Present: Ennis J.

1912.

KEEGEL *v.* ASANA MARAKAR *et al.*

625—P. C. Jaffna, 7,363.

Touts—Ordinance No. 11 of 1894, s. 5—Intermeddling with suitors.

The Ordinance No. 11 of 1894 applies to touts and vagrants only.

A tout is one who procures the employment in any legal business of any legal practitioner in consideration of remuneration moving from such practitioner, or proposes to a legal practitioner to secure his employment in legal business in consideration of such remuneration.

APPEAL from a judgment of the Police Magistrate of Jaffna (W. K. H. Campbell, Esq.).

The facts of this case are shortly as follows. On July 17, 1912, a case came before the District Judge of Jaffna (M. S. Pinto, Esq.), in which one Abdul Cader and his parents sued one Putappar. The District Judge was of opinion that the case should be settled out of Court. The case was fixed for August 2 for that purpose. On the morning of that day, before the case was called, " a group of people (including the third accused) were discussing the case outside the Court, and certain people who had no right to interfere at all strenuously opposed the settlement." The three accused in this case were charged, under Ordinance No. 11 of 1894, with having intermeddled with suitors without an excuse. The evidence showed that the third accused " was seen in Court heaps of times when he had no case." But he " accounted for his presence in Court " on that day, which explanation the Magistrate accepted:—

He has partially accounted for his presence in Court. Judgment was given in a case of his that day without notice it is true, but perhaps he had heard through his counsel, and I accept that.

The learned Magistrate acquitted the first and second accused, and held that the third accused opposed the settlement and sentenced him to pay a fine of Rs. 100, in default two months' rigorous imprisonment.

The third accused appealed.

H. A. Jayewardene (with him *Talaivasingham*), for the accused, appellant.—The evidence does not disclose any offence under Ordinance No. 11 of 1894. There is a good deal of difference of opinion as to what class of persons come within the operation of the Ordinance. The Ordinance never contemplated that a person who speaks to a litigant about a case should be guilty of an offence under the

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Keegel v. Asana Marakar

Ordinance, which was aimed solely at professional touts. [Ennis J. —Who is a tout? And what is the law in India on the point?] In India the procedure is to call upon a person to show cause why he should not be proclaimed a tout. If he is so declared, his name is posted up (Legal Practitioners Act, 1879, section 36). It was never intended by the Ceylon Ordinance that a person who speaks to a litigant about the Courts and tries to bring about a settlement should be punished as a tout. Counsel referred to *Naranaswamy v. Deogu*,[1] *Mesu v. Karunaratna*,[2] and *Keegel v. Assan Lebbe*.[3]

No appearance for respondent.

September 5, 1912. ENNIS J.—

In this case the accused has been charged and convicted that he " did without lawful excuse intermeddled with S. M. Abdul Cader, who had business in the District Court of Jaffna." The conviction is under section 5 of the Ordinance No. 11 of 1894.

The provisions of sections 5 of this Ordinance have been on several occasions the subject of observation by the Supreme Court, and the difficulties of interpreting the section have been pointed out.

The Ordinance was enacted to " provide against the mischief by touts and vagrants meddling with parties who seek redress in the Courts of Justice," and whatever the construction of section 5, it must, I think, be read with the intention stated in the preamble, and apply to touts and vagrants only.

In this case it is suggested that the accused is a " tout." No definition of tout is given in the Ordinance, but the ordinary definition of a tout is one who procures the employment in any legal business of any legal practitioner in consideration of remuneration moving from such practitioner, or proposes to a legal practitioner to secure his employment in legal business in consideration of such remuneration.

There is nothing in the evidence to show that the accused in this case is such a person, and in the circumstances I must allow the appeal and quash the conviction.

Set aside.

[1] *2 N. L. R. 81.* [2] *9 N. L. R. 146.*

[3] *9 N. L. R. 147.*