1923.

Present ; Jayewardene A.J.

INSPECTOR OF POLICE, KURUNEGALA, *v.* SABAPATHY.

80—P. C. Kurunegala, 17,274.

Ordinance No. 11 of 1894—Intermeddling with suitors—Proctor asking Inspector not to prosecute a person charged with an offence.

When a person who is charged with an offence appeals to a proctor for help and assistance, and the proctor asks the complainant not to prosecute, but to let the man off ; it cannot be said that the proctor intermeddled at all, or that he meddled without " proper excuse."

In the same way a father might interfere on behalf of his son, a master on behalf of his servant, and *vice versâ*. In short, any person interested in a party concerned in any litigation, or in the litigation itself, might do the same without becoming liable to be charged under section 5 of Ordinance No. 11 of 1894.

THE facts are set out in the evidence.

Pereira, K.C. (with him *Balasingham* and *Peri Sunderam*), for the accused.—The evidence shows that Casi Lebbe was engaged by accused to milk his cow, and that he appealed to accused for help when he was arrested. The conduct of the accused cannot in the circumstances be said to be " intermeddling." The Ordinance does not apply to a person like the accused. See *Menon v. Abdul Lebbe*[1] and *Keegel v. Asana Marikar*.[2]

Dias, C.C., for the respondent.—The accused was not retained by Casi Lebbe, and he was not acting as his proctor or legal adviser. It is clear that he wanted the Inspector not to prosecute his tout. He had no lawful or proper excuse for thus intermeddling with the Inspector. Counsel referred to *Mesu v. Karunaratne*.[3]

May 15, 1923. JAYEWARDENE A.J.—

This is an appeal by the accused, a proctor practising at Kurunegala, who has been convicted under section 5 of Ordinance

[1] *(1915) 5 C. W. R. 61.* [2] *(1912) 16 N. L. R. 69.* [3] *(1906) 9 N. L. R. 146.*

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No. 11 of 1894, called " An Ordinance to suppress intermeddlers with suitors in Courts of Justice." The present section No. 5 has been substituted for the original section by Ordinance No. 35 of 1917. It appears that one Casi Lebbe, who is described by the police as a well-known tout, was arrested by L. C. Pereira, a Sub-Inspector of Police, for interfering with some witnesses in a case in which the Sub-Inspector was prosecuting. Casi Lebbe was brought into the Police Court, and placed near the dock. The accused then approached the Sub-Inspector, who was in the company of two others—Sub-Inspectors Jacotine and Prins—and asked Pereira not to charge Casi Lebbe, but to let him off, as Casi Lebbe was his tout. Pereira and Prins were certain that the accused called Casi Lebbe his tout, while Jacotine said that accused did not use the word " tout," but said " do not prosecute as he is my man." On these facts the accused was charged under section 5. The accused says that Casi Lebbe made gestures to him indicating that he wanted his help, and he spoke to the Sub-Inspector as the man implored him. He denies having called Casi Lebbe his tout, but admits that he said : " The man is known to me, let him off." In re-examination he added that Casi Lebbe lived close to his house, and sometimes milked his cow. The accused's proctor also contended for him that section 5 did not apply to legal practitioners. The learned Police Magistrate convicted the accused, and sentenced him to pay a fine of Rs. 100. He held, I think, rightly, that section 5 was wide enough to include a legal practitioner, if he was not acting as such. He also held that the accused, on his own showing, had intermeddled with Sub-Inspector Pereira, who was a suitor before the Police Court of Kurunegala, and that it was immaterial whether the accused used the word " tout " or not. He did not find that Casi Lebbe was accused's tout, and he did not disbelieve the accused when he stated that he spoke to the Sub-Inspector, as Casi Lebbe appealed to him for help. At the argument before me I felt that the Magistrate had not dealt with the accused's excuses for intermeddling with the suitor in question, and I sent the case back for him to express a definite opinion as to whether Casi Lebbe was the accused's tout or whether he was employed by the accused to milk his cow. When the case went back, the accused's proctor applied that he be given an opportunity to urge further grounds on behalf of the accused. He wished to lead evidence to prove that Casi Lebbe was accused's milkman. This was very properly refused by the Police Magistrate, who was, however, induced to send for the Police Information Book, in which as Sub-Inspector Pereira had said at the trial he had at once made a record of what had happened. The entry in the information, which is embodied in the Police Magistrate's reply, is " Proctor Sabapathy (*i.e.*, the accused here) implored of me not to charge the accused (*i.e.*, Casi Lebbe), as he was one of his men.

This proves that Sub-Inspector Pereira's statement that accused described Casi Lebbe as his tout is incorrect. Pereira gave evidence some months after the incident, and he would have been better advised if he had refreshed his memory by referring to the entry he had made immediately after the incident, instead of trusting to his treacherous memory on an important matter of this kind. In view of the discovery of this entry, the Police Magistrate's opinion is, as was to be expected, not very definite. My own view is this: That it has been proved, in fact it was never disputed, that Casi Lebbe is a well known tout. It may be he milks the accused's cow sometimes when he is not engaged in touting. The fact that Casi Lebbe was a tout must have been known to the accused who has practised in the Minor Courts at Kurunegala for about three years, and when the accused stated that Casi Lebbe was "one of his men," as recorded in the information book, he must have meant that he was one of his touts, and what I feel is that Sub-Inspector Pereira drew this inference from what the accused told him. Even if Casi Lebbe was the accused's "tout," can he be held to be guilty of an offence under section 5, and can it be said that he had meddled or intermeddled on Casi Lebbe's behalf "without proper excuse," on the facts of this case? I have not the slightest doubt that the accused assumed, if he did not know, that Casi Lebbe had been arrested for intermeddling with some suitor or other person having business in Court, and he construed the gestures as an appeal or invitation to him to interfere on his behalf. That Casi Lebbe did make gestures is stated by the accused, it is not contradicted or supported by other evidence. One would not expect these gestures to be noticed in a Court, especially if it was crowded, but when his man was placed under arrest, the accused would naturally look towards him, and Casi Lebbe would, as a matter of course, appeal to his master for assistance to get him out of his trouble. The accused would be too ashamed to approach his tout, or to speak to him publicly, and thereby proclaim his connection with him. The request under these circumstances would be conveyed by appealing gestures. I find that Casi Lebbe did make gestures which the accused construed as a request for his interference and assistance. Section 5 is an extraordinary enactment, and I do not think its parallel can be found in any system of law known to us. In *Narayenaswami Deogu*[1] Laurie J. pointed out "with force and humor" its difficulties and its defects. In *Mesu v. Karunaratne* (*supra*) Wendt J. said: "This section is so vague that it has practically been a dead letter." Wood Renton J., on the contrary (see *Keegel v. Assen Lebbe*),[2] thought that, as the section was a part of the living law of the Colony, effect must be given to it when the facts proved were covered by it. That was, however, a bad case,

[1] *(1896) 2 N. L. R. 31.*

[2] *(1906) 9 N. L. R. 147.*

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and the learned Judge observed that if the Touting Ordinance was inapplicable, the law as to contempt of Court was quite simple and close at hand. In *Keegel v. Asana Marikar* (*supra*) Ennis J. thought that section 5 applied only to touts and vagrants, as the preamble stated that the Ordinance was intended to prevent the mischief caused by touts and vagrants meddling with parties seeking redress in Courts of Justice. The Legislature, however, still believed in the necessity and usefulness of section 5; and by Ordinance No. 35 of 1917, it amended the preamble by substituting the word "persons" in place of the words "touts and vagrants" and amplified the terms of section 5. Notwithstanding this amendment and amplification, De Sampayo J. in *Menon v. Abdul Lebbe* (*supra*) thought that section 5 applied not to persons who pursue a lawful trade, but to persons who were aimed at in the original preamble to the Ordinance. The amendment and the amplification have not rendered easier the construction of section 5. The question then is, does section 5 cover the facts proved here, and has the accused offered a "proper excuse" for his meddling as required by the Ordinance? If his excuse is a proper one, then his meddling is not an offence under section 5. The accused is a legal practitioner, and he is entitled to appear for and on behalf of and to represent any client who requests him to do so. If he so represents a client, he is entitled to ask the complainant to settle or withdraw a case without committing an offence under section 5. Then, in my opinion, he would have a proper excuse for so doing. "Meddling" or "intermeddling" is described as "the unauthorized act of one who is busy in things that ought not to concern him." In the same way a father might interfere on behalf of his son, a master on behalf of his servant, and *vice versâ*. In short, any person interested in a party concerned in any litigation, or in the litigation itself, might do the same without becoming liable to be charged under section 5. See *Narayenaswami v. Deogu* (*supra*). In *Mesu v. Karunaratne* (*supra*) it was held that a person who drew up a plaint for a suitor at the suitor's request cannot be said to have intermeddled with the suitor without lawful excuse. In the same way when a person who is charged with an offence appeals to a proctor for help and assistance, and the proctor asks the complainant not to prosecute, but to let the man off; it cannot, in my opinion, be said that the proctor intermeddled at all, or that he meddled without "proper excuse." It may be that the tie which binds the proctor to his tout makes him do so more readily, but that cannot affect the legal position. I hold, therefore, that the accused "intermeddled" on behalf of Casi Lebbe at the latter's request, but that he cannot be said to have meddled with a suitor without proper excuse within the meaning of section 5 of the Ordinance. I allow the appeal, and acquit the accused.

Appeal allowed.