

however, remains unaffected. One point, therefore, clearly emerges from a consideration of the cases on this point that before Muslim Law could be applied there must be a *cursus curiae* in favour of applying that law. There is no *cursus curiae* of which I am aware which deprives a Muslim widow of a preferential right to the custody and guardianship of her minor children and to be in charge of their property. It would indeed be strange if a Muslim widow having the preferential right to administer her husband's estate under section 523 of the Civil Procedure Code, the title to a part of which estate would vest in her children, is not to be regarded as their natural guardian.

In the result I find that the appellant is not entitled to have recourse to Muslim Law to defeat the plaintiffs' claim that Fatheela Umra was empowered by the general law of the land to accept the gift.

For the reasons which I have stated the appellant's contention that the gift to the plaintiffs was bad for want of a valid acceptance fails.

I would dismiss the appeal with costs.

Dias S.P.J.—I agree.

*Appeal dismissed.*

1950 Present : Dias S.P.J., Nagalingam J. and Windham J.

*In re* BATUWANTUDAWÉ

IN THE MATTER OF THE APPLICATION BY UPALI BATUWANTUDAWÉ TO BE RE-ADMITTED AS AN ADVOCATE.

*Advocate—Name struck off the roll of Advocates—Subsequent application for reinstatement—Principles applicable on such application—Reporting to Inn of Court.*

The petitioner, whose name was struck off the roll of Advocates on the ground that he had been convicted of cheating, forgery of a valuable security, and cheating by personation, applied to the Supreme Court, after an interval of thirteen years, to be readmitted to the profession.

*Held*, that the application for reinstatement should not be allowed.

*Held further*, that when the name of a member of the English Bar, who is also an Advocate of the Supreme Court, is struck off the roll of Advocates, the fact should be reported to his Inn.

**T**HIS was an application by the petitioner to be readmitted as an Advocate.

*E. B. Wikramanayake, K.C.*, with *B. H. Aluwihare, G. T. Samara-wickreme* and *C. E. Jayewardene*, for petitioner.

*R. R. Crossette-Thambiah, K.C.*, Solicitor-General, with *H. A. Wijemanne*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

April 5, 1950. DIAS S.P.J.—

The petitioner, Upali Batuwantudawe, was called to the English Bar at the Middle Temple. By virtue of that call to the Bar, he was on August 4, 1932, admitted and enrolled as an Advocate of the Supreme Court of Ceylon.

In D. C., Colombo, Criminal Case No. 11,382, the petitioner, who was the second accused, along with his brother and another were indicted for abetting the offence of cheating, the forgery of a valuable security, to wit, a promissory note for Rs. 600, and cheating by personation. On June 19, 1936, he was convicted on each of the counts, and sentenced in the aggregate to undergo a term of six months' rigorous imprisonment. In appeal his conviction was affirmed and the petitioner duly served his sentence. This court by its order dated October 8, 1937, struck his name off the roll of Advocates holding—"The Advocate in this case was convicted of a series of very serious offences involving gross fraud in each. He has shown no cause against extreme disciplinary measures, and we can do no less than order that he be struck off the register of Advocates". We respectfully concur with that view. The petitioner, who at the material dates was in extreme financial embarrassment, entered into a conspiracy with his co-accused and another to defraud an Afghan money-lender in order to obtain from him money on a forged promissory note purporting to have been signed by one "T. E. Wickremasinghe, Assistant Superintendent of Police". In order to perpetrate this fraud, the petitioner and his brother procured the uniform of an Assistant Superintendent of Police from a friend of theirs in the Police Force, and one Vernon Alexander posing as an Assistant Superintendent of Police cheated the Afghan to lend money on a forged promissory note. We have perused the record of the proceedings and the judgment of the learned trial Judge. The facts prove that the petitioner appears to have been totally devoid of any moral sense, and in order to relieve his financial embarrassment, did not hesitate to conceive and carry through what this Court has described as being "a series of very serious offences involving gross fraud in each".

After an interval of thirteen years, the petitioner moves this Court to readmit him to the ranks of the honourable profession, the good name of which he disgraced.

That a legal practitioner who has been struck off the rolls for any "deceit, malpractice, crime, or offence" may be readmitted to the profession is undoubted. A series of decisions of this Court have laid down the principles on which this Court acts in applications of this kind. The question whether relief should or should not be granted must depend on the facts and circumstances of each case.

The general principles on which this Court acts may thus be summarised: A legal practitioner who has been struck off the rolls may be readmitted to the profession if the Court is satisfied that he has atoned for the errors of the past by an unbroken subsequent career of honesty and industry—*In re Moneasinghe*<sup>1</sup>. There must be proof of a career of

<sup>1</sup> (1917) 4 C. W. R. 370.

honourable conduct for so long as to convince the Court that there has been complete repentance, and a determination to persevere in honourable conduct—*Attorney-General v. Ellawala*<sup>1</sup>. The length of time for atonement and repentance depends on the facts of each case. If this Court considers the application to have been made prematurely, it will refuse to act—*In re Seneviratne*<sup>2</sup>. One can conceive of cases where, owing to the heinousness of the offence, it may be considered that a practitioner who has been found to be guilty of such an offence should never be admitted within the ranks of the honourable body of men which forms the legal profession. In every case this Court, as the guardian of the honour of the legal profession, must be very careful in readmitting to its ranks a man who has been guilty of a crime involving dishonesty. A character once lost may, however, be redeemed; and if this Court is satisfied that the applicant had redeemed the past, it would be unjust to prevent him from once more earning his living in the profession for which he is qualified—*In re Seneviratne*<sup>3</sup>. The grounds upon which a member of the legal profession may be restored to the roll are—a palpable and definite repentance, a manifestation of an honest career during a considerable period of time, and adequate reparation, or, at any rate, an offer of all possible reparation in the man's power—*In re a Proctor*<sup>4</sup>. In that case, this Court said: "We should be sorry to create a precedent which would make it an easy matter for a man to be once more restored to the legal profession". The question of reinstatement depends, not only on whether the applicant 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 a redeemed character—*In re Wijeyesinghe*<sup>5</sup>. In another case, this Court held that before a practitioner could be reinstated the Court has to be satisfied that the efforts of the applicant to live a decent and respectable life has been continued over a period sufficiently long 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—*In re Wickremasinghe*<sup>6</sup>.

Having regard to the nature of the offences of which the petitioner was proved guilty, and all the facts and circumstances of the case, we do not think that the application for reinstatement should be allowed. This case stands apart from the general run of cases of professional misconduct, and a solemn duty is cast upon this Court to make it clear, *particularly at a time when public morality is at a low ebb*, that it is not an easy matter for a person convicted of offences of this kind to be restored to the ranks of an honourable profession, the good name of which he has degraded by his conduct.

The Solicitor-General has drawn our attention to the fact that this is the first occasion when a member of the English Bar, who is also an Advocate of the Supreme Court, has been struck off the rolls. We are of

<sup>1</sup> (1931) 29 N. L. R. at p. 32.

<sup>2</sup> (1928) 30 N. L. R. 299.

<sup>3</sup> (1936) 39 N. L. R. 476.

<sup>4</sup> (1925) 39 N. L. R. 517.

<sup>5</sup> (1939) 40 N. L. R. 385.

<sup>6</sup> (1945) 46 N. L. R. 204.

opinion that when the petitioner was disbarred in 1937, it was the duty of the Registrar of this Court to have forthwith reported that fact to the Inn to which the petitioner belonged. We direct that this action should now be taken.

The application is dismissed with costs fixed at Rs. 105.

NAGALINGAM J.—I agree.

WINDHAM J.—I agree.

*Application dismissed.*

1949

Present: **Basnayake J.**

KATHIRGAMU *et al.*, Appellants, and NADARAJAH *et al.*,  
Respondents

*S. C. 111—C. R. Point Pedro, 1,382*

*Action for use and occupation—Principles underlying such action.*

To found an action for use and occupation the relation of landlord and tenant must be established. Nor can such action be maintained against a person who claims to occupy the land as of right.

**A**PPPEAL from a judgment of the Court of Requests, Point Pedro.

*C. Thiagalilingam*, for defendants appellants.

*H. W. Tambiah*, with *S. Sharvananda*, for plaintiffs respondents.

*Cur. adv. vult.*

June 8, 1949. BASNAYAKE J.—

This is an appeal on questions of law from the judgment of the Commissioner of Requests of Point Pedro. The defendants are the appellants and the plaintiffs are the respondents. The latter allege in their amended plaint that the former used and occupied 30 *paddies* of a land called Silaikaddaithoddam belonging to the plaintiffs from July, 1944, to the end of June, 1946, agreeing and undertaking to pay the plaintiffs' agent Thangammah, widow of Veluppillai, the sum of Rs. 300 as compensation for such use and occupation. They seek to recover the sum of Rs. 300 which they allege the defendants have failed to pay. The defendants deny the allegations of the plaintiffs and ask that the action be dismissed.

The following issues were framed at the trial—

“ 1. Did the defendants use and occupy 30 *paddies* of the land called Silaikaddaithoddam belonging to the plaintiff from July, 1944, to 30. 6. 46 ?

2. If so, what is the reasonable compensation ?