1939 *Present :* **Hearne, Keuneman and the Kretser JJ.**

In re APPLICATION BY D. S. JAYASINGHE.

Proctor—Disbarred on conviction—Application for re-enrolment—Redemption of character—Attempt to make reparation—Re-enrolment must be consistent with public safety.

Where an application for re-enrolment is made by a Proctor who has been removed from the roll upon conviction for a criminal offence, the question to be decided by the Supreme Court is not only whether he has redeemed his character but also whether he may with propriety be allowed to return to the practice of an honourable profession.

An honest attempt to make reparation is regarded as some evidence of redeemed character.

In re an Advocate (*39 N. L. R. 476*) referred to.

THIS was an application for restoration to the roll by a Proctor who had been removed from the roll.

As a result of the conviction of the petitioner of the offences of cheating and forgery in 1923, he was removed from the roll of Proctors. He applied to have his name restored to the roll and filed certificates from various people to testify to his character during the thirteen years that have elapsed since his relelase from prison.

C. V. Ranawake (with him *C. E. A. Samarakkody* and *Dodwell Gunewardene*), in support of the application.—The petitioner has placed sufficient material before the Court entitling him to ask it to exercise its discretion in his favour. There is evidence of a palpable and definite repentance and the manifestation of an honest career for a long period. Though no actual reparation has been made there is an offer of reparation which the petitioner's client has accepted; there is no hard and fast rule on this last point. See Bertram C.J. in *In re Application of a Proctor* [1].

Counsel also cited *In re Poole* [2] and *Application of C. C. J. Seneviratne* [3].

J. W. R. Ilangakoon, K.C., A.G. (with him *D. W. Fernando, C.C.*), on notice.—In these applications the interest of the public at large should be considered and not that of a few well-wishers of the petitioner. Further, the interest of the profession must be taken into account. The Court must be satisfied that he will not misplace the confidence the public will place on him. The existence of Proctors is due to that confidence. As a rule a Proctor whose name has once been struck off the roll cannot be readmitted. When a chance is to be given, he is suspended. In the case of Ellawala, he was not found wanting in his professional capacity. The reasons for disenrolment are considered in *In the matter of the complaint of D. C. de Silva against Mr. Edgar Edema* [4]. The application for readmission on similar grounds was refused in *Visser v. Cape Law Society* [5]. There is no guarantee that a man who has once succumbed to temptation would not succumb to it again. He cannot be readmitted as a solace in old age.

[1] (*1925*) *39 N. L. R. 517.*
[2] (*1869*) *L. R. 4 C. P. 350.*
[3] (*1928*) *30 N. L. R. 299.*
[4] (*1877*) *Ram. 380, at p. 384.*
[5] (*1930*) *S. A. Law Rep. Cape P. Div. 159.*

C. V. Ranawake, in reply.—No case is so bad that under no circumstances may a person in the petitioner's position be readmitted. Abrahams C.J. in *In re Application for Readmission as an Advocate* [1] says, "I do not think we can now say that the case was so bad that under no circumstances could we admit the applicant to the ranks of the profession".

The petitioner has redeemed his lost character; the Court has to look into the conduct and conduct alone of the petitioner during the period following his punishment. See *Attorney-General v. Ellawala* [2] and *In re Pyke* [3].

March 20, 1939. HEARNE J.—

This is an application by Mr. D. S. Wijesinghe to have his name restored to the roll of Proctors of this Court. His name was removed from the roll sixteen years ago on conviction of the offences of cheating and forgery. He makes the application on the ground that during the thirteen years that have followed his release from prison he has shown himself to be a fit person to practice once again the profession to which he was called.

I am not altogether impressed with the petition. The petitioner has sought to minimise the very serious crimes of which he was convicted. He says that he had failed to keep his own money separate from his client's money and that "he had utilized the latter with the result that, when required, it was not available". The truth is, however, that the fraud he committed on his client was carefully planned and concealed and extended over a period of several months. He says that he did not consider very serious what later proved to be a gross dereliction of duty. It is impossible to believe, in the light of the facts disclosed at the trial, that he did not realize the serious nature of his acts and that they amounted, not merely to dereliction of duty, but to grave offences against the law of the land. There is, at the least, an absence of frankness in the petition.

The principles on which this Court would act in applications similar to the present one have been stated on previous occasions.

In the case of an advocate who was convicted of a criminal offence in 1920 and disbarred in 1922 it was held in 1928 that it would be premature to reinstate him (*30 N. L. R. 299*). Eight years later he renewed his application. On this occasion Abrahams C. J. said, "I do not think we can now say that the case was so bad that under no circumstances could we admit the applicant to the ranks of the profession". The Chief Justice then proceeded to hold that the applicant had redeemed his past and that "it would be unjust to prevent him from once more earning his living in the profession for which he is qualified" (*39 N. L. R. 476*).

Considerable reliance has been placed on this case. It is argued that it lays down that the sole question a Court is required to decide is whether a person who has been convicted of a crime of dishonesty has redeemed his character. I do not agree. Re-establishment of character, so far as it can be inferred from certificates or affidavits is an

[1] *(1936) 39 N.L.R. 476, at p. 476.*
[2] *(1926) 29 N. L. R. 13 and S. C. Mins. Feb. 3, 1923, and S. C. Mins. May 4, 1937.*
[3] *(1865) 34 L. J. Q. B. 121.*

indispensable condition, but reading the judgment of the Court as a whole it is clear to me that the question of the safety of readmitting the Advocate concerned, having regard to the nature of the crime he had committed, was also present to the minds of the Judges of the Court.

I see no difference between the principle enunciated by this Court and the principle enunciated in (1910) 12 Cal. L. J. 625, that a Court may in its discretion readmit a Proctor who has been struck off the rolls "if satisfied that during the interval that has elapsed since the order of removal was made, he has borne an unimpeachable character, and may with propriety be allowed to return to the practice of an honourable profession". I stress the word propriety. It means, I think, that the matter must be regarded not merely from the point of view of the applicant but also from the point of view of the public. That, I think, is the significance of the words of Abrahams C.J., "I do not think we can now say that the case was so bad that under no circumstances could we admit the applicant to the ranks of the profession". He indicated that in his opinion the reinstatement of the Advocate involved no risk to the general public who in their dealings with him have the right to expect the highest standard of honour and trustworthiness.

The same idea appears in the judgment of Bertram C.J. when he says "We are prepared to exercise the jurisdiction of this Court in favour of the applicant because we are satisfied that in so doing we are not in danger of readmitting to the roll a person who is not entitled to be treated with professional confidence" (*In re a Proctor*).[1]

In *In re Advocate*[2] the question of restitution was not considered, possibly because the amount involved was small, possibly because restitution had been made. The crime of which the Advocate concerned had been convicted was the result of a single act of dishonesty and related to a sum of Rs. 1,000. In the case of *In re a proctor* (*supra*) however it was stressed, while in *Visser v. Cape Law Society*[3], where the Court was not satisfied that an attorney, who had been struck off the rolls, on conviction of the crimes of forgery, perjury and theft, had made any attempt to repair the wrong he had done, an application for reinstatement was refused. An honest attempt to make reparation has, I think, rightly been regarded as some evidence of reformed character.

In the present case the proceedings at the applicant's trial indicate that he systematically defrauded his client, Mr. Rustomjee. The amount involved was considerable, Rs. 12,000. No restitution has been made, and although the applicant appears to have been in fairly regular employment, no explanation has been offered of his failure to make restitution even on a small scale. On the subject of his earnings the petition is silent.

Certain "certificates" which have obviously been prepared for the purpose of supporting the application have been brought to our notice. The writers express the hope that the applicant will be regarded as having lived down his misfortune and that he will be reinstated. Misfortune is a word that would more appropriately have been applied by them to the lot of Mr. Rustomjee. In phrases borrowed from

[1] *39 N. L. R. 517.* [2] *39 N. L. R. 476.*

[3] *(1930) S. A. Law Rep. Cape P. Div. 159.*

previous judgments of this Court they also express the opinion that the applicant has "reconstructed his life" and "rehabilitated his character". In the case of some of the certificates it is doubtful whether the opinions are based on first hand knowledge.

Those who have employed the applicant are much more restrained in their language. The Editor-in-Chief of the Times of Ceylon for which he worked as proof reader describes his work as "satisfactory", while Mr. Crowther of the same paper says that he discharged his duties with credit and fidelity. Mr. Goonesinghe of the Ceylon Labour Union states that his work in the management and editorship of the "Comrade" and "Viraya" was performed diligently and to his entire satisfaction, and that as a social worker he has been of great use to the members of the Labour Union.

There is nothing out of the ordinary in these certificates and I do not gather from them that the applicant, in any of the positions held by him, was entrusted with financial responsibility.

Looking to all the facts and the principles on which this Court has acted in the past, I regret I am unable to say that we could with propriety accede to the application which, in my opinion, should be dismissed.

KEUNEMAN J.—I agree.

DE KRETSER J.—I agree.

Dismissed.