

THE OUT-DOOR PROCTOR

James Cecil Walter Pereira

1881

**New Edition with an Introduction
by**

Vijaya Samaraweera

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J. C. W. PEREIRA, K. C.
(Solicitor - General)

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Law & Society Trust

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PREFACE

Over two decades ago, during the course of research undertaken while teaching at the University of Sri Lanka at Peradeniya (as the institution was then known) on the legal system introduced by the British in nineteenth century Sri Lanka, I came across, quite by chance, J.C.W. Pereira's *The Out-Door Proctor* at the University Library in a collection of Sri Lankan pamphlets. This little booklet of verses published in 1881 captivated me. I had not seen any reference to it in the literature – indeed, it is not even listed in H.A.I. Goonetilleke's comprehensive multi-volume work, *A Bibliography of Ceylon*. I referred to *The Out-Door Proctor* in several essays I published on the legal system of nineteenth century Sri Lanka. However, I always felt that it deserved more than a passing reference in a scholarly writing. It merited a wider audience, not necessarily on account of its literary worth (which, in any case, I was not competent to evaluate), but because of its vivid and rich description of what transpired daily at the Police Magistrate's Court in Colombo in the last decades of the nineteenth century. The irony and wit with which this description is presented, only added to its value.

The way I saw it, placing Pereira's *The Out-Door Proctor* before a wider audience entailed bringing the work out in a new edition together with an introduction which discussed its historical context. However, during the time I was at Peradeniya, for one reason or another, I was unable to devote the time that was required

to prepare the manuscript for publication, and my eventual departure for the United States effectively led me to abandon the project. My return to Sri Lanka in September 1996 as the Fulbright Senior Scholar at the Open University for the academic year 1996-97 gave me the opportunity to revive the project. I immediately encountered a problem though: the copy of *The Out-Door Proctor* which I had referred to at the Peradeniya University Library could no longer be found, and an initial search in the libraries of other major repositories failed to turn up a copy of the work. A subsequent search at the National Museum Library by Bimsara Dissanayake of the Law & Society Trust, who was working as a researcher for me, produced results, and I was able to have access to another copy (probably the only surviving one) of *The Out-Door Proctor*.

How *The Out-Door Proctor* was eventually located by Bimsara Dissanayake and then copied to produce this edition is a story which starkly testifies to the obstacles which researchers encounter when working at the National Museum, one of the great cultural treasures of Sri Lanka. The story is long and complicated and need not be recounted here in detail. However, two elements may be noted briefly to highlight our experience. First, the Library's card catalogue did not properly list *The Out-Door Proctor*. Bimsara found reference to this work in a jumbled up miscellaneous collection of entries; in effect, he had to go through virtually the entire card catalogue covering the Museum's collection of books to find the proper entry. Secondly, once the book was located, we could not get it copied in its entirety. We were permitted to photocopy only a portion, and the rest had to be transcribed by

hand by Bimsara. I leave it to the reader to picture how frustrating this exercise was to us.

This republication project was initiated and largely completed during my tenure as the Fulbright Senior Scholar at the Law Division of the Open University of Sri Lanka and as a Consultant to the Law & Society Trust. I owe a great debt to Bimsara Dissanayake; if not for his commitment and diligence as well as patience, I could not have undertaken this project. My thanks to Upali Amarasiri, the Director of the National Library of Sri Lanka, for his assistance in the preparation of the manuscript. I also wish to thank the Law & Society Trust for sponsoring the re-publication of *The Out-Door Proctor*. Finally, as always, my wife Dineli's support was invaluable.

Vijaya Samaraweera

Colombo, September 30, 1997

INTRODUCTION TO THE NEW EDITION

by

Vijaya Samaraweera

J.C.W. Pereira's *The Out-Door Proctor* appeared in print in the form of a pamphlet in Colombo in 1881. Pereira was prompted to produce this verse composition, as he himself explained in the introduction, by the controversy that had arisen in the mid-1870s over the role of "Out-Door Proctors" in the courts of law centered at Hulftsdorp. Although entitled *The Out-Door Proctor*, it dealt not only with that well-known and much maligned intermediaries, who were, in fact, integral to the working of the legal system in nineteenth century Sri Lanka.¹ It describes with marvelous sense of irony and wit the busiest criminal court of the times, the Police Magistrate's Court in Colombo, and it is a description which, in many respects, embraces the colonial legal system itself. Slight though it is — in its original edition, it ran into mere 16 pages — *The Out-Door Proctor* is a valuable source to those who study how the law worked in the later nineteenth century Sri Lanka. But, it is more than that: its evocation in verse of the Hulftsdorp world in the early 1880s remains unique and unmatched,² and its

¹ Though Sri Lanka was formally adopted as the name for the country only in 1972, it will be used in place of Ceylon in this introduction consistent with modern historical scholarship.

² Employing a different art form which embodies wit and irony, J.L.K. Van Dort caricatured legal personalities in his *Ceylon: Its Near Past* published in 1951. Although his caricatures reveal acute observations of the personalities concerned, Van Dort's work cannot be compared to the breadth found in Pereira's *The Out-Door Proctor*. See, J.L.K. Van Dort, *Ceylon: Its Near Past*, London, 1951.

description has endured remarkably, for the milieu it evoked has not disappeared altogether. These qualities merit its republication and presentment to a new generation of readers.

James Cecil Walter Pereira was born to a wealthy Sinhala-Burgher family (his father was a Sinhala and Mother a Burgher) in Colombo on September 10, 1856.³ He had his secondary education at two of the leading schools in the island, the Colombo Academy (later, Royal College) and at St. Thomas' College, and matriculated at the Calcutta University. He chose, as did his older brothers, law as his career. His choice was not surprising, for by the mid nineteenth century law had become the career of choice of the English-educated youth in Sri Lanka.⁴ Training for the law, Pereira served his apprenticeship under one of the prominent lawyers of the times, F.C. Loos who represented the Burgher community in the Legislative Council as an unofficial member, and he was admitted as a Proctor of the District Court of Colombo in 1878. A distinction was maintained at this time between Proctors of the Supreme Court (who were permitted to practice in all the courts, including the Supreme Court) and Proctors of the District Courts (whose practice was limited to the District Courts and the lower courts), and his admission as a Proctor of the Supreme Court in 1880 enabled him to join the

³ For further biographical details of J.C.W. Pereira see, A.R.B. Amerasinghe, *The Supreme Court of Sri Lanka: the first 185 years*, Colombo: Sarvodaya, 1986, pp. 177-79; A. Wright (ed.), *Twentieth Century Impressions of Ceylon*, London: Greater Britain Publishing Co., 1907, p. 105.

⁴ On the evolution of the legal profession in the nineteenth century see, Vijaya Samaraweera, *Burgher Lawyers of 19th Century Sri Lanka*, Colombo: Law & Society Trust, 1987.

more honored ranks. He began practicing with his two brothers, and quickly became one of the leading criminal lawyers at the Police Magistrate's Court in Colombo.

In 1885, Pereira proceeded to England to qualify as a Barrister. The Council of Legal Education had been established in Colombo in 1873 for the training of Advocates within the island, but Pereira, like many of his contemporaries, chose to obtain the more prestigious Barrister's qualification to qualify for admission to what was recognised as the "higher" branch of the legal profession. Pereira's career path of becoming a Proctor first and then seeking the Barrister's qualification to become an Advocate was not unusual, either — indeed, one of his own older brothers had taken precisely that route. In England, Pereira was admitted to the Middle Temple, and in 1887 was called to the English Bar. He returned to Sri Lanka the same year, and was enrolled as an Advocate of the Supreme Court in 1888. In 1901, Pereira was admitted as an Advocate of the High Court of Madras as well.

Pereira became a widely respected and successful lawyer. His appointment as a King's Counsel in 1904 confirmed his standing in the profession. However, the judiciary and the official bar beckoned him. In the early years of the twentieth century, he was appointed, both in acting and in regular capacities, to the judicial posts of the Commissioner of Assize and Police Magistrate of Colombo. In the official bar, he was a Crown Counsel, acted as the Solicitor General and the Attorney General, and held the appointment of Solicitor General on a regular basis as well. After acting in the capacity on two occasions, Pereira received a regular appointment as a Puisne Justice in 1910, and he served the highest court of the land until his retirement as a Senior Puisne Justice in 1915.

Pereira was active in both local and national politics prior to joining the official bar. He was a member of the Colombo Municipal Council for a number of years, and played a prominent role in the Ceylon National Association in its early years.

Pereira was only twenty-five years old and had practiced law for barely three years when he wrote *The Out-Door Proctor*. He never returned to this genre of writing. However, he became a well-known scholar of Roman-Dutch Law and the laws of Sri Lanka, and produced several legal texts, most notably the *Institutes of the Laws of Ceylon* which gained authoritative standing.⁵ Pereira typified that unique legal personality, the professional who found the time to engage in scholarly endeavor in the midst of a busy career as a lawyer or as a judicial official and make a significant contribution to the academic study of law.

The British inherited two distinct legal systems when they began their rule in the island of Sri Lanka.⁶ In the Maritime Provinces, the coastal belt which they conquered from the Dutch in 1796 and retained at the Peace of Amiens in 1802, the British

⁵ For a bibliography of Pereira's writings see the Appendix at p. 12

⁶ The most comprehensive treatment of British rule in Sri Lanka remains, K.M. de Silva (ed.), *Ceylon from the Beginning of the Nineteenth Century to 1948*, vol. III of *The University History of Ceylon*, Colombo: University of Ceylon Press Board, 1973. For the legal developments under the British see, T. Nadaraja, *The Legal System of Ceylon in its Historical Setting*, Leiden: E.J. Brill, 1972. On the evolution of the legal system in the nineteenth century see, Vijaya Samaraweera, "British Justice and the 'Oriental Peasantry': the Working of the Colonial Legal System in Nineteenth Century Sri Lanka" in, R.I. Crane and N.G. Barrier (eds.), *British Imperial Police in India and Sri Lanka: A Reassessment*, Columbia, MO.: South Asia Books, 1981.

recognized the legacy of Dutch courts of law and procedure, the traditional law systems which the Dutch had codified, and the Roman Dutch law. In the Kandyan Provinces, the territory ceded to the British under the terms of the Kandyan Convention of 1815 which was signed after the defeat of the King, the British inherited the traditional Sinhala system of administering justice. The two territories were governed separately until 1833. In the Maritime Provinces, the British soon began to introduce their own courts and procedure as well as English laws, and the direction which they were committed to taking was embodied and symbolized in the introduction of the jury system in 1802. Within a decade and half, the system of administration of justice of the littoral was completely transformed, and the structure which emerged had the firm imprint of the new rulers. In the interior, changes were slow in coming, primarily because the British had "guaranteed" to the Chiefs and people of Kandy their laws, institutions and customs and their established forms of administering justice at the Kandyan Convention. The successful crushing of the "Great Rebellion" of the Kandyans in 1818 introduced a new context for British policies; the act of rebellion provided the justification for them to introduce new institutional arrangements for the governance of the Kandyan Provinces.

In 1833, radical and far-reaching measures in the colonial administration in Sri Lanka were mandated through what has come to be known in the historiography as the Colebrooke-Cameron Reforms. In the sphere of judicial administration, the changes were brought about by the Charter of Justice of 1833. The Charter was drafted by Charles Hay Cameron, who with his colleague W.M.G. Colebrooke had come to the island as Commissioners of Eastern Enquiry to investigate the colonial administration in the 1820s. An early convert to English philosopher Jeremy Bentham's

teachings, Cameron had established himself as a leading figure in the Benthamite circles in England by the time he began to work on the judicial arrangements for Sri Lanka (Colebrooke had responsibility for all other areas of the colonial administration). The Charter introduced an entirely new, comprehensive and unified system for the administration of justice, complementing the uniform structure introduced in the general administration on the basis of Colebrooke's proposals. It was an elegant, symmetrical and highly rationalized arrangement, as it should have been, given its Benthamite genesis.⁷

The 1833 Charter provided the basic framework for the administration of justice in Sri Lanka during much of the nineteenth century. However, the integrity of the Benthamite structure was not to be maintained for too long after its introduction, and the vision which had guided Cameron in his design of the judiciary and the imperatives he had articulated for its functioning gradually faded away.

Several different developments contributed towards this transformation. The economic and social developments, largely brought about by the broad-based reforms of 1833, were certainly important factors; the consequences of the forces these developments unleashed were to be placed before the judiciary — manifested above all in litigation over land ownership — and the judicial arrangements which Cameron provided proved incapable of dealing with them. The constant tinkering with Cameron's arrangements by the colonial officials, primarily in order to meet

⁷ On the Charter see, Vijaya Samaraweera, "The Ceylon Charter of Justice of 1833", II *Journal of Imperial and Commonwealth History*, 263-77 (1974).

the enormous demands made upon the courts by litigants, too, brought about considerable changes.⁸ But, in the ultimate analysis, perhaps most crucial was the emergence of elements who mediated between the new judicial arrangements and the colonial peoples. Cameron's judiciary was utterly alien to the experience of the colonial population, and for it to have received acceptance by the colonial peoples there necessarily had to be intermediaries who had the capacity and ability to facilitate their access to and understanding of the unintelligible system. This was precisely what the intermediaries accomplished: they paved the way for the innovation to take root in the new soil. However, in the process they brought about profound changes in the shape, form and mission of the judiciary Cameron's Charter had introduced. The elegant, symmetrical and rationalized structure crafted by Cameron became distorted, and his vision of cheap and expeditious justice for Sri Lanka was undermined.

There were a number of different types of intermediaries who emerged in the years following the introduction of the 1833 Charter.⁹ The intermediaries relevant to this discussion were identified in contemporary sources by a number of different terms — among them, “touts”, “hawkers”, “brokers of proctors”, “common barristers”, “jungle proctors” and “petty practitioners” — but in general they were collectively known as “out-door proctors”, the term which is used in J.C.W. Pereira's work. Out-

⁸ See, Vijaya Samaraweera, “Litigation and Legal Reform in Colonial Sri Lanka”, 2 *South Asia* n.s. 78-90 (1979).

⁹ For a detailed discussion of these intermediaries see, Vijaya Samaraweera, “Benthamite Justice and the Emergence of Legal Elites in Nineteenth Century Sri Lanka”, paper presented at the Annual Meeting of the Canadian Law and Society Association, Montreal, Canada, June 5, 1995. This paper will appear in, *K.M. de Silva Felicitation Volume*, Kandy (forthcoming).

door-proctors can properly be described as informal practitioners of law. They possessed neither a formally acquired legal education or training, nor a formally prescribed place in the judicial structure. Evidence suggests that the origins of the out-door proctors can be traced back to the office of Notary Public. As the Lieutenant-Governor of the colony observed in 1877,

*the Notary Public has ... become the village lawyer. He not only attests but proposes all the instruments requiring notarial execution; he brings lender and borrower together when a loan or mortgage is required; his counsel is sought for in matters of legal difficulties and to him are confided the secrets of many families.*¹⁰

The British required no formal credentials for this office, but it is clear that social standing in society, whether on the basis of caste ranking or family recognition, was the determining factor in the appointment of Notaries.¹¹ Contemporary records also suggest that many out-door proctors were those who had imbibed in the formal legal culture through their involvement in courts – thus acquiring a “habitual experience”, as one source described it —¹² and who then parleyed the knowledge and experience thus gained into a livelihood.

Many out-door proctors operated in the guise of lawyers. An official inquiry declared in 1884 that out-door-proctors “more

¹⁰ W.M.D.D. Andradi, “English Educated Ceylonese in the Official Life of Ceylon, from 1865 to 1883”, unpublished Ph.D thesis, University of London, 1967, p. 133.

¹¹ *Lakminipahana*, 21 September 1864.

¹² *Lakminipahana*, 29 November 1862.

or less infest[ed] the purlieus of every court in Ceylon, great and small", and that they thrived on the ignorance of litigants and defrauded them by promising them services and assistance of a professional order.¹³ It is obvious that the out-door-proctors were able to function in court complexes and provide services to litigants in courts only through the cooperation of minor court officials. Indeed, as Pereira's *The Out-Door Proctor* amply testifies, the collusion between these two groups was highlighted as the major source of corruption in courts in the last decades of the century. There is another explanation for the large presence of out-door proctors in and around courts: they also functioned as "touts" or "brokers" of lawyers.¹⁴ After all, as Hulftsdorp exemplified, the great majority of lawyers tended to establish their offices near courts. If contemporary evidence is to be believed, the services of out-door proctors were called upon only by "inferior men in the race for professional distinction".¹⁵ Regardless of whether the out-door proctors acted in the guise of lawyers or as touts for the professionally trained, they were commonly held to be responsible for the promotion of litigation which was held to have no legitimate basis, or "frivolous litigation" to use the nineteenth century terminology. As John Capper expressed it 1877, this "race of harpies of the law ... thrive on the follies of the litigants and ... fan slumbering embers into a blazing flame."¹⁶

The out-door proctors were not confined to the major towns where courts were located. They were very much present in the

¹³ *Sessional Paper XXIII*, pp. 15-16.

¹⁴ Andradi, *op.cit.*, p. 124

¹⁵ Quoted in, *Id.*

¹⁶ John Capper, *Old Ceylon, sketches of Ceylon life in the olden times*, Colombo: Ceylon Times Press, 1877, pp. 208-209.

villages as well. In village society they were identified as *goda perakadoruvas* or “village proctors”, a term which still has currency, and they functioned as the “experts” who were consulted by those who needed advice or assistance in legal matters.¹⁷

In the last decades of the nineteenth century there were many occasions when the out-door proctors were hauled before the courts for practicing law without a license.¹⁸ However, as a group they received their greatest public visibility in 1875 when twenty-eight of them were charged before the Police Magistrate’s Court in Colombo under the Vagrant’s Ordinance No. 4 of 1841 for “not having any visible means of subsistence”.¹⁹ It is this event and the controversy surrounding it that led J.C.W. Pereira to write his *The Out-Door Proctor*. The defendants were convicted by the Police Magistrate but the conviction was eventually overturned by the Supreme Court on the ground that the statute could not be applied to the individuals who were charged. The publicity which was generated by the case led to calls for legislation to prohibit the out-door-proctors from working near court complexes as well as calls for the lawyers to refrain from employing them in their practices. There was no legislative outcome, but there was “voluntary” action on the part of Colombo lawyers not to work with out-door-proctors.²⁰ This reveals the extent to which the publicity surrounding out-door proctors had become an embarrassment to the legal profession.

The legal action under the Vagrant’s Ordinance exemplified the hostility displayed towards the out-door-proctors by judicial officials and the established members of the legal profession.

¹⁷ *Lakminipahana*, 27 December 1862.

¹⁸ See, *Sessional Paper XXIII* of 1884.

¹⁹ On the Vagrant’s Ordinance see below at note 21.

²⁰ Andradi, *op.cit.*, p. 125.

Pereira's *The Out-Door Proctor* embodies this hostility, though at his hands it is tinged with humor and irony. However much they were condemned in some circles, there is little doubt that out-door-proctors were valuable elements in the judicial administration in colonial Sri Lanka. In combining an official role with an informal one, as the Notaries Public did, or in spreading the knowledge and experience acquired through the formal process, as those with litigation exposure did, these elements added a crucial informal dimension to the judicial administration that was introduced by the 1833 Charter of Cameron. These dimensions greatly altered and extended the shape and form of Cameron's structure in that the formal arrangements alone were no longer relevant to the working of the judiciary. Further, it is arguable that these informal dimensions were crucial in paving the way for the implanting of Cameron's innovative design in the colonial soil. To be sure, in the process values which underlay the judiciary were undermined — "frivolous litigation" exemplified this — but that constituted an inevitable and necessary accommodation, given how far removed the values projected in Cameron's design were from the colonial society.

In preparing the manuscript of J.C.W. Pereira's *The Out-Door Proctor* for this edition, editorial changes were made only in its introduction. The argument and the main body of the work has been left untouched. As for the introduction, changes were limited to the format and punctuation.

APPENDIX
BIBLIOGRAPHY OF J.C.W. PEREIRA'S WRITINGS

1. *The Out-Door Proctor*, Colombo: n.p., 1881.
2. "Sources of Our Laws", 1 *Ceylon Law Review*, 5-9 (March 1899).
3. *An Historical Outline of the Sources and Development of the Roman Law, and the bearing of that law on the common law of Ceylon*, Colombo: Ceylon Observer Press, 1894.
4. *Institutes of the Laws of Ceylon, founded on, and following the arrangement of the late Mr. Justice Thomson's work bearing the same title*, Colombo: Government Printer, 1901,1904. 2 v.
The Laws of Ceylon, Colombo: Government Printer, 1913.
(2d edition of the *Institutes* published in one volume).
5. *The Law Relating to the Right to Compensation for Improvement*, Colombo, Messenger Press, 1909.

THE OUT-DOOR PROCTOR

J.C.W. Pereira

1881

Introduction

The cry for special legislation against "out-door proctors" in several recent numbers of the *Ceylon Observer*, the *Catholic Messenger*, and some other local newspaper, induced the writer to devote a portion of his leisure hours to the composition of the hasty lines now presented to the public. The actual extent of the havoc and mischief caused by these individuals in our courts of justice, pre-eminently in the minor courts of Colombo, is known to but a few gentlemen interested in the due administration of justice in the Island; and is deserving of all the censure and opprobrium that either verse or prose could suggest. The writer, in the course of a rather rambling practice at the bar during a period of nearly three years, has observed carefully the devices adopted by these despicable creatures, the Proctors that employ them, and some of the minor officers of our minor courts, for the one grand object of "making money"; and, the genuineness of the incidents recited in this work may hence be depended upon.

Although the out-door proctors are now allowed "full fling" at their nefarious practices, they have not been altogether free from prosecution before this. They have successfully gone through three trials, the last of which was a case in the Police Court of Colombo (No. 20,848) against twenty-eight of their number. This case seems to have been instituted on the 29th of April, 1875, at the instance of the much esteemed Police Magistrate of that time, Mr. P. W. Conolly. The plaint charged the defendants with having

*on the 29th day of April, 1875, and on divers other days,
at New Bazaar, wandered abroad, not having any visible*

*means of subsistence, and not giving a good account of themselves, in breach of the 4th section of the 3rd clause of Ordinance No. 4 of 1841.*²¹

Several Proctors seem to have boldly come forward both to assist the prosecution, and to give evidence against the defendants. Some portions of the evidence of one of these Proctors may, at least, contribute to the amusement of the readers. This evidence would, at the present day, be considered inadmissible, being too general and indulging in opinion rather than bare statement of fact; but it has been, in this case, received, and there is no question as to its correctness:

I am in practice for only ten months. All the defendants, except the fourteenth, are out-door proctors. They take as much money as they can out of the suitors, and then they get money from the unprincipled Proctors. I have no doubt these men fleece the suitors. Their calling is dishonest. They wander abroad. Defendants came to me, when I first

²¹ The clause 4 of the 3rd section of the Vagrant's Ordinance No. 4 of 1841 reads:

"3. Every person committing any of the offences hereinafter mentioned in this clause shall be deemed an idle and disorderly person within the true intent and meaning of this Ordinance, and shall be liable upon the first conviction to be imprisoned, with or without hard labour, for any term not exceeding fourteen days, or a fine not exceeding twenty shillings.

....

(4) Every person wandering abroad or lodging in any verandah, outhouse, shed, or unoccupied building, or in any cart, vehicle, or other receptacle, without leave of the owner thereof, and not having any visible means of subsistence, and not giving good account of himself."

See, *A Revised Edition of the Legislative Enactments of Ceylon*, Colombo: Government Printer, 1913., I, pp. 138-9.

joined the profession, and they asked me for a santhosam.²² The latest quotation of their charges is three rupees in the pound. The seventh defendant is as much an out-door proctor as any other. His employment by Mr. A . Proctor is a mere cloak.

The learned Police Magistrate convicted the defendants, and sentenced them to fourteen days imprisonment at hard labour, each; and, in delivering judgement, remarked,

Men, who, it is proved, hover about the streets leading to the courts, like so many ill-omened birds of prey, from early morning till late at night, and who have no trade or legitimate calling but who subsist by swindling, must, I submit, be considered to be 'wandering abroad and not giving a satisfactory account of themselves'. This 'wandering abroad without being able to give a satisfactory account' constituting the gist of the offense as described in the ordinance. I do not think therefore that with the evidence before me, I am putting a strained interpretation on the ordinance in convicting the defendants. Should, however, my view prove to be erroneous (as I presume defendant's counsel will take an appeal) some change in the law should be made to meet the case of these defendants who work such incalculable mischief in getting up false cases and fomenting litigation among the natives. But, possibly, a mistake has been made in prosecuting these men before endeavouring to bring about the punishment of their aiders and abettors, those unprincipled proctors who employ and

²² bribe.

make use of them. These most unworthy members of a worthy profession should not be allowed to continue practicing any longer and degrading themselves and their profession: they should be put down with as strong a hand as their confreres, the out-door or jungle proctors.

The Supreme Court, however, set aside the conviction, and acquitted and discharged the accused, remarking in the course of a long judgement:

It appears that these persons were in the habit of frequenting the precincts of the police court, and earning their livelihood (or a portion of it) by introducing suitors to certain proctors practicing in that court, and receiving a reward or commission from the proctors to whom the clients were introduced, in consideration of the service so rendered. There is no doubt that the prevalence of a system of this kind is a great evil, not only as giving to unprofessional persons over whom the judges have no immediate control, and for whose character there is no guarantee of any kind, a direct interest in encouraging litigation; but also of supplying unprincipled persons of this class the opportunities of defrauding ignorant native suitors of their money, under colour of procuring for them professional advice and assistance. Cases of dishonesty of this kind have been brought to our notice in which the offenders have been severely punished, and a system that gives rise to such evil is deserving of the most emphatic condemnation. But it must not be forgotten that the existence of the practice of employing, what are called 'out-door proctors' is due not to the persons who

are so employed, but to those practitioners who employ them; and the Supreme Court concurs with the view expressed by the police magistrate that the conduct of such practitioners in soliciting business by making use of the services of persons of questionable repute to bring them clients, and then rewarding these persons with a share of the fees, is highl unprofessional and discreditable.

However desirable it may be that a practice so deservedly condemned should be put an end to, we must be none the less careful not to strain the operation of an ordinance to meet a case to which it was not intended to apply, or to uphold a conviction on insufficient evidence, in order to check an admitted evil.

By these remarks, the absolute necessity for special legislation to suppress the misdeeds of out-door proctors, is placed beyond all doubt; and, if the lines now offered to the public awaken those concerned in local legislation to a sense of their duty to agitate for such special legislation, the writer will consider himself amply rewarded for his work.

ARGUMENT

The baneful effect of legal technicalities and the misdeeds of out
- door proctors on the cause of justice, deplored;
The scene about courts of justice, generally;
The C-o Courts, as at present constituted;
The Advocates;
The Proctors;
The Out-door proctor introduced and described;
The aggrieved villager coming to the courts to complain of an
assault on him;
The interview between the out-door proctor and the villager,
wherein the former advises the latter to retain a Proctor
(recommending "Ghost") and to tack on a false charge of
theft to the assault to prevent the case being referred to the
Gansabawe;²³
The Proctor described;
The proceedings at the meeting of the Proctor, the hawker, and
the villager;

²³ *Gamsabha*, the informally constituted dispute resolution bodies in Kandyan villages had survived the demise of the Kandyan kingdom but found no place in the structure established by the Charter of 1833. The colonial officials made several unsuccessful attempts to revive the institution in the following decades. Eventually in 1871, under the Village Communities Ordinance, they were re-established in an elaborate form but the model chosen for this revival was not the institution of the old order but rather the notion of "village communities" put forward principally by Sir Henry Maine in his *Village Communities in the East and West* (1871). See, Vijaya Samaraweera, "Litigation, Sir Henry Maine's Writings and the Village Communities Ordinance of 1871" in, L. Prematilleke et.al. (eds.), *Senarat Paranavitana Commemoration Volume*, Leiden: E.J. Brill, 1978, pp. 191-203.

The case, its commencement, and final dismissal;
Simang, comes to the courts to surrender having heard of warrants
being issued against him, consulting the clerk who insists
upon a bribe to take bail;
Simang perplexed as to whether the better course is to bribe the
clerk or to fee a Proctor;
The toutor approaches Simang, and, with a view to accomplish
his double purpose of bribing the clerk and feeing a Proctor,
advises the latter course;
Ghost retained for a crown;
Ghost's application to admit Simang to bail proves unsuccessful;
The hawker now advises Simang to bribe the clerk;
The clerk bribed, and Simang admitted to bail;
The Proctor that first commissioned a tout;
The court - clerk and his misdeeds;
Bribery, and its great influence in our courts, chiefly as a power to
induce our clerks to do work for which they draw their
legitimate pay from Government;
The lawyer's life condemned;
A return to the misdeeds of the tout;
His practice of giving false evidence for hire, and there in, about
the witness box;
The dire effects of such false evidence illustrated by an example
within the personal knowledge of the author;
Appeal to the Q. A.,²⁴ urging upon him the necessity for special
legislation against out- door proctors and the in-door ones
that employ them;
Conclusion.

²⁴ Queen's Advocate. The office was re-named the Attorney General in 1884.

THE OUT-DOOR PROCTOR

E' EN thou, fair justice! this degen'rate day,
Thy stern decrees and thy unsullied sway,
From law and usage loose and ill-defined,
And fraud and falsehood, no protection find.
That time when, free from pond'rous tomes that bore
Ambiguous terms and mystic legal lore,
when no shrewd technicalities served to fence.
Thy seat, but by thy handmaid, Common Sense,
Both led and aided, thy wert wont to smile
within the precincts of this Indian Isle,-
(when too, by art untrammelled, 'neath thy sway,)
Provincial Courts ²⁵ and Land - raads ²⁶ led the way,
Is past indeed; and has succeeded next.
The day when Tact and Skill e'er seek pretext
Of legal knots and meshes 'neath the shade,
Thy rule to curb, and thy commands evade,-
The day when candour seeks her rank in vain,
But Art, Deceit, and Lying rampant reign,-
And more than all, this spurned and hapless day,
Accursed with this "ill-omened Bird of prey,"

²⁵ Provincial Courts, first established by Governor Sir Fredric North in 1802, were the primary courts of law in the Maritime Provinces until the Charter of 1833 introduced new arrangements for the administration of justice.

²⁶ The Dutch had established *Landraden* (or *Landraads*) with jurisdiction over land matters in the littoral during their rule. They were given recognition by the British after they conquered the territory but were soon replaced by the Provincial Courts. They were briefly revived in 1810.

Whose devious flight, with freedom rare, it wends
In hall or hut, where'er thy power extends.

HARK Justice then, while we review thy fate,
And deeds done in thy spacious halls relate.
O'erwhelmed by dizzy masses, there they stand -
The sinful signal of a sinful land.
Here, justices the laws of peace expound,
There, drunken mobs, in fury, stamp the ground;
Here baton - armed, the smart red-caps parade,
And there, the sly pickpocket plies his trade.
Thus round thy mansions, side by side, elect
To play their parts aright the check and checked;
Thus Force and Pilfer, at thy portals, vie
To mock thy presence, and thy guards defy.
Now yonder hall, with massive bench arrayed,
In semicirc'lar form the tables laid,
Around which daily sit our learned team
Of lawyers' cute, proclaims thy court supreme,
There 'bove the bench the Lion seems to growl,
And 'neath the bench the Registrar doth scowl.
There sit "my Lords" with wisdom in their looks,
And tables groan beneath the weight of books.
There lawyers plead both ripe in age and raw,
Now facts explain, and now discuss the law,
Till, noise and bluster o'er, and pleadings termed,
Down thunders from the "drowsy bench," "AFFIRMED."
Then turning thence, few stunted trees adorn,
The District Court, the lawyers' hope forlorn.
Here Law and Wit, by turns, their potions deal,
Nor doth Philosophy her stores conceal;

Dutch jurists old, the judge's fancies suit,
 From sober Vander Linden ²⁷ down to Voet.²⁸
 Here proctors by the sapient Judge are told
 That they to speak or plead should ne'er make bold.
 The mighty Bench alone doth send forth sound,
 And briefless advocates sit silent round.
 But, while with clam'rous voice and deaf''ning sound,
 And with long-winded words, the judge expound
 The English law, th' enraptured natives watch,
 Mixed with the Dutch, and tempered by the Scotch,
 [The (trial of) suits in sheer stagnation lies,]
 And motion rolls do all the work comprise:
 And, while the belted scamps in court remain,
 And try, with threats, strict silence to maintain,
 Nought heeding, Beck'noff hither wends his way,
 And, grinning wide, his drunken pranks doth play.
 Turn we our sight from such unmeaning sports,
 To scan the working of our minor courts.
 As first and foremost then, our thoughts arrests.
 Replete with sin the court of small requests.
 While Ceylon's Civil Service teems, in truth,
 With England's lettered sons and Ceylon's youth;
 And while obdurate nuts of law ne'er lack
 To test the petty judge's skill to crack;

²⁷ J. van der Linden's *Rechtsgeleerd Practicaal en Koopmans Handboek* (1780) was recognized by the Supreme Court of Sri Lanka as one of the foremost authorities on the Roman-Dutch Law from early British times. Nadaraja, *op.cit.*, p. 280 (note 243).

²⁸ J. Voet's *Commentarius ad Pandectas* (1698-1704) is the pre-eminent authority on Roman-Dutch Law in Sri Lanka. Nadaraja, *op.cit.*, p. 286 (note 272).

How strange, indeed, this bench, so often still,
Smart snipe-shots and conchologists do fill !
Not far from this, that hall exposed to view,
With its innumerable loafer crew,
And railed, wide doors, where idle gazers flock,
And dusty tables, and a filthy dock,
Chief clerk in specks, but seedy coat and vest,
Both sized as best his scanty means suggest,
And men in chains, bespeaks, in plainest style,
The chief Police Court that adorns our isle.
There, Irish temper clumsy suitors hails,
And Irish wit with Irish jokes prevails;
But still behold, there keen Intelligence,
Experience intermixed with Common Sense,
And strict Impartiality—that Heaven-born Gift—
With utmost care, the weight of ev'dence sift.
Thus then, each judge, as he his bench arrays,
His learning, whims, or ignorance displays:
Thus sport and business both alike indeed,
Within our courts, in happy tune, proceed.

INTENTLY now to view, let'us prepare,
The motley crowd that earn a living there.-
The proud, though artful, advocates well might
Stand first in rank, with sable robes bedight,
Deep versed in law, but deeper still in art
To lure the native with his purse to part,
They drain the rich of all they could afford,
Nor leave untouched the pauper's scanty hoard.
'Mong these are some, that, at some date afar,
As proctors shrewd and steady, graced the bar;

But English views and manners soon they prized,
And these from us our errant friends enticed;
But sooner still, alas! their dues they earned:
They —— went, but —— home returned.

THE sharp, astute and nimble proctor band,
Within our courts, the next in order, stand;
In this, indeed, are some, not slackly pursed,
Frank and upright, and e'en in law well versed.
But 'mong the countless proctors, 'neath the sun,
'Midst us, behold the impecunious one:
Ten thousand vices in his heart contend,
And filthy lucre his eternal end;
In tatters loose and swinging at his sides,
Now here, now there, from court to court, he strides.
Not he, whom flaming from th' etherial sky
Th' Almighty hurled, in horrid Hell, to lie,
Through beds of raging fire and hideous dearth,
Impatient roamed in search of mother earth,-
Not he, in ancient times, as said in Job,
Roamed to and fro, and up and down the globe,-
As round the courts, from his distasteful home,
In quest of gain, this proctor seems to roam.

BUT who that human form with knavish port,
Slow pacing at the door of yonder court,
With effort, does his blear-eyed visage raise,
And surly look at every mortal gaze ?
Ah! 'tis the cheat that every fraud supports,
Ah! 'tis the vulture of the minor courts:
Behold in him and in his vacant stare,

The veritable out-door proctor there.
In him there gleams with glance askance and sly,
Beneath a ruffled brow, a bloodshot eye,
While roasted gram or betel serves to clog
The foul effluvia of the morning grog;
He sniffs at nooks, and every object spies,
As slyly crawls a cat in search of mice.
And now some untaught rustic, with dismay,
And feeble motion, thither, wends his way;
The wily touter his approach espies,
And off to him with nimble foot he hies;
The unsuspecting rustic closely views,
And seeks his mind with questions to confuse.
The rustic soon explains, - assault and might
O'er him had rampant been the previous night,
His jaw was fractured, he could scarcely talk,
And though on foot he moved, could scarcely walk;
To court he'd hied with weary steps and faint,
To air his grievance, and to lodge his plaint.
The hawker thus rejoins; - "Permit my friend,
To you one salient, sound advice to lend;
Such petty squabbles here no welcome meet,
They back to your own village courts retreat;
But tack some trivial theft to this assault,
Of purse with ten rupees, and stretch the fault;
Or, what might better tell against the thief,
A comb worth twenty-five and handkerchief.
But, by yourself, to knotty law ne'er speed,
The kind advice of some good proctor heed.
About these courts, condemned from youth to roam,
To me they've grown familiar as my home;

My view of proctors can admit no doubts,
Full well I've studied all their in's and out's;
They my displeasure dread, my help entreat,
They court my friendship, and my visits greet.
Not far from hence, where yonder highways meet,
A proctor shrewd there lives in Ferry Street;
In figure tall, and sound in sense, I vow,
With pointed chin and nose and narrow brow.
To him come haste, and his paternal care
Of clients, and his tender mercies share."
Poor Isang thus clean nabbed by Brumpy, goes,
Nor once anticipates his future throes:
The wretched couple, wriggling through the host
That crowd the courts, proceed direct to "Ghost".
Now Ghost, with sunken eye, dispersed anew
His drunken revels with the morning dew.
With pate well-oiled, and lank and open hands,
And with unbuttoned coat, fee-thirsty stands.
Thus stand a ravenous wolf, when first its prey
It scan in thicket basking on its way;
And thus, indeed, in some barbaric lands;
The grim assassin by his victim stands.
The work of this quaint trio now proceeds,
Ghost questions, Isang listens, Brumpy pleads;
By Brumpy's calculations fair and free;
At two rupees is fixed the proctor's fee,
The suitor marks the proctor's timely frown,
And, one by one, the coins are counted down.
On this hard cash, the hawker would rely
To pocket his commission, by and by;
But *now*, with coin by simple Isang made

With toil unceasing, Brumpy must be paid.
And hence, alas! the hawker doth purloin,
From hapless Isang's hands, some rusty coin
That had, for ages long and past, lain still
In ancient box or some propitious till.
And now, with all due legal forms observed,
The plaint, at last, is filed, and summons served;
The date arrives, the proctor ev'dence leads;
And, in due form and style, the trial proceeds;
And Ghost attempts the judge the law to teach,
He plucks up courage and he makes a speech;
But Ghost's rank nonsense by the judge is hissed,
The *theft* is disbelieved, the case dismissed.
Thus, thus, O Lanka! are thy scions seized,
And by this savage hawker grimly fleeced:
Such, then, the deeds, the tricks, the plans, in vogue,
To cheat and rob, of this "pestif'rous rogue."

NOW 'gain behold, that being in yonder nook,
That 'gainst that window leans with pensive look;
From morn till noonday, in that self same mood,
Now yawning and now thinking has he stood,
O why thus lingers he of all mankind? -
The foremost query of th' inquiring mind-
Some spiteful boer himself from home had torn
To courts, and had an affidavit sworn;
And charged poor Simang with a varied lot
Of crime, as theft, and riot, and what not?
And duped the Justice with affliction feigned,
And 'gainst poor Simang's person, warrants gained:
But soon, some imp that in this plot had played

A part, the news to Simang had conveyed;
And he, with all despatch, and heeding naught,
His way to court had made, and quickly sought
That rare embodiment of vices dark-
The noted swindler-prince, the bailing clerk-
And had to him, with sorrow, told his tale,
Besought his mercy, and had tendered bail:
But, true to all the instincts of his tribe,
To bail poor Simang, he would have a bribe:
But Simang had, in hamlets, been informed,
That proctors various, wondrous deeds performed,
And hence with tott'ring feet and nerveless hands,
As wond'ring doubting, fearing, there he stands,
What make his choice, or what the better mark,-
To fee a proctor, or to bribe the clerk,-
The faithless hawker comes; his aid concedes;
And simple Simang, soon, his counsel heeds.
And now, with falt'ring voice and cheerless face,
'Fore this wiseacre Simang lays his case,
"Eh"! Brumphy cries, "why make thyself the tool
For foul extortion, thou besotted fool !
Around these courts, by hundreds, proctors swarm;
Some shrewd, some ruthless, some in feelings warm.
Of these, from out thy purse, unflinching pass
A crown to Ghost, or half to Kehelgasbaas;
Thy work would soon be o'er, the clerk appeased,
Bail quickly taken, and thyself released."
They go to Ghost, and Simang quickly down
Pays Ghost the small, but vastly welcome crown;
The fee being bagged, the proctor, like a Turk,
Runs here, runs there, and makes a show of work.

But artful Ghost, in vain his labour spends,
His spurious efforts ill-luck sad attends;
For, in despite of cause by him adduced,
The bail's deemed insufficient, and refused.
Now Brumpy, Simang to that nook conducts,
Where first he stood; to bribe the clerk instructs.
Again, there Simang stands, as once described,
And soon, with one rupee, the clerk is bribed;
That bail, that once deficient was decreed,
Is now admitted, and now Simang's freed.
Thus, such atrocious means the tout prefers
To profit proctors, and to fill his purse:
Thus then, right-thinking men and judges hark !
He fees the proctor, and he bribes the clerk.
His share has Brumpy from the clerk's rupee,
And his commission from the proctor's fee.

AH ! that low proctor who, with base design,
The tout, to tout for work, did first assign !
Be his disgraceful deeds unknown to fame,
Ten thousand curses showered on his name;
Be he detested, as of men the worst,
Who, at the touter, tossed the rupee first,-
Who his firm patronage' at first did stretch
To this inhuman and perfidious wretch.

AND, thou O Clerk ! thy endless tricks to paint,
My wit's too lim'ted and my pen too faint.
Thy scabby deeds have quite intol'rant grown,
Though yet, their dire effects to few are known.
Is't true, to suitors oft at thine abode,

Thou points, at law, success to gain, the mode ?
Is't news or scandal, that is thine in full
The fatter part of every stolen bull ?
One thing is sure, and that, thou earnest with care,
Three times thy legal pay by means unfair.
On thee by thy superiors errant cast
Is such control and such discretion vast,
That those poor beings that fail to sacrifice
Their paltry gains to thy predominant vice-
The vice of fell extortion - have their bail
Refused, and turned themselves to pine in gaol.

AND thou, grim Bribery, grand motive power,-
The great propeller at the present hour !
This hour, controlled by science' hand supreme,
Are huge and massive loads propelled by steam.
Electricity soon its force might lend
To human agents, and with steam contend:
But thine the power, such force to far excel,
And human limbs and human thoughts propel-
Within our courts, what handsome government pay,
Could scarce induce our clerks to e'en essay,
Thy power unshaken them compels to rise,
And with dispatch to finish in a trice.
Thy force is pre-required by some to serve,
To shake a muscle, or to stretch a nerve.
Not such alone thy power, but marvels grand
Are wrought by thine unseen mysterious hand.
By thee induced, important papers here
Slide off, and long-lost records re-appear;
Thou couldst the course of many an action halt,

Prolong a case, or cause or purge default;
Affect of many a faultless suit the fate,
Its notes expunge, and pleadings antedate.
In short, thy baneful sway all good suspends,
And down to peons from our clerks extends;
Thy noxious rule around us casts its spell,
And of our courts doth make an earthly hell.
Yet, to this hell, how rash their courses steer
The striplings of Ceylon from year to year !
To such deluded victims, and to those
That feed on strife, a word before I close,-
Of modes of life beneath the welkin vast,
Elect or love the lawyer's life the last.
With grand luxuriance flushed, within this isle,
Tea, coffee, cocoa, and cinchonas smile;
While round them mountains frown, and breezes sport,
Their tree-tops waving, beckon your support.
Proceed to them, to them your succour lend,
A life relieved of strife and vices spend.

BUT why digress, and why my subject spurn ?
To tout pernicious then anew to turn,-
I lack the pow'r, though not the zeal to sketch
This ruthless, rude, repulsive, rowdy wretch.
Scarce one dishonest deed, the Courts about
Is done, but in it, his share has the tout.
But when, regardless of its dread effects,
To swell is faults, with perj'ry he elects,
Just indignation then begins to flow
Upon him, and his deeds intol'rant grow:
For, when some ev'dence by some imp's required,

Oft and anon, this low dissembler's hired;
 To court he slips, his store of lies unlocks;
 Without the least compunction mounts the box,-
 That box in which by man without dismay,
 A million lies are spouted, day by day
 In which the errant Christian freely brooks
 To mock his faith, profane his Book of books,
 The first commandment of his God disdain,
 And with irrev'rence use His name in vain,-
 That box where Budhists, Moors, and Hindoos flock,
 With law to trifle, truth and honour mock,-
 That box that must an emblem stand alone
 Of falsehood and abuse,- that liar's throne.
 He mounts the box, and from his gullet loose,
 Lies after lies in fit succession ooze;
 Nor lets a frown or lisp his words to taint,
 And, though a churlish fiend, he looks a saint.
 Tis by such ev'dence, thousands writhe with pains,
 Dragged from their homes, despatched to pine in chains;
 And by such reckless ev'dence, who can state
 How many have no gallows met their fate ?
 Full well I know that once a heinous crime
 On honest men was cast in Jacko's* time,-
 Four virtuous striplings in the prime of youth
 Who victims soon to falsehood fell, in truth,
 Their trial them did Jacko send to stand,
 Before the first tribunal of the land.
 There, by such ev'dence, how profuse their tears,

* The nickname of a quondam commissioner and J.P.²⁹

²⁹ Justice of the Peace.

When sentence passed on them for ten long years !
Two years have 'lapsed, but still, how far the date,
That must conclude the long, remaining eight !
But yet, how long, the tout maintain his sway,
How long will truth and justice be his prey !
How long his deeds is it our doom to brook,
To whom, alas, for aid to whom to look !
No more to let the tout, the law defy,
On thee, Queen's Advocate, must we rely.
'Tis thine, good Sir, as leader of the bar,
'Tis thine the lot his baleful course to mar;

His mischiefs, by existing law, to quell,
Or special legislation, to dispel;

Exterminate him from the Courts about,
Exterminate the aiders of the tout.
And, by some present law or future act
That our sage politicians may enact,
When from our courts the tout is driv'n afar,
With him abetting members of the bar,
Then, Justice fair! e'en this degen'rate day,
Thy stern decrees and thy unsullied sway,
Though law and usage loose and ill-defined
Within such narrow, needless limits bind;
No more would they, this spurned and hapless day
Be picked by this "ill-omened Bird of prey,"
Whose devious flight, so free, no more 't would wend
In hall or hut, where'er thy arms extend.

