1933 *Present :* **Dalton A.C.J., Drieberg J. and Koch A.J.**

In re A. P. JAYATILEKE.

IN THE MATTER OF AN APPLICATION UNDER SECTION 19 OF THE COURTS ORDINANCE, 1889.

Proctor—Conviction of criminal offence—Unlawful assembly—Unfit to be member of legal profession.

Where a proctor was found guilty of being a member of an unlawful assembly, the common object of which was to take property by means of criminal force, and with causing hurt to those in occupation of the property,—

Held, that he was unfit to be a member of the legal profession and that his name should be removed from the Roll of Proctors.

THIS was an application under section 19 of the Courts Ordinance.

Illangakoon, Deputy S.-G. (with him *Pulle, C.C.*), in support.

de Zoysa, K.C. (with him *C. V. Ranawake*), for respondent.

Cur. adv. vult.

August 3, 1933. DALTON A.C.J.—

An order has been granted on the respondent, a proctor of the Supreme Court, calling upon him to show cause why he should not be removed from office. On June 21, 1932, he was convicted at the Midland Circuit with six other persons on five counts of the indictment laid against him, which were as follows:—

(1) That on or about August 2, 1931, at Lunugala, in the District of Badulla, they were members of an unlawful assembly, the common object whereof was by means of criminal force or show of criminal force to take possession of property, to wit, a dwelling house situated on a land called Elleanadarawatta, and that they thereby committed an offence punishable under section 140 of the Ceylon Penal Code.

(2) That at the time and place aforesaid, they, being members of the unlawful assembly aforesaid, did in prosecution of the said common object commit house-trespass, by entering into the house in the occupation of one Ellen Perera with intent to use criminal force; and that they thereby committed an offence punishable under sections 146 and 437 of the Ceylon Penal Code.

(4) That at the time and place aforesaid, they, being members of the unlawful assembly aforesaid, did, in prosecution of the said common object, voluntarily cause hurt to the said Ellen Perera; and that they thereby committed an offence punishable under sections 146 and 314 of the Ceylon Penal Code.

(6) That at the time and place aforesaid, they, being members of the unlawful assembly aforesaid, did, in prosecution of the said common object, voluntarily cause hurt to M. Marthelis Fernando; and that they thereby committed an offence punishable under sections 146 and 314 of the Ceylon Penal Code

(8) That at the time and place aforesaid, they, being members of the unlawful assembly aforesaid, did, in prosecution of the said common object, voluntarily cause hurt to Dissanayake Mutumenika; and that they thereby committed an offence punishable under sections 146 and 314 of the Ceylon Penal Code.

In respect of the first and second counts he was sentenced to rigorous imprisonment for 6 and 15 months respectively, and in respect of the fourth, sixth and eighth counts to 9 months' rigorous imprisonment on each count, the sentences to run concurrently. An application was thereafter made on his behalf to Sir Philip Macdonell, Chief Justice, who presided at the trial, to state a case on a point of law, misdirection being alleged, under the provisions of Chapter XXXI. of the Criminal Procedure Code. This application was refused. Respondent then applied to the Privy Council for special leave to appeal but this application was also refused, these proceedings having been held over pending the decision in that latter application.

In showing cause against the order now sought to be obtained, respondent has filed an affidavit in which he traverses the correctness of the findings of the jury on his trial. It is not open to him, however, to question the correctness of his conviction in these proceedings. Counsel has urged further on his behalf, however, that the offence was to some extent only a technical one inasmuch as the respondent only knew on August 2, the date of the offences, that the dwelling house referred to in the first count of the indictment was occupied by the woman Ellen Perera, and had acted upon a mistaken view of his rights. On that point all that it is necessary to say is that the Chief Justice, on his refusal to state a case, pointed out circumstances deposed to in evidence whence the jury might reasonably infer, if they accepted the evidence, that respondent well knew that Ellen Perera was in occupation of the house some time prior to August 2. It was a question of fact for the jury to decide. The trial lasted almost a month, and evidence was given by accused himself and by others on his behalf. It is clear that the jury refused to accept his version of the incidents of that night.

It was then urged on respondent's behalf, citing the words of Lord Esher in *In re Weare* [1] that although a man may have been convicted of a criminal offence, which *primâ facie* makes him a person unfit to be a member of the honourable profession of solicitor, it must not be carried to the length of saying that whenever a solicitor has been convicted of a criminal offence the Court is bound to strike him off the roll. This Court, I think I am correct in saying, in cases of this nature has always acted in accordance with the view as to its duties there approved of, and has held that the question whether or not a proctor be removed from office must depend upon the circumstances of each case.

Being in agreement then with Mr. de Zoysa as to the way in which the Court must approach this matter, I ask myself the question whether the acts proved against the respondent, and the offences of which he has been convicted, make him unfit to remain a member of the honourable profession of a proctor. It is not necessary, in my opinion, to go into the matters referred to by Mr. Illangakoon, which he stated were admitted at the trial, questions relating to matters in dispute between the respondent and Ellen Perera arising out of the administration of the estate of her deceased husband. Mr. Illangakoon urged that the respondent was in fact advising her on matters in which his interests were opposed to her's. It is sufficient,

[1] *(1893) 2 Q. B. at p. 445.*

in my opinion, for the purpose of answering the question I have put to myself, to refer to the incidents of the night of August 2 and the incidents immediately preceding that date, bearing in mind of course that the jury was satisfied respondent knew before August 2 that Ellen Perera had entered into occupation of the house.

The evidence shows that, on the footing that she was entitled to do so by inheritance, she entered into occupation of the house on July 2. The respondent's agent was there at the time and made complaints against her which were inquired into, but she remained in the house. There is then evidence to show that on the night of August 2 respondent, who was at Passara, left for Lunugala in a car with four other persons, the 5th, 7th, 8th and 9th accused, arriving at the scene of the offences between 9 and 10 P.M. Besides Ellen Perera, her sister Muttu Menika and the latter's husband were in the house. On arrival there, according to the evidence, the respondent with others entered the house, assaulted the inmates, the two women being seriously assaulted according to the medical evidence, and there is evidence to show that respondent personally took part in inflicting some of these injuries. There is also medical evidence to support Mutu Menika's complaint that a criminal assault was committed on her by one of the gang brought there by respondent, although it is not alleged that respondent was responsible for this. The occupants being then turned out of the house spent the rest of the night in fear, hiding from their assailants, and reported the occurence to the Police at Lunugala next morning.

This is not a simple case of criminal trespass where a party has taken a mistaken view as to his rights. The evidence shows that respondent was the moving spirit in the incidents of that night. He has in fact been dealt with as such, since no other of the accused (all but the 2nd, 8th and 9th being convicted) has received more than 5 months' rigorous imprisonment. His disputes with Ellen Perera explain his conduct, although of course they cannot justify it. He decided to take the law into his own hands to expel her from the property and recover possession of it, collected a gang of persons to help him in his project, coming with some from a considerable distance, and under cover of darkness entered the premises with them and attacked the three inmates, two of them being defenceless women, inflicting numerous injuries on them and afterwards driving them out in terror into the night. The conduct of the respondent—an educated man, and one who has on his own showing occupied public positions in the Uva Province—apart from the criminality of it, was most disgraceful and reprehensible even as an ordinary subject of the King, and still more so as a member of the legal profession. It makes him unfit to remain a member of an honourable profession. The order asked for will therefore be allowed, and his name will be removed from the Roll of Proctors.

DRIEBERG J.—I agree.

KOCH A.J.—I agree.

Rule made absolute.