

Present: Lascelles C.J., Wood Renton and Grenier JJ.

THE KING v. JAYETILLEKE.

3—D. C. (Crim.) Kurunegala, 3,435.

Petition-drawer—Drawing petition for filing in Court—No offence under s. 5 of Ordinance No. 12 of 1848—Contempt of Court.

A petition-drawer who drew a petition for a person called upon to show cause why she should not be appointed guardian *ad litem* over a minor was held not to have committed an offence under section 5 of Ordinance No. 12 of 1848.

The section applies to the case of a proctor who practises without the prescribed annual certificate; it has no application to the case of a person who is not a proctor.

LASCELLES C.J.—“It does not follow that because a prosecution such as the present one has failed the Courts are powerless to prevent unauthorized persons from doing work which should properly be done by proctors. To such persons to act as proctors may amount to a contempt of Court, and in any case it is open to a Court to decline to accept pleadings or other documents drawn by unauthorized persons”.

THE facts are set out in the judgment of Lascelles C.J.

Allan Driberg (with him *J. Joseph*), for the appellant.—Drawing a petition is not an offence under section 5 of Ordinance No. 12 of 1848. The section refers only to the case of a proctor who carries on the business of a proctor without a stamped certificate.

The accused did not act as proctor. He professed to act as a petition-drawer only. The Ordinance does not affect petition-drawers. The observations of Hutchinson C.J. in *In re Wijesinghe*¹ are not correct.

Walter Pereira, K.C., S.-G., for the Crown.—The accused is not a proctor; he professed to act as a proctor. The accused is guilty of an offence under section 1, though he may not be guilty under section 5. Section 289 of the Penal Code provides a penalty for offences under section 1. (Chief Justice.—The accused did not profess to act as a proctor!) The accused drew up a petition, which is a pleading, for filing in Court. Only parties or their recognized agents can do it. Sections 24 and 25 of the Civil Procedure Code say who recognized agents are.

Cur. adv. vult.

¹ (1910) 14 N. L. R. 43.

1912. March 1, 1912. LASCELLES C.J.—

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This is an appeal against the conviction of the appellant under section 5 of Ordinance No. 12 of 1848, in that " he, as a proctor, and without having previously obtained a stamped certificate under the Ordinance No. 12 of 1848, did carry on proceedings in a Court, to wit, the Court of Requests of Kurunegala, to wit, by drawing for one Dissanayake Mudianselage Ukku Menika, for reward, a pleading intended to be used in the said Court of Requests of Kurunegala, to wit, a petition dated September 20, 1911," and that he thereby committed an offence under the said section of the said Ordinance.

The accused in this case is a petition-drawer, and it appears that when one Ukku Menika was called upon to show cause why she should not be appointed guardian *ad litem* over a minor relation, she got the accused to draw the petition which is the subject of the present charge. The petition bears the mark of Ukku Menika, and it purports to be drawn by the accused. The substance of the petition is that, as the petitioner had no interest in the first respondent or his property, she declined to be guardian *ad litem* over him, and she begged that the application to have her so appointed should be dismissed. In my opinion the conviction under section 5 of Ordinance No. 12 of 1848 is clearly wrong. The title of the Ordinance is " for making provision in certain respects touching the admission of advocates and proctors; and for the annual registration of practising proctors," and the preamble to the Ordinance recites that " for the better regulation of proctors practising in this Island, it is expedient that every such proctor should be required to take out annually a certificate that the person named therein is a proctor, and authorized to practise as such." The body of the Ordinance is in strict conformity with the title and preamble. Section 1 deals with the admission of advocates and proctors. Section 2 provides for the granting of a certificate annually to proctors. Section 3 sets out the procedure which is required in order that a proctor may obtain an annual certificate. Section 4 provides that when a proctor has not procured an annual certificate within the prescribed time, the Registrar or District Judge shall not afterwards grant a certificate without an order from the Supreme Court. Then comes section 5, which runs as follows:—

" Any person who, as a proctor, after the twenty-fifth day of March next ensuing, shall sue, prosecute, defend, or carry on any action or suit, or any proceedings in any Court, without having previously obtained such stamped certificate as aforesaid which shall be then in force, shall be incapable of obtaining any taxation of any bill of costs due to him, or of maintaining any action or suit for the recovery of any fee, reward, or disbursement for on in respect of any business, matter, or thing done by him as a proctor as aforesaid whilst he shall have been without such certificate as aforesaid, and shall also incur and be liable to a fine not exceeding twenty pounds. "

From the language of the section, and especially from the expression "shall be incapable of obtaining any taxation of any bill of costs due to him, or of maintaining any action or suit for the recovery of any fee, reward . . . in respect of any business, matter, or thing done by him as a proctor as aforesaid whilst he shall have been without such certificate as aforesaid . . ." it is abundantly clear that the section applies to the case of a proctor who practises without the prescribed annual certificate, and that it has no application to the case of a person who is not a proctor.

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The learned District Judge appears to have doubted the applicability of section 5 of Ordinance No. 12 of 1848, but he considered that he was bound by the decision of this Court in *In the Matter of a Rule served on D. J. Wijeyesinghe for Contempt of Court*¹. In that case the observations of Hutchinson C.J. with regard to the applicability of section 5 to a case like the present were *obiter*, and were not necessary for the decision of the case. But whatever may have been the view then taken of the construction of section 5, I am clearly of opinion that it has no application whatever to the present case.

The learned Solicitor-General contended that, even if the conviction under section 5 were not sustainable, it could, nevertheless, be supported under section 1 of Ordinance No. 12 of 1848 and section 289 of the Penal Code. The former section provides for the admission of advocates and proctors, and enacts that "no person not duly authorized to act as an advocate or proctor previously to the time when this Ordinance shall come into operation shall be entitled to act as an advocate or proctor who has not obtained such written authority as aforesaid."

In order to bring the appellant within the prohibition contained in this section, it is necessary that he should have "acted as a proctor." It seems to me that it would be straining the language of the section to hold that a person who prepares a petition, such as that which forms the ground of this charge, is acting as a proctor, and I am unable to adopt the suggestion that the conviction can be supported under section 1 of Ordinance No. 12 of 1848 and section 289 of the Penal Code. It does not follow that because a prosecution such as the present one has failed, the Courts are powerless to prevent unauthorized persons from doing work which should properly be done by proctors. For such persons to act as proctors may amount to a contempt of Court, as was held in *In the Matter of a Rule served on D. J. Wijeyesinghe for Contempt of Court*¹; and in any case it is open to a Court to decline to accept pleadings or other documents drawn by unauthorized persons.

In my opinion the appeal should be allowed, and the conviction set aside.

¹ (1910) 14 N. L. R. 43.

1912. WOOD RENTON J.—

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I agree. Sections 24 and 25 of the Civil Procedure Code define the classes of agents who have a right to act in civil cases. The definition of "pleader" in section 3 of the Criminal Procedure Code does the same as regards criminal cases. These enactments are sufficient to enable the Courts to decline to permit, and, if need be, to treat as a contempt, the attempted intervention of unauthorized persons in civil or criminal proceedings before them. The present case cannot, in my opinion, be brought either under section 1 or under section 5 of Ordinance No. 12 of 1848.

GRENIER J.—

I agree on all points with the rest of the Court. I reserved the case, not because I had any doubts as to the prosecution being founded upon an Ordinance which had no manner of application to a person in the position of the appellant, but because the Crown presented the case in the Court below as a test case, and a decision by a Bench of two or more Judges is always desirable in such circumstances.

Appeal allowed.

