

1925

Present: Bertram C.J., Ennis, Schneider and
Garvin JJ.

IN THE MATTER OF AN APPLICATION OF A PROCTOR TO BE
RE-ADMITTED AND RE-ENROLLED AS A PROCTOR OF THE
SUPREME COURT.

*Proctor—Conviction for criminal breach of trust—Application for re-admission
—Jurisdiction of Supreme Court—Grounds of application.*

The Supreme Court has an inherent jurisdiction to restore a proctor to the roll, who has been struck off on conviction for a criminal offence, where the Court is of opinion that the proctor has sufficiently expiated his offence.

The grounds upon which such a proctor 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 an offer of all possible reparation in his power.

THIS was an application by a Proctor who was convicted of criminal breach of trust and struck off the roll, to be re-admitted to the roll of practising proctors.

A. Driberg, K.C. (with him F. de Zoysa and Mervyn Fonseka), in support.

M. T. Akbar, S.-G. (with him M. W. H. de Silva, C.C.), appear on notice.

Cur. adv. vult.

February 17, 1925. BERTRAM C.J.—

This is an application by a former Proctor of this Court who some fourteen years ago was convicted of criminal breach of trust and who was in consequence struck off the roll of proctors to be restored to the roll. 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 sufficiently expiated his offence to restore him to the roll of practising members of the profession. It is not necessary to say that we all feel that this jurisdiction must be exercised with the greatest caution. If a member of the profession is guilty of a lapse and after consideration of the facts is restored to the roll a very important step has been taken. In the case of *In re Pool*¹ it was said that with reference to such officers of the Court "that their presence on the roll is an indication *prima facie* at least that they are worthy to stand in the ranks of an honourable profession to whose members ignorant people are frequently obliged to resort for assistance in the conduct and management of their affairs and in whom they are in the habit of reposing unbounded confidence; and in looking to the fact that in restoring this person to the roll we should be sanctioning the conclusion that he is in our judgment a fit and proper person to be so trusted. I think we ought not to do so, except upon some solid and substantial grounds".

In the cases brought to our notice the grounds for such a proceeding have been recognized as being in the first place, a palpable and definite

¹ (1869) L. R. C. P. 350.

repentance and a manifestation of an honest career during a considerable period of time, and in the second place adequate reparation or at any rate an offer of all possible reparation in the man's power. Now in the present case it has been proved to us that the proctor in question for a period of fourteen years has led a blameless life in the course of which he has been entrusted with responsibilities of a semi-public nature and he appears to have earned the respect of those who are qualified to express an opinion. Evidence has been given that he has pursued the honourable avocation of a teacher with industry and efficiency and he is highly spoken of in that capacity. It also appears that at the time of the original trial he was anxious and ready to make every possible reparation and that the person who was injured by his lapse was also most anxious to compound the offence. But it was thought necessary in the interests of justice, and in the interests of the legal profession that the law should take its course. It is impossible for us to lay down any general rule. In the previous case—*In re Moonesinghe*¹—the period that elapsed was twenty years. In the present case the period is fourteen years. All we can say in the present case looking at all the facts of the case we are prepared to exercise the jurisdiction of the Court in favour of the applicant because we are satisfied that in so doing we are not in any danger of re-admitting to the roll a person who is not entitled to be treated with professional confidence. In taking this step we do not of course in any way wish to be thought to deal lightly with the offence of criminal breach of trust when committed by a member of the legal profession. The proctor in question found himself in this position because when he was entrusted with funds in a fiduciary capacity he did not keep those funds separate from his own money, but used them for his own purposes with the result that when they were required they were not available. There is no principle which it is more important to press upon persons entering the legal profession than a strict regard to the principles of trust accounts. These principles are now part of the legal training for solicitors in England and it is the intention of the Council of Legal Education to take steps to bring about a regular training in trust accounts among students desiring to enter the proctors' branch of the legal profession in Ceylon. I trust therefore, that it will be realized that this is a point which this Court regards as being of very great importance and it is after very careful consideration that we have determined in the present case to exercise our discretion in favour of the present applicant. 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. We are entitled to act in the present instance because on the facts of the case the present applicant has made out a right to petition the Court for such restoration. The application is therefore allowed.

ENNIS J.—I agree.

SCHNEIDER J.—I agree.

GARVIN J.—I agree.

¹ (1917) 1 C. W. R. 370.