1973 *Present :* **G. P. A. Silva, S.P.J., Wijayatilake, J., and Pathirana, J.**

In re A. THIRUGNANASOTHY

S. C. 21—In the matter of a Rule under Section 17 of the Courts Ordinance

Legal practitioners—Proctor—Power of Supreme Court to remove him from office—Scope of Courts Ordinance (Cap. 6), s. 17.

Where a Proctor is guilty of misappropriating money due to his client he may be removed from office under section 17 of the Courts Ordinance. It is immaterial for this purpose that he has been acquitted on an indictment containing a charge relating to this identical transaction, when the reasons for the acquittal, though sound, are technical in nature.

RULE under Section 17 of the Courts Ordinance on a Proctor of the Supreme Court.

S. Sharvananda, for the respondent.

Ananda de Silva, Senior State Counsel, as *Amicus Curiae.*

Cur. adv. vult.

June 8, 1973. G. P. A. SILVA, S.P.J.—

This matter of this Rule arose as a result of an affidavit affirmed to on 31st January 1966 by one Nadarajah Kumaraswamy to the effect that he and his wife had requested the respondent Thirugnanasothy, in his capacity as Proctor representing them, to file action for the recovery of a sum of Rs. 6,000 lent by them to one Swaminathan Subramaniam on a Mortgage Bond and that the respondent, having recovered the said amount without their knowledge or consent, had failed to pay over to any of them any part of the amount so recovered. On a direction by His Lordship the Chief Justice to hold a disciplinary inquiry, the Law Society held such inquiry and forwarded the proceedings to this Court. The respondent, although noticed by the Disciplinary Committee of the Law Society to be present at this inquiry, forwarded a medical certificate expressing his inability to attend the Inquiry which, however, having been posted on the previous day, reached the Law Society after the inquiry was concluded. It is also relevant to state here that the respondent was tried before the District Court of Jaffna, on indictment, with having between the 21st March, 1957 and 18th May, 1957 misappropriated the sum of

Rs. 6,000 belonging to the affirmant Kumaraswamy, but was acquitted. The District Court Judgment which has been made available to us shows, however, that the acquittal was based on two grounds both of which were technical, namely, that there was no proof that the money belonged to Kumaraswamy nor that the misappropriation took place between the dates as alleged in the indictment.

At the inquiry before us which was entirely independent of the findings of the Disciplinary Committee of the Law Society or the District Judge's decision, evidence was placed by the Senior State Counsel in support of the Rule and the respondent himself gave evidence in his defence.

The evidence of Nadarajah Kumaraswamy, whom I shall hereafter refer to as the Petitioner, was that somewhere in 1951 he entrusted to the respondent, a close relative, a sum of Rs. 6,000 belonging to his wife for investment in a mortgage and that the respondent had accordingly lent this amount to one Subramaniam. The money had in fact been handed over to the respondent by one Dharmalingam, an uncle of the Petitioner, and he learnt somewhere in 1952 both from Dharmalingam and the respondent that the investment had been made. Subsequently, the Petitioner had received from the respondent by cheque a sum of Rs. 840 as interest on this investment and, as the borrower had defaulted payment, the Petitioner instructed the respondent to institute action for the recovery of the money. The Petitioner was employed in the Central Bank and his visits to Jaffna where the respondent practised were few and far between. On a subsequent occasion when the Petitioner visited Jaffna, the respondent informed him that he had filed action for the recovery of this money. Thereafter, every time he returned to Jaffna, when the Petitioner inquired from the respondent what the position was in regard to the case the reply he received was that it was pending. He also wrote about 300 letters to the respondent, as he said, but did not receive a single reply. He later contacted a clerk in the Land Registry from whom he heard that the case had been settled. This information was received about 6 months before he reported the respondent. If this evidence is true it was only in 1965 that the Petitioner would have heard of the settlement.

An examination of the case record P2 shows that action on the Mortgage Bond in question was filed on 14.11.1956, and that of consent, judgment was entered for the plaintiff as prayed for on 28.2.1957. A journal entry of 18.5.1957 shows that, as the claim

in the case had been paid and settled by the defendant, the proctor for the plaintiff moved that satisfaction of decree be entered and that decree was accordingly entered.

In the affidavit filed by the respondent he did not contest this fact, but admitted that he received from the defendent the principal Rs. 6,000 and interest, after which satisfaction of decree was entered. He averred, of course, that he paid back the entire sum so recovered to the Petitioner, and that he obtained a stamped receipt from him which he handed to the defendant mortgagor Subramaniam. He also alleged that the complaint made by the Petitioner belatedly was false and malicious and was part of a conspiracy to injure him and damage his professional reputation.

Subramaniam, the defendant in that case testified to the effect that he had raised another loan of Rs. 8,000 on the same property to redeem the Petitioner's debt and that he was informed by his Proctor that the Petitioner's debt had been settled and that satisfaction of decree had been entered. He completely denied that the respondent gave him a receipt of any kind, but said that he had only informed him that he had settled the debt. Thereafter the first communication he had with regard to this loan was a request made in 1964 for this money from the Petitioner and he sent a reply, the contents of which he did not remember. His attitude was that, as satisfaction of decree had been entered and as he had raised a further loan on this property and was further informed by the Proctor that this debt had been settled, he was not interested in this request made in 1964.

Although the respondent reiterated in his evidence that he had paid the amount recovered to the Petitioner, he was contradicted on this point by the Petitioner. Subramaniam's evidence that no receipt was handed to him by the respondent, which we accept, supports the petitioner that he gave no receipt. The respondent's answer to the evidence of the Petitioner that he had sent about 300 letters, was that the letters had been addressed to his father-in-law's place and, as he had fallen out with the father in-law and left the house, those letters had not reached him. We find it most difficult to accept this evidence. The respondent's conduct with regard to the disciplinary inquiry to which he was summoned in respect of such a grave complaint also intrigues us. He did not even take the trouble to send a telegram to the Law Society on the day he sent the letter informing them of his alleged ill health, but sent a letter by ordinary post from Jaffna which he must know would at the earliest reach the Law Society on the day of the inquiry or thereafter, but certainly not before the inquiry.

The Petitioner's long delay in making his complaint to the Law Society would ordinarily be a factor which would adversely affect his evidence. In this case, however, we feel satisfied that the proximity of the relationship between the two would have stood in the way of immediate recourse to the Law Society or the Supreme Court involving serious consequences to the respondent. In fact that was the Petitioner's evidence :— " I did not want to put the man in trouble. I thought of getting the money by good means. " Although the Petitioner stated in evidence that he wrote about 300 letters before discovering that the case had been settled, it is very likely that he was confused and that a majority of these letters were written after he discovered that the respondent had recovered the money. One knows from experience that this is typical of the conduct between a proctor who is remiss or dishonest and a client. More so is it likely to be the conduct when the two are closely connected. Furthermore, any sensible client who has to recover a comparatively large sum from a proctor knows that he has personally nothing to gain by pursuing a course which will spell the doom of the proctor and that the more prudent course is to make every endeavour, despite delay, to recover whatever is possible. It is only when every useful effort has failed that he would have recourse to a complaint to the appropriate authority.

In view of the serious consequences which a charge of this nature against a proctor would involve, we thought it fit not merely to rely on the affidavit evidence or the findings of the Disciplinary Committee of the Law Society, but to hold an independent inquiry before this Court. On the evidence before us, we have no hesitation in finding the respondent guilty of the charge of misappropriation of the sum of Rs. 6,000 and interest recovered on behalf of his client, the Petitioner, which charge formed the basis of this Rule. The respondent has by his conduct clearly brought himself within the ambit of Section 17 of the Courts Ordinance which empowers this Court to deal with an advocate or proctor found guilty of this type of misconduct. It is immaterial for this purpose that the respondent has been acquitted by the District Court on an indictment containing a charge relating to this identical transaction as the reasons for the acquittal, though sound, are technical in nature.

The only question that remains for this Court to consider therefore is the punishment which the misconduct in question merits. As we are conscious of the consequences which an order in terms of Section 17 of the Courts Ordinance would involve for a professional man, we have given this matter our most anxious consideration, remembering at the same time that the public

interests and the honour of the profession must remain in the fore-front of our decision. The question that the Court has to ask itself is whether a person who has been guilty of misappropriation of his client's money and has aggravated his offence by his refusal to make good the amount despite repeated requests, can safely be entrusted at any time in the future with the interests of unsuspecting clients who may have recourse to him. There can be no two answers to this question. Hence there is only one course open to us, namely, to strike off the respondent from the rolls.

I accordingly order that the respondent's name be removed from the roll of Proctors.

WIJAYATILAKE, J.—I agree.

Rule made absolute.

PATHIRANA, J.—I agree.