseelage John Singho and Suduhakuruge Nandadewa of Moradana	12	0	15	
46	Do.	Do.	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	2	3	25		
		VILLAGE UNDUGODA.						
48	Udagoda Estate	Rubber 30 years old	Do.	9	1	5		
40		PRIVATE INTERESTS IN LOTS IN PRELIMINARY PLAN NO. A 474 VILLAGE GURULLAWALA						
3	V.C. road	V.C. road	Crown & E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	0	1	11		
		VILLAGE ELAGALLA						
11	V.C. road	V.C. road	Do.	0	2	31		
12	V.C. path	V.C. path	Do.	0	0	8		
13	V.C. road & path	V.C. road & path	Do.	0	1	17		
		VILLAGE PUSPANE.						
17	V.C. road	V.C. road	Do.	0	1	30		
22	Do.	Do.	Do.	1	3	16		
50	22½	V.C. path	Do.	0	0	1		
27	V.C. road	V.C. road	Do.	0	3	5		
28	V.C. road & path	V.C. road & path	Do.	0	1	28		

<i>Exhibits.</i>	Lot.	Name of Land.	Description.	Name of Claimant.	Extent.		
					A.	R.	P.
P.1. Extract from the Ceylon Govern- ment Gazette No. 9397, 27th April 1945, <i>continued.</i>	VILLAGE MORADANA.						
	43	V.C. road	V.C. road	Crown & E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	0	0	22
	VILLAGE UNDUGODA.						
	50	V.C. road	V.C. road	Do.	0	0	9
	PRELIMINARY PLAN NO. A 475. VILLAGE UNDUGODA.						
	2	Udagoda Estate	Rubber 30 years old	E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	11	2	28
	21	Do.	Do.	Do.	17	2	36
	22	Do.	Rubber 30 years old, 1 permanent building	Do.	65	1	22
	PRIVATE INTERESTS OF LOTS IN PRELIMINARY PLAN NO. A 475. VILLAGE UNDUGODA.						
	16	V.C. road	V.C. road	Crown & E. L. M. Ibrahim Lebbe Marikkar of Agalawatta	0	0	23
	17	Do.	Do.	Do.	0	0	17
	18	Do.	Do.	Do.	0	1	5
	19	Do.	Do.	Do.	0	0	16
20	Do.	Do.	Do.	0	1	1	

10

I hereby give public notice, as required by section 6, that the Government proposes to take possession of the lands. All persons interested in the aforesaid lands are hereby required to appear personally or by agent before me at Kegalla Kachcheri on May 29, 1945, at 2.30 p.m. and to state the nature of their respective interests in the lands, and the amount and particulars of their claims to compensation for such interests.

The Kachcheri,
Kegalla, April 23, 1945

B. F. PERERA,
Assistant Government Agent

P.8.

LETTER, S. W. R. D. BANDARANAIKE to A. G. A., Kegalla.

P.8.

Intd. A. W. N. Mag.

My No. F.3986.

Your No. L.M. 1900.

The A.G.A. Kegalla.

Acquisition of Knavesmire Estate for Village Expansion & Colonization,
Kegalla Dt.*Exhibits.*

P.8.

Letter,
S. W. R. D.
Bandara-
naike to
A.G.A.,
Kegalla,
26th
November
1945.

Reference to your letter of 7.11.45, I would inform you that the
10 Executive Committee of Local Administration direct the Land Officer,
Kegalla to take possession, for and on behalf of His Majesty, under
provisions of the Land Acquisition Ordinance, Chapter 203, section 12,
of the following lots of land described in P.P.A. 473.

Lots : 1, 2, 17, 18, 19, 21, 22, 23, 24 & 25.

(Sgd.) S. W. R. D. BANDARANAIKE,
M/L.A.

Colombo,

November 26, 1945.

P.2.

CERTIFICATE of Acquisition of Land.

20

CERTIFICATES OF ACQUISITION OF LAND.

(Under section 12 of Ordinance No. 3 of 1876.)

I, D. F. Abeywardena, Land Officer, Kegalle, having being duly
directed under the provisions of Section 12 of Ordinance No. 3 of 1876
hereby certify that I have this day taken possession for and on behalf of
His Majesty the King, under and by virtue of the provisions of the said
Ordinance entitled "An Ordinance to provide for the Land acquisition
of Land for public purposes" of the Land called Knavesmire Estate,
30 Pitadeniya, Udupitiya, Himbutugala and road situated in the village
Rangalla, Kendawa, Tunbage, Pilawela, in Uduwapalata, Lower
Bulathgama & Pittegama in Kandupita Patta South, Beligal Korale,
Kegalle District, Province of Sabragamuwa and bounded on the
(Please see schedule attached)

and more particularly described as lots 1, 2, 6, 7, 8, 9, 10, 10½, 11, 17, 18
19, 21, 22, 23, 24 & 25, in P.P.A. 473. Sab. dated 16th August 1944.

(Sgd.) D. F. ABEYWARDANA,

Dated 6th December, 1945.

Land Officer, Kegalle.

Lots 1, 2, 6, 7, 8, 9, 10, 10½, 11, 17, 18, 19, 21, 22, 23, 24 & 25 in P.P.A.
473 Sab.

40 An allotment of land called Knavesmire Estate, Pitadeniya Udupitiya,
Himbutugala and road situated in the villages Rangalla, Kendawa,

P.2.
Certificate
of
Acquisition
of Land,
6th
December
1945.

Exhibits.

P.2.
Certificate
of
Acquisition
of Land,
6th
December
1945,
continued.

Tunbage & Pilawela in Uduwapalata, Lower Bulatgama in Dehigampol Korale & Lower Bulathgama & Pittegama in Kandupita pattu South, Beligal Korale, Kegalle District, Province of Sabragamuwa.

A. R. P.

Containing in extent (exclusive of Galamune Ela, Bulatwatta Ela, Hawanamade Ela, Polgahamulahena Dola, Pussellemulatenna, Ela, Streams, Road, Foot Paths & Lot 5 in P.P.A. 473 Sab.)

780 0 17

Bounded on the North by Koswattemukalanna said to be Crown 10
Kudaludehigahamulahena claimed by D. V. Punchi Banda, Ammunuwela
Ela, Kudumiriyeheha claimed by K. P. Appuhami, Pussellemulatenna
Ela, Yataderiya Estate, claimed by the Yataderiya Rubber and Tea Co.
Ltd., Tennehena claimed by G. A. Lekama and D. V. Jothihame & others,
Periyehena claimed by M. Ratunaide, Warakaweneha claimed by A. C.
Wolid, Galamune Ela, Mahaduragewatta claimed by B. Setuwa & others,
Waduwegeperiya claimed by R. Dingeri, Durakemeperiya claimed by
D. Kiribanda, Udupitiya claimed by E. Babi and others, Himbutugala claimed
by K. P. Appuhami & D. A. Mohottiappu, Welpella claimed by D. A.
Punchiappuhamy, Egodawatta claimed by D. A. Mohothappu, Bulathuwatta 20
claimed by D. A. Punchiappuhamy and others, Polkotuwewatta claimed
by D. A. Arachi Appu and others, a Road, Radagewatta claimed by
V. Unga, Bogahapitapillewa claimed by D. A. Arachchiappu & others,
a stream and Bogahawitawatta claimed by D. A. Ukkumenikka & Lot 28
in P.P.A. 473.

East by Waharaka Estate claimed by the Waharaka Investment Co.,
Ltd., a stream Puthuarambehana claimed by E. Mutuwa and others, and
Polaambemulahena claimed by S. Hatana.

South by lots 34, 33, 32, 29, 28, 27, 26, 18, 14, 9, 8, 7, 4, 3 and 1, in
P.P.A. 356, Polgahamulahena Dola, Streams, Niyada. Galahena Dola 30
Ranidalagollehema claimed by H. Rankira, Liyahenehena claimed by
A. C. Volid & others, Pallidarawatta claimed by K. D. L. Gunawaradana
and Walawitigodellewatta claimed by P. Podinona and others.

West by Walawitigodellewatta claimed by P. A. Don Martin Appuhami
and others and Ela, Batupitiekumbura claimed by W. Setuwa & others,
Batupitiehena claimed by H. V. Rannaide and others, Lot 20 in
P.P.A. 473, Kohilademiya Encroachment by A. C. Volid, Galamune Ela,
a stream, Wiyalapitiewatta claimed by A. C. Volid and others,
Moragalanda Estate claimed by M. D. Titus & others, Alakotuwewatta 40
claimed by H. Poona Vidana & others and M. L. Fernando, Rukkattanemu-
ahene claimed by H. Poona Vidane and others, Gonamuda Estate claimed
by A. C. Volid, and Koswattemukalana said to be Crown.

More particularly described as lots 1, 2, 6, 7, 8, 9, 10, 10½, 11, 17, 18,
19, 21, 22, 23, 24 & 25 in P.P.A. 473 dated 16th August 1944, authenticated
by N. S. Perera for Surveyor-General.

True Copy.

(Sgd.) M. SELVADURAI,

O.A.

for A.G.A. Kegalle.

26.6.1946.

50

P.3.

ORIGINAL of P.2.

Original of P.2
with A.G.A. Kegalle
with permission of court.

Int. A. W. N.
Mag.

Exhibits.

P.3.
Original
of P.2,
6th
December
1945.

P.5.

LETTER, A. K. J. Henderson to D. R. M. Rajapakse.

10 P.5.
Intd. A. W. N.
Mag.

Mr. D. R. M. Rajapakse,
Luisa Estate,
Yakkala.

No. L.A. 1552.

P.5.
Letter,
A. K. J.
Henderson
to
D. R. M.
Rajapakse,
30th
January
1946.

20 You have been selected for the post of Superintendent, Knavesmire Estate. You should assume duties on 1st February 1946. The salary attached to the post is Rs.350/- per month. A formal letter of appointment will be sent to you in due course. You will be required to furnish cash security in a sum to be fixed within a month of assuming duty.

(Sgd.) A. K. J. HENDERSON,
A.G.A. Kegalla.

The Kachcheri
30.1.46.

P.4.

NOTIFICATION.

P.4.
Intd. A. W. N.
Mag.

30 Notification of an inquiry to select persons to form a Co-operative Society to run Knavesmire Estate at Bulathkohupitiya on Co-operative Lines.

P.4.
Notifica-
tion,
1st March
1946.

Notice is hereby given that the Asst. Government Agent, Kegalla will hold an inquiry at Knavesmire Estate Bungalow on the dates and times

Exhibits.
P.4.
Notifica-
tion,
1st March
1946,
continued.

mentioned below to consider applications from landless residents of the following villages for working Knavesmire Estate at Bulathkopitiya on Co-operative lines. Those persons selected will be provided with temporary accommodation and work on the Estate pending the construction of houses for them. After a period of training of two years those who have been selected to work on the Estate will be formed into a Co-operative Society which will thereafter manage the Estate for the benefit of the members.

2. Applicants who wish to be considered should apply in person on the dates shown below.

(Sgd.) A. K. J. HENDERSON, 10

The Kachcheri
Kegalla 1.3.46.

Assist. Government Agent Kegalla.

Villages referred to above.

<i>Date and time.</i>		<i>Name of Village.</i>	
26.3.46—9.30 a.m.	..	Pilawela	
		Wiyalapitiya	
27.3.46—9.30 a.m.	..	Rangalla	
28.3.46—9.30 a.m.	..	Diyahitiyawela	
		Yataderiya	
		Uduwa	20
29.3.46—9.30 a.m.	..	Tunbage	
		Kondawa	
		Punahela	
30.3.46—9.30 a.m.	..	Narangala	
		Urumiwela	
		Alawatura	
2.4.46—9.30 a.m.	..	Lewela and Yakkala	
3.4.46—9.30 a.m.	..	Wegalla	
		Welatuduwa	
		Pittagama	

P.6.
Notice
to Quit,
29th April
1946.

P.6.
NOTICE TO QUIT.

P.6.
Intd. A. W. N.
Mag.

To
of Knavesmire Estate.

You are hereby informed that your services in the above estate are not required after 31st May 1946 and that you are required to leave the estate and deliver over the lines occupied by you on or before the said 40 date. Your pay and discharge ticket will be issued on 31st May, 1946.

Superintendent.

29th April, 1946.

By order of the A.G.A. Kegalla.

P.7.

NOTICE TO QUIT in Tamil.

P.7. (Notice to quit in Tamil).
Intd. A. W. N. Mag.

Exhibits.

P.7.
Notice to
Quit in
Tamil,
29th April
1946.

P.7A.

TRANSLATION of Notice to Quit.

P.7A. (English Translation of Notice to quit.)
Intd. A. W. N. Mag.

P.7A.
Translation
of Notice
to Quit,
29th April
1946.

To.....
10 of Knavesmire Estate.

You are hereby informed that your services in the above estate are not required after the 31st May 1946 and that you are required to vacate the estate and deliver over the lines occupied by you on or before the said date. Your pay and discharge ticket will be issued on 31st May, 1946.

Sgd. D. R. M. RAJAPAKSE.
Supt.

By Order of the Asst. Govt. Agent
Kegalla.

Knavesmire Estate
29th April 1946.

20 Correct translation

Sgd. N. SINNATHAMBU
S.T.D.C. Kegalla.
27.6.46.

D.1.

NOTICE TO QUIT.

D.1.
Intd. A. W. N. Mag.

D.1.
Notice to
Quit,
29th April
1946.

SELVANAYAGAM KANGANI
Residing at Knavesmire Estate.

30 To Selvanayagam.

You are hereby informed that there will not be work for you on this Estate after the 31st May, 1946. You must hand over to me the house which you occupy (lines) and leave the estate on or before the above date.

The wages and discharge ticket will be given you on 31st May 1946.

Sgd. D. R. M. RAJAPAKSE
Superintendent.

By order of the Asst. Government Agent
Kegalla.

Knavesmire Estate
29.4.1946.

40 Translated by
Sgd. Illegible.

Sworn Translator
D.C. Colombo.

26th June, 1946.

Exhibits.

P.9.

P.9.

LETTER, A. R. Mackonald to D. R. M. Rajapakse.

Letter,
A. R.
Mackonald
to
D. R. M.
Rajapakse.

P.9. Intd. A. W. N. Mag.
Colombo, 26th June, 1946.

Reference No. 1.112/46.

Dear Sir,

The Governor has been pleased to order that you be appointed to the post of Superintendent of Knavesmire Estate in the Department of the Land Commissioner at a salary of Rs.350/- per mensem with effect from 1st February 1946.

2. The appointment is temporary and non-pensionable and will be liable to be terminated at one month's notice. Should you desire to resign your appointment at any time, you will be required to give one month's notice in writing of your intention to do so, or pay to Government a sum equivalent to one month's salary in lieu of notice. 10

3. In the event of your appointment being treated as a scheduled post for the purpose of section 4 of the Public Service Provident Fund Ordinance No. 18 of 1942, you will be required to contribute 5% of your salary to the Fund and will be intitled to contribute a further 5% if you so desire. Particulars regarding the Fund can be obtained direct from the Secretary to the Board of Management. 20

4. You will be paid Rs.25/- per mensem in lieu of Cooly Allowance. You will be intitled to a free house and no rent allowance will be paid to you. The grant of leave and other conditions of service will be governed by the Financial Regulations in force applicable to new entrants to temporary posts in the Public Service.

5. You will be required to furnish security in Rs.5000/-. A further communication with regard to the method of furnishing this security will follow.

6. Your appointment is temporary and does not convey any claim whatsoever for preferential treatment with regard to vacancies in the permanent establishment. 30

Yours faithfully,

Sgd. A. R. MACKONALD.

Mr. D. R. M. Rajapakse.

for Chief Secretary.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

SINNASAMY SELVANAYAGAM - - - - - *Appellant*

AND

THE KING

(**A. K. J. Henderson, Assistant Government Agent—**
Complainant) - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

HY. S. L. POLAK & CO.,
DANES INN HOUSE,
265 STRAND, W.C.2,
Solicitors for the Appellant.

BURCHELLS,
9 BISHOPSGATE, E.C.2,
Solicitors for the Respondent.