1945 *Present:* **Keuneman, Jayetileke and Rose JJ.**

IN THE MATTER OF AN APPLICATION BY W. P. A. WICKREMESINGHE TO BE RESTORED TO THE ROLL OF PROCTORS

Proctor—Application for restoration to Roll—Notice of application—Period of repentance must be sufficiently long—Courts Ordinance, s. 16.

In Ceylon the restoration of a proctor to the Roll, after his name has been removed from the Roll, cannot be regarded as an admission and enrolment of the Proctor under section 16 of the Courts Ordinance and the second schedule to that Ordinance has no application to such restoration.

Before such restoration the Court must be satisfied that the effort of the petitioner to live a decent and respectable life has been continued over a period sufficient to make it say with confidence that he can be safely entrusted with the affairs of clients and admitted to an honourable profession, without that profession suffering degradation.

Further, reparation must be made by the petitioner in a spirit of contrition and repentance.

THIS was an application for the restoration of a Proctor to the Roll of Proctors.

M. F. S. Pulle, Crown Counsel, as *amicus curiæ*, raised a preliminary objection.—This application is made under section 16 of the Courts Ordinance and cannot be entertained unless rule 37 of Schedule II. of that Ordinance has been complied with. Six weeks' notice of the application has not been given in the *Gazette* and in an English newspaper. The words " so admitted and enrolled " in section 17 of the Courts Ordinance support my argument. The word " admit " in section 16 is wide enough to cover an application for re-admission. Reference may also be made to rule 48 of Schedule II. *A fortiori*, in the case of a Proctor who seeks to be reinstated, notice should be given to the public. The petitioner having been on the roll of Proctors before, there is no dispute as to his competent knowledge and ability.

It has been held that the Supreme Court has an inherent discretionary power to readmit a Proctor who has been struck off the Roll—*In re Monerasinghe* [1]; *In re a Proctor* [2]. But the present objection was not raised in those cases. It is submitted that, even if the requirements of section 16 have no application in the present case, the Court will, while exercising its inherent power, insist on notice being given to the public before this application is heard. Such notice is a prudent safeguard and will enable members of the public to raise objections, if any, to the granting of the application.

[1] *(1917) 4 C. W. R. 370.*

[2] *(1925) 39 N. L. R. 517.*

N. Nadarajah, K.C. (with him *E. B. Wickremanayake* and *C. J. Ranatunga*) for the petitioner.—Section 16 of the Courts Ordinance and the rules referred to therein would be applicable only to a student who has passed his examinations and is seeking admission for the first time. This is made clear by the provisions of rules 34, 37, 38, 39, &c. The present application is made under the disciplinary jurisdiction vested in the Court by section 17 of the Courts Ordinance. The Court which has the right to remove the name of a Proctor from the Roll for an offence which he has committed has also an inherent discretionary power to readmit him if he has subsequently expiated the offence and redeemed his character. The question is fully considered in *Re Seneviratne* [1] and *Re Abiruddin Ahmed* [2]. Restoration is only a corollary of the disciplinary jurisdiction. Restoration of a solicitor is provided for in England by 22 and 23 Geo. V., c. 37. See Cordery on Solicitors (4th ed.) pp. 520, 556, 236, 238; *Re Brandreth* [3].

As regards the merits of the application, the petitioner has submitted numerous testimonials showing that his conduct has been irreproachable and that he has made full reparation in respect of the offence which he committed. More than five years have passed since he was removed from the Roll. For a similar offence the punishment imposed was only a suspension from practice for 12 months—*In re a proctor* [4].

M. F. S. Pulle, C. C.—With regard to the merits of the application the offence of the petitioner was a grave one. Full restitution has not been made by the petitioner and the Court has always taken a serious view of professional men guilty of such offences.—*In re Wijesinghe* [5]; *In re Poole* [6]; *Re Garbett* [7]; *In re Cooke* [8]. Moreover, the interval between the removing of the petitioner's name from the Roll and the application for restoration is short. For a lighter offence a Proctor was suspended from practice for ten years—*In re Miwanapalana* [9].

Cur. adv. vult.

March 5, 1945. KEUNEMAN J.—

The petitioner was a Proctor of this Court. In 1938 he was charged with offences alleged to have been committed in 1930. The charges consisted of three counts—

(1) that the petitioner in a curatorship case falsely represented to the District Judge that Mrs. T. F. Wickremesinghe was the owner of a land called Egodawatta tendered as security for a proposed mortgage, and so falsely and dishonestly induced the District Judge to issue an order of payment in his favour for the sum of Rs. 4,038;

(2) that he falsely represented to the District Judge that a mortgage bond hypothecating *inter alia* Egodawatta was ready, and so fraudulently and dishonestly induced the District Judge to issue the said order of payment for Rs. 4,038;

[1] *(1928) 30 N. L. R. 299.*
[2] *8 Indian Cases 1108.*
[3] *(1891) 64 L. T. 739.*
[4] *(1938) 40 N. L. R. 367.*
[5] *(1939) 40 N. L. R. 385.*
[6] *L. R. (1869) 4 C. P. 350.*
[7] *(1856) 18 C. B. 403.*
[8] *(1939) 41 N L. R. 206.*
[9] *S. C. Minutes of 21st December, 1933.*

(3) that he falsely represented to the District Judge that Mrs. T. F. Wickremesinghe had perfect title to Egodawatta, and so fraudulently and dishonestly induced the District Judge to allow his application that a loan of Rs. 500 be given to Mrs. T. F. Wickremesinghe on a mortgage by her.

The petitioner was convicted of these offences on April 1, 1939, and his appeal from the conviction was dismissed on July 26, 1939. On September 26, 1939, this Court made order directing that the petitioner's name be removed from the Roll of Proctors. The petitioner now moves for an order that he be restored to the Roll of Proctors.

At the hearing Crown Counsel raised a preliminary objection. He argued that this was an application to be admitted and enrolled as a Proctor within the meaning of Section 13 of the Courts Ordinance (Cap. 6), and that the rules set out in the Second Schedule of the Courts Ordinance applied. Crown Counsel insisted that Rule 37 had not been complied with, viz., notice to the Registrar and in the *Government Gazette* and in an English newspaper,—and claimed that publicity was necessary in a case of this kind. This is certainly a very novel objection, and has not previously been raised, although this Court has for a considerable period exercised jurisdiction to restore to the Roll proctors whose names have been removed therefrom. In this case some colour has been given to this objection by the fact that the petitioner purported to base his application on Section 16 of the Courts Ordinance.

I have considered the objection but I do not think it can be maintained. Wood Rention C.J. said in this connection—

" No express power of reinstatement is conferred upon us by section 19 " (*i.e.*, our present section 17) " of the Courts Ordinance. But both in England before the matter was expressly dealt with by the legislature and in South Africa the view has been adopted that a Court which has the right to remove the name of a Solicitor from the Rolls has also an inherent discretionary power to re-admit him, when he has subsequently expiated the offence of which he has been guilty and redeemed his character. That principle is as applicable in Ceylon as in England and in South Africa ". (See *In re Monerasinghe*, 4 C. W. R. 370).

In the case reported in 39 N. L. R. 517 (*In re a Proctor*), Bertram C.J. said:—" There is no question that this Court has an inherent jurisdiction in the exercise of its discretion where it is of opinion that an offender has subsequently expiated his offence to restore him to the roll of practising members of the profession."

The important point in these decisions is that the Court exercises " an inherent jurisdiction " in restoring a Proctor to the Roll. This jurisdiction is not based upon any section of the Courts Ordinance.

I do not think it is necessary to examine the numerous English cases on the point. They were considered in the Indian case of *In re Abiruddin Ahamed* (8 Indian cases 1108), and I agree with the opinion expressed therein, to wit:—

" The principle deducible from the long series of English decisions . . . . has been adopted in the American Courts, and it is

regarded there as indisputably settled that an order or judgment of disbarment is not necessarily final or conclusive for all time, but an attorney who has been disbarred may be reinstated, on motion or application for reasons satisfactory to the court."

It is however of interest to note that the law relating to Solicitors was codified in England by the Solicitors Act, 1932. Section 3 of this Act deals with the admission and enrolment of Solicitors. Under section 13 the Master of the Rolls is given power to replace on the Roll the name of a solicitor whose name has been removed or struck off the Roll. Under section 13 (2) an order under this section " shall for the purpose of section 3 (2) of the Act be deemed to be an admission ". I take it that apart from section 13 (2) this would not have been regarded as an admission.

In my opinion in Ceylon the restoration of a Proctor to the Roll, after his name has been removed from the Roll, cannot be regarded as an admission and enrolment of the proctor under section 16 of the Courts Ordinance, and the Second Schedule to that Ordinance has no application to such restoration to the Roll.

The preliminary objection therefore fails.

As regards the merits of the application, it is clear that the offences of which the petitioner was found guilty were of a serious character. When the petitioner's name was removed from the Roll, Soertsz A.C.J. was of opinion that " the offences . . . . are more serious than they appeared to be to the Trial Judge ". I cannot myself see any element of mitigation in respect of these offences. The person for whose benefit the order of payment was obtained was the petitioner's mother, and the petitioner must have been well aware of the fact that she was not the owner of Egodawatta, and yet the petitioner deliberately misled the District Judge into thinking that she was the owner and in fact had mortgaged Egodawatta. This was a very serious lapse on the part of the petitioner. No doubt the record of the petitioner had otherwise been excellent, but the Trial Judge took this into consideration in passing on the petitioner a fairly lenient sentence.

It is now urged that the petitioner has made reparation to the minor, and that his conduct and behaviour since his name was removed from the Roll of Proctors has been excellent. I have carefully examined the question whether reparation has been made to the minor. It certainly appears that the minor and his curator were satisfied with the reparation made, but it is by no means clear that full reparation has been made. Further, there are two points which stand out in this connection, (1) that the reparation was made only after the curator had moved the authorities in this matter, and when criminal proceedings were anticipated, and (2) that the bulk of the reparation was made by the relations, of the petitioner, and that the petitioner's only contribution towards reparation was the payment of a sum of Rs. 500 in 1935. It is not possible from these facts to draw the conclusion that reparation was made by the petitioner in a spirit of contrition and repentance.

Since the petitioner was removed from the Roll of Proctors he appears to have led a respectable life. He is the Chairman of the Village Committee of Godapitiya, and in this connection he is said to have control

over the funds of the committee. He is also Chairman of the Local Assistance Committee of certain areas, and is the Nominated Member for Weligam korale and Gangaboda pattu in the Land Advisory Committee for Matara District. He has also been Chief Warden of Kandaboda pattu and Gangodaboda pattu under the A. R. P. Controller. He appears to have done useful work in respect of all these matters.

The petitioner also was for a period of about 1½ years the Secretary of the Ruhuna Transit Co., Ltd., until August, 1944, and as such he had control of the collections amounting to over four lakhs of rupees a year.

The petitioner discharged his duties satisfactorily and honestly. The petitioner has also produced a number of certificates from Judges before whom he had appeared, from Proctors and other members of the public, which show the confidence still reposed in the petitioner.

I have carefully considered all these matters, but I am not satisfied that the petitioner has made out a case for restoration to the Roll. I may say that the lapse on the part of the petitioner apparently was due to the pressure put upon him by his creditors. There is nothing in the affidavit or in the connected papers to show what his financial position is at the present day. Petitioner's counsel stated that his financial position is now sound but fuller particulars should have been given on this point. But quite apart from this I am not satisfied that the effort of the petitioner to live a decent and respectable life has been continued over a period sufficient to make me say with confidence that he can be safely entrusted with the affairs of clients and admitted to an honourable profession without that profession suffering degradation.

" We have a duty to perform to the suitors of the Court, and to the profession of the law, to see that the persons admitted to it are persons on whose integrity and honour reliance may be placed ", said Cockburn C.J. in *Ex parte Pyke* (6, B. & S. 703, at 707, 34 L. J. Q. B. 121). Still, if we are satisfied that the conduct of the man has been such as to inspire confidence in his character, we might admit or readmit him. "

The application is refused with costs fixed at Rs. 52.50.

Application refused.