

1944 *Present: Howard C.J., Soertsz and Wijeyewardene JJ.*

IN THE MATTER OF A RULE ON PROCTOR JOSEPH GERALD FERNANDO
UNDER SECTION 17 OF THE COURTS ORDINANCE.

*Proctor—Charged with criminal offence in the course of professional duties—
Struck off the roll—Courts Ordinance, s. 17.*

Where the respondent, a Proctor, was convicted of criminal offences committed by him in his character as Proctor, he should be struck off the roll of Proctors.

THIS was a Rule issued against the respondent, a Proctor of the Supreme Court, to show cause why his name should not be removed from the roll of Proctors.

J. Mervyn Fonseka, K.C., S.G., and M. F. S. Pulle, C.C., in support.
Respondent in person.

March 30, 1944. HOWARD C.J.—

The respondent, a Proctor of this Court, has been called upon to show cause why his name should not be removed from the Roll of Proctors entitled to practice before this Court.

On December 15, 1943, at the Criminal Sessions of the Supreme Court held at Kalutara the respondent was, on his own plea, convicted of the offences mentioned below in the following cases:—

“ *S. C. Case No. 17/M. C. Panadure, Case No. 12,255.*

That on a date between April 1, 1936, and August 31, 1936 (inclusive), at Moratuwa in the District of Colombo, he being a Notary did, in breach of section 35 (a) of the Notaries Ordinance (Cap. 91), attest a fraudulent deed knowing the same to be fraudulent, to wit, a document purporting to be a Last Will bearing No. 881 and purporting to have been executed by one Hewage Manis Fernando, a fictitious person, on that he had thereby committed an offence punishable under section 35 of the said Ordinance.

S. C. Case No. 24/M. C. Panadure, Case No. 12,256.

That between November 9, 1931, and December 13, 1931, at Moratuwa in the District of Colombo, he being a Notary knowingly and wilfully did, with intent to defraud the Government of Ceylon in respect of stamp duty, insert in the duplicate copy of deed of gift No. 533 dated November 9, 1931, words and figures, to wit:—

- (a) ‘ hundred ’, ‘ 100 ’; and in the attestation of the said deed;
- (b) ‘ line 2 thousand was cut and hundred written and figures 1000 was altered to 100;
- (c) ‘ line thousand was cut off and hundred written and in figures 1000 was altered to 100 ’;
- (d) ‘ a stamp Two (. . . . 2/-) ’;

which words and figures ought not to have been inserted therein, in breach of section 35 (b) of the Notaries Ordinance; and that he had thereby committed an offence punishable under section 35 of the said Ordinance (Cap. 91).”

Upon these convictions the respondent was sentenced in *S. C. Case No. 17* to ten days’ simple imprisonment and in *S. C. Case No. 24* to imprisonment till the rising of the Court.

The respondent has appeared in person and asked the Court to take a lenient view of these offences. Although the respondent concedes that he is not entitled to reopen the proceedings instituted against him in the Supreme Court of Kalutara, he has endeavoured to convince the Court that he is not actually guilty and that his offences are merely technical involving no moral turpitude. He has also invited our attention to the fact that so far as *S. C. No. 24* is concerned the revenue suffered small loss. In regard to *S. C. No. 17* he asserts that the person mentioned therein was not fictitious. In view of the fact that he pleaded guilty to this charge with a full realisation of what such plea implied, it is impossible for the Court at this stage to accept his plea that a fictitious and fraudulent document was not executed by him. Nor can we take the view that the offences were merely technical. No doubt when sentence was passed,

the learned Judge took into consideration the further proceedings that would be instituted against the respondent under section 17 of the Courts Ordinance and, in consequence, treated him with considerable leniency.

The respondent has not only been convicted of criminal offences. Those offences have been committed by him in his character as a Proctor. The only question we have to decide is whether those offences are such as to make him unfit to remain a member of this honourable profession. Can it be said that the respondent, after the commission of these offences, is a person to whom can properly be entrusted by the Court, the interests of suitors? We are compelled by the facts proved and admitted in this matter to say that the respondent is not a person who should be allowed to manage the business of others as a Proctor. In our opinion the nature of the offences of which the respondent has been convicted leave us no option but to strike him off the roll. The order is that he be struck off the roll.

SOERTSZ J.—I agree.

WIJEYWARDENE J.—I agree.

Rule made absolute.
