

1959 Present : Basnayake, C.J., Pulle, J., and H. N. G. Fernando, J.

IN RE FERNANDO

S. C. Application No. 5—In the matter of a Rule Nisi issued under Section 17 of the Courts Ordinance (Chapter 6) on John Henry Matthew Fernando, Proctor of the Supreme Court, Colombo

Proctor—Removal from office—Considerations applicable—Courts Ordinance (Cap. 6), s. 17.

The respondent, a Proctor, had been convicted of criminal breach of trust and of dishonest misappropriation of property under sections 389 and 386 respectively of the Penal Code.

Held, that the respondent's name should be struck out of the Roll of Proctors.

RULE nisi issued under section 17 of the Courts Ordinance.

M. Tiruchelvam, Solicitor-General, with *A. C. Alles*, Deputy Solicitor-General, and *A. E. Keuneman*, Crown Counsel, for Applicant.

M. C. Abeyewardene, with *L. G. Weeramantry* and *V. Nalliah*, for Respondent.

Cur. adv. vult.

¹ (1940) 5 C. L. J. 68.

March 23, 1959. BASNAYAKE, C.J.—

The respondent a proctor of this court was convicted of the following offences :—

“ 1. That between the 27th October, 1947, and the 10th November 1947, at Colombo, within the jurisdiction of the said District Court—being entrusted with property, to wit, Imperial Bank of India Cheque No. PB/7-649775 for Rs. 7,000 and Bank of Ceylon Cheque No. 639307 for Rs. 8,000, in the way of your business as an Agent, by one Wannakawattawaduge Martin Marthelis Fernando of No. 29, Kawdana Road, Dehiwela, you did commit criminal breach of trust in respect of the said property, and that you have thereby committed an offence punishable under Section 392 of the Penal Code.

“ 2. That at the time and place aforesaid and in the course of the same transaction, you did dishonestly misappropriate a sum of Rs. 15,000 being proceeds of the two cheques referred to in Count (1) above, the property of the said Wannakawattawaduge Martin Marthelis Fernando, and that you have thereby committed an offence punishable under Section 386 of the Penal Code. ”

Upon the said conviction he was sentenced to undergo simple imprisonment for a term of six weeks on the first count and on the second count to pay a fine of Rs. 500 or undergo a term of six months' simple imprisonment.

In appeal the conviction on the first count was altered to a conviction of an offence under section 389 of the Penal Code and subject to that variation the appeal was dismissed. This alteration was made in view of the decision in *King v. Cooray*¹ which held that where the entrustment is not made to the offender in the way of his business as a banker &c. the offence of criminal breach of trust does not come within the ambit of section 392.

Learned counsel for the respondent submitted that having regard to the circumstances of this case we should not remove the respondent from his office of proctor but that we should suspend him for a term.

His main submission was based on the assumption that the alteration of the conviction in appeal showed that the money was not entrusted to the respondent in his capacity as a proctor. We are unable to agree. The evidence in the case which we have perused leaves no room for doubt that the clients concerned came to him to obtain his services as a professional man and not in any other capacity. But even if the assumption of learned counsel be correct it makes no difference. The jurisdiction this court exercises under section 17 of the Courts Ordinance has nothing to do with punishment. The power to remove or suspend a proctor from his office is one that is meant to be exercised for the protection of the profession

¹ (1953) 54 N. L. R. 409.

and the public and for the purpose of maintaining a high code of conduct among those whom this court holds out as its officers to whom the public may entrust their affairs with confidence. If a proctor is adequately to perform the functions of his office and serve the interests of his clients, he should be able to command the confidence and respect of Judges, of his fellow practitioners and of his clients. When a proctor is convicted of a criminal offence more especially of an offence involving his honesty and his fidelity it must inevitably mean the loss of that confidence and respect without which he can no longer adequately perform the functions of his office. Such a person this court cannot hold out to suitors and others as a person in whom they may with safety place their confidence and who can be trusted to advise them, and to undertake their affairs.

This was the test laid down by this court in the recent case *The Solicitor-General v. Abdul Cader*¹. There is no reason why the same test should not be applied in the instant case. It was urged that the money which the respondent misappropriated was paid as long ago as 1953. But that payment while discharging the respondent's civil liability to his clients does not in any way affect the considerations that govern the exercise of the disciplinary powers of this court. There are many instances² in our reports of advocates and proctors having been removed from office for convictions which though quite unconnected with their professional duties have made them unfit to be entrusted thereafter with the office of advocate or proctor as the case may be. It is unfortunate that the respondent should find himself in this situation after nearly 20 years in his profession. But the interests of the profession and the public which are paramount require that he should be removed from his office and we accordingly make order that John Henry Matthew Fernando, Proctor of the Supreme Court, be removed from his office and direct that his name be struck out of the Roll of Proctors of this court.

PULLE, J.—I agree.

FERNANDO, J.—I agree.

Rule made absolute.

¹ (1958) 60 N. L. R. 49.

² *In re Ellawala* (1926) 29 N. L. R. 13 (acceptance of a bribe).

In re Ranasinghe (1931) 1 C. L. W. 47 (Griminal breach of trust by advocate).

In re Kandiah (1932) 25 C. L. W. 87 (offence against the Opium Ordinance No. 5 of 1910).

In re Ariyaratne (1932) 34 N. L. R. 196 (culpable homicide not amounting to murder).

In re W. A. P. Jayatilleke (1933) 35 N. L. R. 376 (unlawful assembly, house-trespass and hurt).

In re Brito (1942) 43 N. L. R. 529 (offence under the Post Office Ordinance sending indecent or grossly offensive post cards).