1934 *Present* : **Macdonell C.J., Drieberg and Akbar JJ.**

In re A. V. DE SILVA, ADVOCATE.

IN THE MATTER OF AN APPLICATION UNDER SECTION 19 OF THE COURTS ORDINANCE.

Advocate—Conviction for touting—Moral turpitude—Courts Ordinance, No. 1 of 1889, s. 19.

Where an Advocate was convicted under section 2 (*d*) of Ordinance No. 11 of 1894 of the offence, viz., that " being a legal practitioner, he had tendered or given a gratification for procuring the employment as such practitioner of himself ".—

***Held,* the Advocate should be removed from office.**

THIS was the hearing of a rule on the respondent, an Advocate, to show cause why he should not be removed from office under section 19 of the Courts Ordinance by reason of his conviction under section 2 (*d*) of Ordinance No. 11 of 1894.

J. E. M. Obeyesekere, Deputy S.-G. (with him *M. F. S. Pulle, C. C.*), in support.

Aelian Pereira, for respondent.

Cur. adv. vult.

December 17, 1934. MACDONELL C.J.—

This was a rule calling on the respondent, an Advocate of this Court, to show cause why he should not be removed under section 19 of the Courts Ordinance, by reason of his conviction under section 2 (*d*) of Ordinance No. 11 of 1894, under the following circumstances:—

A certain lorry driver was charged in the Colombo Police Court with overloading his lorry and pleaded guilty on February 14, 1933, but the case was put off till February 20, 1933, to enable him to produce his licence. On the latter date the driver was in Court with his wife and his mother, who had come there with the sum of Rs. 4 in all, wherewith to retain a particular Proctor whom they had in mind. They were met by a tout called Jamaldeen who diverted them from their intention of retaining this Proctor, told them that he could get them an Advocate and took them to the respondent. They gave Rs. 3 to the respondent out of which the respondent gave Jamaldeen Re. 1 retaining Rs. 2 for himself. The case was called and again put off to enable the driver to produce his licence, but the respondent did not appear in Court for him. After the case had been adjourned the two women, not unnaturally annoyed at the respondent's not appearing, met him and asked for their money back again. The respondent did return them the Rs. 2 but told them that for the return of the other Re. 1 they must look to Jamaldeen. They did ask Jamaldeen for the return of this Re. 1 but he refused. They then complained to a policeman and their statements of the above events were taken the same morning. Jamaldeen was convicted under Ordinance No. 11 of 1894, and the respondent was then himself charged under section 2 (*d*) of the same, namely, that he "being a legal practitioner, had tendered or given a gratification for procuring the employment as such practitioner of himself". He was convicted on this charge on October 10, 1933, which conviction was affirmed on appeal in this Court on July 23, 1934. This seems to be the first case of a legal practitioner having misconducted himself in contravention of this Ordinance, No. 11 of 1894. The respondent was in Court personally and said to us "I have no cause to show. There was no dishonesty. I submit myself to the Court". It was urged on behalf of the respondent that whereas at one time he had had a considerable practice, he had yet lost the same during recent years because of competition from younger and more energetic members of the Bar, and the Court was told that he had therefore been "driven by misfortune to the common subterfuge of employing a tout to give him some assistance", and it was added that this was by no means an isolated case. We were asked, as we understood, to say

that whereas employing a tout would be very improper for a young Advocate endeavouring to build up a practice, and would be conduct meriting removal, in the case of a more senior man who had once had a practice and was trying to regain the same, the offence of employing a tout should be more leniently dealt with.

The argument strikes us as a somewhat astonishing one, and we cannot accede to it for a moment. The Bar and its traditions exist by reason of the independence of each Advocate. He must succeed in accordance with his merits, and it would be subversive of all the traditions of the Bar if he were to employ any such assistance as that of a tout to obtain him practice. This proposition seems to us an obvious one, and it is difficult to take seriously the contention that employing a tout can under any circumstances be a venial offence.

It was argued further to us that the offence proved against the respondent did not involve any moral turpitude or dishonesty. The fact in the case that having taken the money he did not appear in Court does, if unexplained, tend in the direction of dishonesty, but, quite apart from that, the conduct proved against the respondent does show moral turpitude and an entire forgetfulness of the duties and traditions of the profession to which he belongs.

It would be wrong to allow any Advocate who has so far misbehaved as to employ a tout, to remain upon the roll of Advocates, and if so the order must be that the respondent be removed from that roll.

DRIEBERG J.—I agree.

AKBAR J.—I agree.

Rule made absolute.