APPELLATE CRIMINAL.

Before Mr. Justice Shephard and Mr. Justice Davies.

1896. January 9.

QUEEN-EMPRESS

v.

RAYAPADAYACHI *

Penal Code, s. 448—Criminal Trespass—Intent.

Although a trespasser knows that his act, if discovered, will be likely to cause annoyance, it does not follow that he does the act with that intent.

CASE referred for the orders of the High Court by R. D. Broadfoot, Acting Sessions Judge of Trichinopoly, under section 438, Criminal Procedure Code.

The facts of this case appear from the letter of reference which is as follows:—

"The Stationary Second-class Magistrate of Udaiyarpalaiyam "convicted one Rayapadayachi accused in calendar case No. 677 of "1895 on his file under sections 451 and 75, Indian Penal Code, "and sentenced him to four months' rigorous imprisonment.

"The accused appealed against this conviction to the Deputy "Magistrate of Aryalur, who altered the conviction to one under "section 448 and upheld the conviction.

"In this case, there is a distinct finding by the Stationary Sub-"Magistrate that the intention of the accused in entering the house "was to have sexual intercourse with the complainant's unmarried "sister. The Deputy Magistrate agrees with the said Sub-Magis-"trate and with the said finding; while admitting that it is no "offence to have intercourse with an unmarried woman, he adds "that in this case the accused should be presumed to have acted "with a criminal intent as 'nothing can be more annoying and "'insulting to complainant than such an entry.' I think this is "not a correct and proper interpretation of the law. Criminal "revision case No. 544 of 1885 quoted in page 329, *Weir's* "*Criminal Rulings*, third edition, is in point. This ruling is a "clear authority for holding that, in the circumstances stated and "found, the accused has committed no offence; for his *primary* "intent, and to that alone we should look, was not to insult or "annoy the brother but to meet the sister.

* Criminal Revision Case No. 602 of 1895.

"Again on the facts found, it is no more than likely that, as "alleged by the accused, he was enticed into the house in order to "be beaten and falsely charged with theft. Under these circum- "stances I have the honour to request their Lordships to quash "the conviction and to order that the accused who has been this "day ordered to be released on bail be set at liberty."

Counsel were not instructed.

JUDGMENT.—We agree with the opinion of the Sessions Judge based on a decision of this Court *in re Sivaratri Guruvaiya*(1) which, however, is not in accordance with a previous decision *in re Veda Gurukkal*(2). In our opinion the accused, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of the house, cannot be said to have intended either actually or constructively to cause such annoyance. It is one thing to entertain a certain intention and another to have the knowledge that one's act may possibly lead to a certain result. The section (441) defining criminal trespass is so worded as to show that the act must be done with intent and does not, as other sections do (*e.g.*, section 425), embrace the case of an act done with knowledge of the likelihood of a given consequence.

The conviction must be set aside and the prisoner who is on bail released from his bond.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Davies.

QUEEN-EMPRESS

v.

SUBBANNA.*

1896. February 14.

Madras District Municipalities Act—Act IV of 1884, s.179—Criminal Procedure Code, s. 433.

By section 179, Madras District Municipalities Act IV of 1884, it is provided "the external roofs, verandahs, pandals, and walls of buildings erected or renewed

(1) Criminal Revision Case No. 544 of 1895, *Weir's Criminal Rulings, Third Edition*, 329.

(2) Criminal Revision Case No. 249 of 1882, *Weir's Criminal Rulings, Third Edition*, 328.

* Criminal Revision Case No. 532 of 1895.