1951 *Present :* **Nagalingam J., Gratiaen J. and Gunasekara J.**

S. C. 361—IN THE MATTER OF AN APPLICATION FOR READMISSION AS AN ADVOCATE OF THE SUPREME COURT

Advocate—Name struck off Roll of Advocates—Subsequent application for readmission—Principles applicable.

The petitioner, whose name was struck off the Roll of Advocates on the ground that he had been convicted of two offences involving moral turpitude, applied to the Supreme Court, after twenty years had elapsed, to be readmitted to the profession.

Held, that in such an application, the duty of the Court must be measured by the rights of litigants who may seek advice from a professional man admitted or readmitted to the Bar and by the right of the profession to claim that re-enrolment will not involve some further risk of degradation to the reputation of the Bar. There is, however, no principle of law which declares that an advocate who has been disbarred on the ground that he has committed a grave crime is permanently disqualified from seeking re-enrolment.

THIS was an application by the petitioner to be readmitted as an Advocate.

N. K. Choksy, *K.C.*, with *E. Amarasinghe*, for the petitioner.

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

Cur. adv. vult.

July 26, 1951. GRATIAEN J.—

The petitioner was enrolled as an advocate of this Court on 9th June, 1927. In 1930 he committed two offences involving gross moral turpitude and for these offences he was tried and convicted on 9th September, 1931, and on 12th November, 1931, respectively. A sentence of three years' rigorous imprisonment was imposed on him in respect of the first conviction and a sentence of two years' rigorous imprisonment in respect of the second. While he was serving the earlier sentence, this Court, in the

exercise of the disciplinary jurisdiction vested in it under the Courts Ordinance, made order that his name should be struck off the roll of advocates. He was discharged from prison on 6th September, 1934, and now applies for readmission to the profession on the ground that he had during the intervening years qualified himself for reinstatement. Over 20 years have elapsed since he offended against the law and brought discredit upon his profession.

I do not propose to refer in any detail to the nature of the offences of which he was found guilty in the past—in one case by the unanimous verdict of the jury at the Assizes, and in the other, on his own unqualified plea, by a Magistrate exercising the jurisdiction of a District Judge. Suffice it to say that I have given due weight to all these details, as the gravity of the crimes is of great relevancy to the length of the probationary period which must be insisted upon as proof that the crimes have been expiated.

Application such as we have before us cannot be decided by mere " rule of thumb " or by reference to some " tidy formula ". There is no principle of law which declares that an advocate who has committed such-and-such an offence is thereby permanently disqualified from seeking re-enrolment. Cockburn C.J. said in a similar case " I cannot help feeling, both on principle and precedent, that sentences of exclusion from either branch of the profession need not necessarily be exclusion for ever. And when we find that a gentleman has suffered twenty years exclusion, and that the sentence of exclusion, however right, has had the salutary effect of awakening in him a higher sense of honour and duty, we should not be inexorable ". *Ex parte Pyke*. [1] These words which I have quoted were pronounced in 1865, With how much more force can they be repeated now, having regard to the greater emphasis which the modern theory of punishment has laid on the opportunities for rehabilitation which a term of imprisonment is designed to offer to a convicted person ?

I have considered with care and with the greatest respect the judicial decisions to which the learned Solicitor-General and Mr. Choksy have drawn our attention. All of them remind us that this Court, in dealing with these applications, must not be influenced either by punitive or by sympathetic considerations. Our duty must be measured by the rights of litigants who may seek advice from a professional man admitted or re-admitted to the Bar by the sanction of the Judges of the Supreme Court. It is also measured by the right of the profession, whose trustees we are, to claim that we should satisfy ourselves that re-enrolment will not involve some further risk of degradation to the reputation of the Bar. Bearing these priciples in mind, we must now decide whether the applicant's conduct and behaviour during the long probationary period which has elapsed since he was convicted of crimes involving dishonesty afford cogent proof that he has redeemed the character which he then lost. Has he during these long and difficult years pursued a career of honourable life so as to convince us that he now possesses the strength of character to carry out his present resolve to persevere in honourable conduct in the future ?

[1] *6 B. and S. 703 (= 122 E. R. 1354)*

I am much impressed by the evidence regarding the applicant's attitute while he was serving his prison sentence. His discharge certificate dated 6th September, 1934, bears a testimonial in the following terms from the Acting Inspector-General of Prisons:—

"His conduct and industry while in prison has been at all times exemplary and his influence over others has always been to the good. He has paid in full the price of his past wrong-doing, and in my opinion, given the chance of proving his worth and undoubted ability, he will make good and take his rightful place in the community as an honourable and useful citizen. From my knowledge of his character while in prison I feel that he deserves every encouragement to enable him to wipe out the past.

(Sgd.) C. C. SCHOKMAN".

One starts then with this early manifestation of a resolve to reconstruct his life. On his release from prison, he must necessarily have faced many difficulties in obtaining honourable employment, and he decided that, in view of his educational qualifications, he should join the teaching profession. He started his new life as a private tutor, and later joined the staff of the Polytechnic Institute. Four years later he joined the tutorial staff of Lorensz College in Gampaha. He was then employed by the Associated Newspapers of Ceylon, Ltd., first as Head Reader and later as Assistant Manager of the Lake House Book Shop. He has produced from each of his successive employers a testimonial which speaks well of his trustworthiness and good behaviour during the relevant periods. He is now the Principal of a school in Gampaha in which students are prepared for higher examinations. One cannot but be impressed by the manner in which he has progressively surmounted his early difficulties and earned the confidence of those who, knowing as they did the history of his past life, were in the best position to judge his character. Throughout this period he has associated himself very closely with the work of his church. His parish priest, who has known him for several years, speaks of his activities as a religious and welfare worker, and states that he is now held in high esteem by the people in the locality. He is free of debt. He has earned the respect of those with whom he has come in contact over a long term of years, and it seems to me that he can justly claim to have "atoned for the errors of the part by an unbroken subsequent career of honesty and integrity". *In re Moonesinghe* [1].

Can it be said, as it was said by Schneider J. in *Seneviratne's case* [2] that the present application for reinstatement is premature because, although there is clear evidence that his convictions have had the salutary effect of awakening in him a higher sense of honour and duty, nevertheless the probationary period is not long enough to guarantee a complete redemption of the past? I do not think so. The applicant left prison at the age of 40. Today he is 57 years old, and, as I have pointed out, his resolve to mend his ways was conceived when he first entered prison in 1931. In all the circumstances of the case, I would adopt, with great respect, the observations of Abrahams C.J. in *(1936) 39 N. L. R. 476* "It is far better that we should do one thing or the other now. We should of

[1] *(1917) 4 C. W. R. 370.* [2] *(1928) 30 N. L. R. 299.*

course be very careful in admitting to the profession—members of which should observe the highest standard of honour and trustworthiness—a man who has been guilty of a crime of dishonesty. *But that is not to say that character once lost cannot be redeemed.* It therefore follows that if we are of the opinion that the applicant has redeemed the past, it would be unjust to prevent him from once more earning his living in the profession for which he is qualified ". I see no reason why the present intention of the applicant to continue his career as a teacher should stand in his way. We are concerned only with the question whether his conduct over a long period of years has proved him to be a fit and proper person for re-enrolment as a member of the Bar.

In my opinion the application should be allowed, and I would make order that the name of the applicant should be restored to the roll of Advocates of the Supreme Court.

NAGALINGAM J.—I agree

GUNASEKARA J.—I agree.

Application allowed.