1939 *Present* : **Soertsz A.C.J., Keuneman and de Kretser JJ.**

THE SOLICITOR-GENERAL *v.* COOKE.

IN THE MATTER OF A RULE ISSUED ON J. M. T. COOKE, PROCTOR OF THE SUPREME COURT

Proctor—Conviction for criminal breach of trust—Money entrusted by client—Attempt at reparation—Courts Ordinance, s. 17 (Cap. 17).

Where the respondent, a Proctor, was convicted of criminal breach of trust of money entrusted to him by a client,—

***Held,* that he should be removed from the roll of Proctors and that suspension from office for a period would not be a sufficient punishment for his misconduct.**

In re *a Proctor* (*40 N. L. R. 367*) referred to.

THIS was an application by the Solicitor-General under section 17 of the Courts Ordinance asking that the name of the respondent be removed from the roll of Proctors.

J. W. R. Ilangakoon, K.C., A.-G. (with him *D. Janszé, C.C.*) in support.

E. F. N. Gratiaen (with him *S. Nadesan,* instructed by *R. R. Nalliah*), for the respondent.

Cur. adv. vult.

July 14, 1939. SOERTSZ A.C.J.—

This is an application made by the Solicitor-General under section 17 of the Courts and Their Powers Ordinance, asking that the name of the respondent be removed from the roll of Proctors, on the ground that in D. C. (Crl.) Jaffna, case No. 4,149, he was convicted of the offence of criminal breach of trust of a sum of Rs. 300 entrusted to him by a client, for investment.

The evidence discloses not only a serious offence committed with every circumstance of deliberation, but also measures taken thereafter, involving the fabrication of evidence, in order to make the victim believe that his money had been put out on a mortgage. In point of fact, the money appears to have been used by the respondent, for purposes of his own, in the financial difficulties in which he found himself at this time. His story that, with the knowledge of his client, he gave this money to a moneylender has been rightly rejected by the trial Judge.

In this state of things, I was not a little surprised when the respondent appeared in answer to the notice issued on him to show cause, and submitted that he had nothing to say in regard to the conviction, but that in regard to the application by the Solicitor-General, he desired to say that there was no occasion for the removal of his name, and that it would be sufficient to order his suspension from office for a period. This submission shows either an entire inability on the part of the respondent to appreciate the gravity of his offence, or a too sanguine expectation of such a lack of appreciation on our part. It was said on his behalf that

he had made restitution, that he had restored the money to his client. The respondent was relying on certain observations made in similar cases that a Court would take into account the fact that the delinquent has made restitution. No doubt, that is a fact which will be considered, or perhaps I should say, will not be ignored, on an occasion like this, but the weight to be attached to it must depend on the circumstances of each case. For my part, I can attach but little weight to a restitution that is nothing more than a last resort, when every attempt to defeat and delay his client had failed. I cannot help feeling that when the respondent returned the money he was thinking more of the advantage that might accrue to him from this course when the Judge was considering the question of sentence than of his obligations to his client.

The case of *In re a Proctor*[1], was cited to us. In that case a concession was made to the respondent on the ground that the criminal breach of trust of which he was convicted was criminal breach of trust of property entrusted to him in his private and not in his professional capacity. This is a distinction which I am not disposed to make, but I do not think it necessary to say anything more on that point, for in the case before us it is admitted that the respondent was acting in his professional capacity.

It is impossible not to feel sorry for a professional man in a plight like that of the respondent, but it is not open to us to show a forbearance or practise a generosity that ignores the interests of the public and the prestige of the profession to which the respondent belongs. If I may respectfully say so, I share the view of Coutts-Trotter C.J. *in re Narasimhachariar, High Court Vakil, Kumbakonum*[2], "We have not only to consider the interests of the Vakil even should we believe that his repentance is sincere and that his present intention is that he will give no cause for further complaint . . . . but we have to consider the public in a matter of this kind, and we have also to consider the legal profession generally. How can we say that a man who has been guilty of two such grossly dishonest and improper acts as these, can safely be entrusted with the interests and monies of future clients. We cannot. Were we to suspend him, we should mark our sense of disapproval of such conduct by a suspension so long that it would practically be equivalent to debarring him from ever efficiently practising again, and also we should prevent him from doing what we hope he will endeavour to do, namely, to put his affairs in order and earn his livelihood in some other walk of life. These cases are of such gravity that we feel that, in justice to the public and the profession, we can do no less than order that the Vakil be struck off the rolls".

For exactly these reasons, I would order that the name of the respondent be struck off the roll of Proctors.

KEUNEMAN J.—I agree.

DE KRETSER J.—I agree.

[1] *40 N. L. R. 367.*

[2] *A. I. R. 1925 Madras 797.*