IN RE DEMATAGODAGE DON HARRY WILBERT

SUPREME COURT
ATUKORALE, J., BANDARANAYAKE, J. AND MARK FERNANDO, J.
S.C. RULE NO. 1 OF 1988
JUNE 30, AND JULY 4, 1988

Attorney-at-Law – Rule against attorney-at-law – Judicature Act, No. 2 of 1978 ss. 40, 42 – Article 136(1) of the Constitution – Jurisdiction under section 42(2) of Judicature Act regarding acts committed before enrolment – Nature of jurisdiction under s. 42(2) – Deceit committed before enrolment – Inherent jurisdiction – Standard of proof – Failure to refer to inherent jurisdiction in Rule – Prejudice – Article 136(1)(g) of the Constitution.

In adducing documentation to establish his educational qualifications for entry to the Ceylon Law College the respondent now an attorney-at-law submitted a G.C.E. (O/L) certificate which bore several erasures and alterations which were not done in the Department of Examinations which issued the certificate. The respondent used that certificate as genuine and correct although he had reason to believe that it had been materially altered and thereby induced the Ceylon Law College to admit him as a student. He thus committed a deceit.

Held–

1. The Supreme Court has jurisdiction under section 42(2) of the Judicature Act, in regard to acts of deceit committed prior to enrolment, but the Court will be slow to exercise that jurisdiction in regard to matters long past or of trifling relevance to the interests for the protection of which that jurisdiction exists.
2. Any supposed ambiguity in regard to the extent of the jurisdiction of the Supreme Court which is a superior court and a court of last resort must be resolved in favour of the wider rather than the narrower interpretation, as the jurisdiction relates to the protection of the public, the litigants and the legal profession.
3. The jurisdiction under section 42(2) does not involve considerations of punishment, or penalty, or stigma; but the protection of the interests of the public and the litigants, and the honour and reputation of the legal profession.
4. There was a total lack of qualification for entry to the Law College. The entry of respondent's name on the Roll of Attorneys-at-Law has been induced by misrepresentation or mistake, if not worse.
5. The conduct of the respondent amounts to deceit within the meaning of section 42(2).
6. Even if a narrow interpretation is given to section 42(2) the court has an inherent jurisdiction to deal with the respondent's act of deceit although it was committed before his enrolment.
7. The traditional jurisdiction of the Supreme Court in regard to attorneys-at-law is recognised by implication in Article 136(1)(g) of the Constitution; section 42(2) of the Judicature Act does not purport to restrict that jurisdiction. If the court were powerless to remove from office an attorney-at-law whose admission and enrolment was obtained in these circumstances, undoubtedly the administration of justice would be brought into disrepute among right-thinking people. The court has in any event an inherent jurisdiction to deal with this act of deceit.

8. The only facts and charges relied on are those set out in the Rule; the omission to refer to the inherent jurisdiction of the Supreme Court has not in any way prejudiced the respondent in showing cause.

Per Fernando J: "The inherent jurisdiction of a court springs from its very nature; the grant of a statutory power to deal with a particular act, in a particular manner, does not necessarily exclude such inherent jurisdiction, nor are the boundaries thereof immutable or circumscribed. Such inherent jurisdiction exists, and is exercised, because it is essential for the administration of justice."

9. Though proof beyond reasonable doubt is not necessary yet proof on a preponderance of probability will not suffice. A degree of proof commensurate with the subject matter is necessary, for in proportion as the offence is grave so ought the proof to be clear. Every allegation of professional misconduct involving an element of deceit or moral turpitude requires a high standard of proof.

Cases referred to:

1. *Solicitor-General* v. *Ariyaratne* 1 CLW 400
2. *Re a Proctor* 39 NLR 517
3. *Re Ranasinghe* 52 NLR 559; 45 CLW 26
4. *Bater* v. *Bater* [1951] P. 35
5. *Blyth* v. *Blyth* [1966] AC 643
6. *Bhandari* v. *Advocates' Committee* [1956] 3 All ER 742
7. *In re Kandiah* 25 CLW 87
8. *Attorney-General* v. *Senaratne* 60 NLR 77
9. *Hunter* v. *Chief Constable, West Midlands Police* [1982] AC 529
10. *Peiris* v. *Commissioner of Inland Revenue* 65 NLR 457

IN THE MATTER OF A RULE issued on the respondent attorney-at-law in terms of section 42 of the Judicature Act.

Eardley Perera P.C. with *E. D. Wikramanayake, W. P. Gunatillake* and *J. Udawatte* for the respondent.

K. C. Kamalasabayson, Deputy Solicitor-General with *A. F. T. Fernando*, S.C. for the Attorney-General.

E. S. Amerasinghe P.C. with *M. B. Peramuna* for the Bar Association of Sri Lanka.

Cur. adv. vult.

July 26, 1989.

FERNANDO, J.

The Respondent entered the Ceylon Law College as a Proctor student on or about 4.1.73, and was admitted and enrolled as an

Attorney-at-law on 18.9.78. Many years later, it was brought to the notice of this Court that there were serious discrepancies between the G.C.E. (Ordinary Level) Certificate submitted by him with his application dated 11.8.72 to the Law College, and the records maintained by the Department of Examinations. Consequently, this Rule was issued calling upon the Respondent to show cause why he should not be suspended from practice, or removed from office, as an Attorney-at-law, in terms of section 42(2) of the Judicature Act, No. 2 of 1978, for having –

(1) fraudulently or dishonestly used as genuine G.C.E. (Ordinary Level) certificate No. 63310 dated 18.5.67, which he knew or had reason to believe to be a forged document, and thereby committed an offence;

(2) committed deceit, within the ambit of section 42(2) of the Judicature Act.

The Respondent first sat for the G.C.E. (Ordinary Level) Examination in December 1963, but no evidence has been led as to his results; he sat again in August 1964, December 1966 and December 1967, and his results were as follows:

ubject	August 1964	December 1966		December 1967
	Principal's Certificate	Law College Application	Examinations Dept. Register	Examinations Dept. Register
iology		[Credit]	Credit	failed
ealth Science		[Ordinary Pass]	Ordinary Pass	Credit
inhala Language "A" syllabus)	Credit	[Ordinary Pass]	Ordinary Pass	Ordinary Pass
hemistry		[Credit]	Failed	Failed
nglish Language "B" syllabus		[Credit]	Failed	Failed
hristianity (R.C.)	Ordinary Pass	[Credit]	Failed	Credit
rithmetic		[Credit]	Failed	----
ure Mathematics		----	----	Failed
ivics		[Credit]	----	----
hysics		----	Failed	Failed
otal: Credit Passes	One	[Six]	One	Two
Ordinary Passes	One	[Two]	Two	One

According to the Respondent's affidavit filed in response to the Rule, he was doubtful whether he would be suited to the legal

profession and whether he would have the financial resources necessary to complete his studies at the Law College; he requested that Certificate No. 63310 be returned to him, to enable him to submit it with applications for employment; in December 1972, that Certificate was returned to him. He testified that in 1987 he was questioned by the Police, in connection with the suspected forgery of this Certificate; he was requested to produce the Certificate, but did not do so, as he could not find it. In early 1989, after this Rule was served on him, the Certificate was traced, and was tendered to this Court by his Counsel, who joined learned Deputy Solicitor-General in requesting this Court to obtain a report from the Examiner of Questioned Documents; this was done.

In 1972, the Rules of the Council of Legal Education required that a person seeking admission as a Proctor student should have obtained five credits at the G.C.E. (Ordinary Level) Examination, including credit passes in English Language and Sinhala (or Tamil) Language; either five credit passes obtained at one sitting, or four credit passes at one sitting and the fifth at another. As the Respondent had obtained a credit pass in Sinhala Langauge at the December 1964 examination, he satisfied these requirements if Certificate 63310 was authentic and accurate. The practice at the Law College was to seek verification of results from the Department of Examinations, except where an original certificate was tendered; accordingly, verification was sought in respect of a certificate issued by the Principal of a School in regard to the Respondent's August 1964 results, but not in respect of the December 1966 results. This practice may well have to be reconsidered. The Respondent's application to the Law College, made in his own handwritng, and the certificate, refer to six credit passes in the same subjects, and hence there is no possibility of the certificate having been tampered with after it was submitted to the Law College.

The relevant portions of the Department of Examinations, Examination Results Registers relating to the December 1966 and 1967 examinations were produced. The Examiner of Questioned Documents, in his report submitted upon an order made by this Court, and his oral evidence, stated that an examination of the entries relating to the Respondnet has not revealed any evidence of erasures, alterations or interpolations; this has not been challenged,

and after perusing the entries ourselves, we are completely satisfied that they have been made in the ordinary course of business and have not been tampered with.

This evidence *prima facie* establishes that –

(1) The Respondent's results at the December 1966 examination were as set out earlier in this judgment; and

(2) The Respondent sat again in December 1967 for almost the identical subjects, obtaining similar results to the 1966 results; (but completely different to the results shown in Certificate No. 63310).

A.C.M. Ibrahim, Deputy Commissioner of Examinations (Certificates and Records) produced these Registers and explained how they were prepared; the Register for 1966, relating to private candidates (the Respondent having been a private candidate on that occasion) consists of several loose sheets bound together; each sheet had several vertical columns, one for each subject, and columns for certain other entries; and several horizontal columns, to record the names and other particulars of the candidates. These sheets were entered by officers of the Department from the information contained in the applications submitted by private candidates; initially the subjects for which each candidate had entered were recorded, by means of a horizontal line written in the appropriate column; after the answer scripts were marked, the results are entered in the appropriate column, by writing the grade obtained (i.e. "D", "C", "S" or "F" as appropriate) above the said horizontal line. Thereafter a results sheet is sent to every candidate; some time later, a certificate is sent, as a matter of course, to every candidate who has passed in five or more subjects, but not to others (who would receive a certificate only if they made a specific request. One vertical column, headed "G.C.E. (Ord. Level) Certificate Number", contains the serial numbers of the certificates issued to candidates who have passed in five or more subjects; these numbers are consecutive, and in the same order as the index numbers of these candidates, thus indicating that these certificates were issued as part of one process, and more or less contemporaneously. There is no certificate number entered against the Respondent's name in that column, indicating that no certificate was issued to him on the basis that he had passed in five subjects. In another column, headed "Remarks", are entered the serial numbers of the results sheets

issued to all candidates, as well as the serial numbers of the certificates issued, on request, to candidates obtaining less than five passes; in this column, against the Respondent's name, appears the serial number (63310) of the certificate issued to the Respondent; this certificate is not in the same sequence as the certificates in the other column, but is more than 5,000 numbers later. This confirms Ibrahim's evidence as to the practice followed in sending certificates to candidates in the latter category.

He also produced the relevant portion of the Register for December 1967 relating to school candidates (the Respondent having been a school candidate from Pembroke Academy); this was not in the identical format, although quite similar. The sheet relating to the December 1967 examination contains the signature of each candidate on the reverse, in the appropriate horizontal column, confirming the correctness of the subjects entered for; according to Ibrahim, the relevant entries are made in the school, and signed by each candidate; there can thus be no doubt as to the subjects which the Respondent entered for at that examination, which are identical to the subjects entered for in December 1966, (with one difference, namely that he offered Pure Mathematics instead of Arithmetic) according to the sheet for that examination. In the case of private candidates, the sheet is prepared in the Department, and hence the signatures of the candidates do not appear.

The Respondent has admitted in his evidence before us that he did not sit for Civics in December 1966; that he was aware that the results sheet received by him and Certificate No. 63310 were wrong, in that they purported to show that he had sat for and passed in Civics; that he stated in his application to the Law College that he had obtained a Credit pass in Civics although he was conscious that this was incorrect, as he had not sat for that subject; and that averments in his affidavit, claiming that he had sat for Civics, were incorrect. The Respondent admitted that he received a results sheet by post, which he did not produce; he was unable to trace it, although he did not make much effort to do so. He denies that he applied for the certificate, and states that it arrived by post, and was then in the same form as now.

Ibrahim's evidence is that the Results Register is entered from the marks sheet; the marks sheets are entered from the answer scripts. In cross-examination he stated that he had not checked upon the

availability of twenty-year-old answer scripts and mark sheets, but this is irrelevant in this case, for it was his further evidence that both the results sheet and the certificate issued to the candidate are entered by reference to the Results Register. In determining whether Certificate No. 63310 was altered, the question that arises is not whether the entries therein are consistent with the answer scripts or mark sheets, but when, how and why they became inconsistent with the Results Registers.

Ibrahim was questioned as to the procedure to be followed if a mistake was made in the preparation of certificates: as to whether such entry was erased, or altered, or a fresh certificate form used. He testified that a specific number of certificate forms, bearing printed serial numbers, were handed to each typist for the purpose of entering results; if any error was made, the typist was not expected to earse or alter such entry, but to treat that certificate form as cancelled, and to enter a fresh form; all the forms issued to each typist, consisting of those duly entered, those not used, and those which were cancelled, had to be accounted for and returned by him. He also testified that for security reasons, certificates were typed using a purple ribbon. However, we cannot exclude the possibility that typists may, in some cases, have typed entries over erasures, contrary to these instructions.

The report of the Examiner of Questioned Documents together with his oral evidence, establishes that there were numerous erasures and alterations in the Certificate No. 63310. The cross-examination did not disclose any inconsistency or infirmity in his investigations or evidence. The only defect in his report, which transpired in answer to a question from the Bench, was that it did not state whether (in the case of two entries) one particular letter had been altered, or typed over an erasure; and even this omission was promptly supplied by him, after reference to his notes. He explained the methods used by him for his investigation, and in every instance was able to explain the basis of his conclusions. I have no hesitation in accepting his evidence as to the erasures, alterations and double typing appearing on the document. The following matters are established by his evidence:

(1) The printed portions of the certificate, including the serial number and the signature, are genuine;

(2) Vertical lines are drawn in a certificate, against the subjects in

which the candidate was unsuccessful (or did not sit); this is obviously intended to prevent any entry being added to a genuine certificate. There is evidence of the erasure of such vertical lines, except in the case of the three subjects in which the Respndent was successful according to the Results Register. From the indentations that remained on the document, it is clear that what was erased were vertical lines;

(3) In five places, where there had previously been vertical lines, a new entry (credit pass) had been made over the erasure; this included Civics, for which the Respondent had not sat;

(4) The certificate contains a space to record (in words) the number of subjects passed; the Sinhala word for "eight" now appears over an erasure; had the certificate been originally entered so as to conform to the Results Register, the word "three" would have appeared here.

Certain other matters were referred to in his evidence –

(1) The Respondent's index number is typed in black, without any erasure, alteration or superimposition (or re-typing);

(2) The first three letters of the Respondent's name are typed in purple, over an erasure. The rest of his name, except for one "halkirima" which is in black, has been typed twice, once in black and once in purple; so also the Sinhala word for "credit" in respect of Biology. Four hyphens, immediately before and again immediately after the Respondent's name, are typed in black;

(3) In respect of Sinhala Language and Health Science, the first two letters of the Sinhala word for "ordinary pass" are in purple, over erasures, the third letter in purple and black, and the last letter in black;

Ibrahim's evidence is that the certificates are typed in purple; if that practice was followed, there is no explanation as to how any part of the certificate could be in black (without any erasure). Ibrahim had not been in that branch of the Examinations Department in 1967, and it may be that this was not the invariable practice. However, this does not in any way affect the other evidence as to the erasure of vertical lines and substitution of "credits". Likewise, there is no explanation as to the alterations, and double typing in purple and black, in respect of subjects in which the Respondent had passed; it may be

that in the process of erasing the original vertical lines some of these entries too were affected. Here again this feature does not affect the evidence regarding the five additional credits.

The certificate, at the time it was submitted to the Law College was not consistent with the entries in the relevant Register; it then showed the Respondent to have obtained credit passes in four subjects, in which he had actually failed, and in another for which he had not sat. These alterations could have been made at the time it was originally typed; or after it was originally typed, but before it was posted to the Respondent; or after it was received by the Respondent and before submission to the Law College.

In view of Ibrahim's evidence, while it is possible that, contrary to instructions, a typist may have made one or two erasures and re-typed entries, to save himself the labour of re-typing an entire certificate, it is not likely that any typist would have made so many erasures, in virtually every entry in the certificate, instead of re-typing the certificate, which would hve been very much easier. It is also unlikely that any such re-typing would have been in a different colour.

It is also possible that these alterations were made in the Department of Examinations, after the certificate was checked but prior to being posted to the Respondent. Either an unknown benefactor in that Department, intending to benefit the Respondent, or an unknown enemy hoping to put him into trouble at a later date, could have tampered with the certificate. There is only a suggestion, but no evidence, to the latter effect.

In considering these two possibilities, the Respondent's conduct has to be considered. He testified that he sat as a school candidate in December 1963, but did not suggest that his results were any better than in 1964 or in 1967. In August 1964 he obtained only a credit pass in Sinhala and an ordinary pass in Christianity. He left school in January 1965 and joined Pembroke Academy, to start afresh a two-year course for the same examination; however, in December 1966 he did not sit as a school candidate from Pembroke; he could not recall whether Pembroke had a Withdrawal test, to weed out unsuitable candidates; he sat as a private candidate. Having received his results sheet, and certificate, both showing (according to him) six credits and two passes, he nevertheless sat again in

December 1967; he did so, he says, because he had not obtained a credit in Sinhala. When it was pointed out that he had already obtained a credit in Sinhala in 1964, he could not give a satisfactory explanation: at one time, he seemed to suggest that he sat because his fellow-students were sitting, and at another stage he implied that he wanted to have five or six credits, including Sinhala, at *one* sitting. However, he also testified that after the December 1966 examination, he left Pembroke and commenced working as a proof-reader at the Colombo Catholic Press, with the idea of later becoming a journalist. If so, the latter suggestion cannot be accepted, for this would have made it difficult to get the results he hoped for. If he did leave Pembroke early in 1967, it is difficult to see how he could have entered as a school candidate from Pembroke. He has thus failed to give a plausible explanation for making a further attempt, despite results (in 1966) far better than in 1963 or 1964. In his application to the Law College, while giving full details, as required, of "Schools and Universities in order, giving dates of entry and leaving", of three schools attended prior to December 1964, and of another institution attended in 1970-71, he has omitted Pernrboke Academy which he was attending when he obtained the results on which he relied for admission; no satisfactory explanation was forthcoming for this omission. Further, the hypothesis that erasures and alterations took place in the Department must also be examined in relation to the results sheet: prior to the certificate being sent to the Respondent, a results sheet was admittedly received by him; if the results sheet was in conformity with the official Results Register, then the discrepancies between the results sheet and the certificate would have been obvious to the Respondent. If the results sheet was in conformity with the altered certificate, then it would mean that the results sheets too was deliberately entered in a manner inconsistent with the Results Register: but there is no reason whatever to think that the results sheet was incorrect. Finally, the manner in which the Respondent treated the obvious error in regard to Civics is also relevant: he asserted that candidates were often credited with passes in subjects for which they had not sat, and, like them, had no hesitation in taking the benefit of such errors, without query or qualms of conscience.

The Respondent's evidence in these proceedings did not impress me at all; his readiness to reap the benefit of the error in regard to the credit pass in Civics weighs against his credibility; he had no scruples about declaring in his application to Law College that he had

obtained a credit in Civics; nor even about swearing in his affidavit in these proceedings that he had sat for Civics. In giving evidence he was evasive and inconsistent on crucial matters; as to his reasons for sitting for the December 1967 examination, as to his employment between 1967 and 1972, and as to his reasons for waiting until 1972 to commence his legal studies, although from 1967 he was qualified to do so, if Certificate No. 63310 was authentic.

In these circumstances, I am satisfied beyond reasonable doubt that the alterations to the certificate did not take place in the Department of Examination.

In proceedings of this nature, it is not necessary that the acts alleged be proved beyond reasonable doubt; these proceedings are not criminal or penal in nature, but are intended to protect the public, litigants, and the legal profession itself. Over half a century ago, it was observed in *Solicitor-General vs. Ariyaratne* (1), that these proceedings involve not the question of punishing a man, but quite a different question, ought a person against whom such offences are proved remain on the Roll of an honourable profession? The same principles have been re-iterated in regard to re-enrolment: thus in *Re a Proctor,* (2).

> "In the case of *In Re Pool* it was said ..... 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 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."

and again in *Re Ranasinghe,* (3):

> "..... this Court, in dealing with these applications, must not be influenced either by punitive or sympathetic cosiderations. Our duty must be measured by the rights of litigants who 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."

However, proof on a preponderance of probability will not suffice; a degree of proof commensurate with the subject-matter is necessary, for in proportion as the offence is grave so ought the proof to be clear; *Bater vs. Bater* (4); *Blyth vs. Blyth* (5). In *Bhandari vs. Advocates Committee* (6), the Privy Council approved the following statement of the law:

> "We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities."

Applying that standard, I am satisfied, and hold, that the Respondent used as genuine and correct Certificate No. 63310 (a) which he knew to be incorrect, and (b) which he had reason to believe to have been materially altered; thereby inducing the Ceylon Law College to admit him as a Proctor student. If these facts had then been known, I am quite certain that the Respondent would not have been admitted and enrolled as an Attorney-at-law by this Court in September 1978. It transpired that criminal proceedings are contemplated against the Respondent for forgery; although not obliged to do so, in view of our order in this matter, we refrain from making any finding in respect of the charge of fraudulently or dishonestly using as genuine a certificate known to be forged.

It remains to consider whether this act of deceit, committed before the Respondent was enrolled as an Attorney-at-law, amounts to "deceit" within the meaning of section 42(2) of the Judicature Act, No. 2 of 1978. The relevant provisions of the Judicature Act are as follows:

> 40(1): The Supreme Court may in accordance with rules for the time being in force admit and enrol as attorneys-at-law persons of good repute and of competent knowledge and ability.
>
> 42(2): Every person admitted and enrolled as an attorney-at-law who shall be guilty of any deceit, malpractice, crime or offence may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together.
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> 43(3): Before any such attorney-at-law shall be suspended or removed as herein provided, a notice containing a copy of the

charge or charges against him and calling upon him to show cause within a reasonable time why he should not be suspended or removed, as the case may be, shall be personally served on him .....

42(4): It shall be the duty of the presiding officer of any court or other tribunal administering justice before which any attorney-at-law is found guilty of any crime or offence which may be prescribed to forthwith report such fact to the Supreme Court, which may if it thinks fit suspend such attorney-at-law from practice pending the final determination of any appeal from such finding of guilty or a proceeding under sub-section (3) whichever is later.

Mr. Eric Amerasinghe, P.C., on behalf of the Bar Association of Sri Lanka submitted that the Association was interested only in the question of principle involved, whether disciplinary action under section 42(2) could be taken in respect of acts committed prior to enrolment. He submitted that there ought to be no exhumation of misconduct buried in the distant past, no hunting for skeletons, unknown or forgotten, in ancient cupboards. If that were to be permitted, he said, the Association might be inundated with complaints seeking to rake up the past; but we do not take so dismal a view of the antecedents of the members of the legal profession. He conceded one exception, that this Court had jurisdiction to remove an Attorney-at-law convicted of an offence, committed prior to enrolment, and reported under section 42(4); he sought to explain this anomaly on the basis that there was a stigma attaching to such a conviction, which he said was of itself a good ground for the removal of an Attorney-at-law. The jurisdiction under section 42(2) does not involve considerations of punishment, or penalty, or stigma; but the protection of the interests of the public and litigants, and the honour and reputation of the legal profession. Such a conviction may be reported by the presiding officer of a court, without having the means of ascertaining whether the offence was committed prior to enrolment; if the jurisdiction conferred by section 42(2) is confined to acts committed after enrolment, the *procedure* for reporting provided by section 42(4) cannot extend that jurisdiction. When a matter is reported, this Court must determine whether it falls within the scope of section 42(2); if it does not, the jurisdiction under section 42(2) will not be exercised. Section 42(2) must therefore be interpreted without treating a conviction as an exception.

All Counsel were agreed that this Court has an inherent jurisdiction to take disciplinary action in respect of an act of deceit committed prior to enrolment, at least where such deceit relates to or is connected with the process of enrolment. Mr. Eardley Perera, P.C., for the Respondent, submitted that this Rule had been issued under and in terms of section 42(2), that this Court did not have jurisdiction to deal with the Respondent under that section, and accordingly no action for suspension or removal could be taken in these proceedings. The learned Deputy Solicitor-General contended that this Court did have jurisdiction under section 42(2); further, as no acts, other than those set out in the Rule, were involved, an order could be made in these proceedings even in the exercise of the inherent jurisdiction of this Court, without the need for fresh proceedings.

Before considering the scope of section 42(2), it needs to be emphasised that the *existence* of jurisdiction must be distinguished from its *exercise*. That an Act was committed before enrolment, or that a *considerable* period has elapsed since its commission, may well justify this Court in declining to suspend or remove a practitioner after inquiry, or even in declining to issue a Rule in the first instance: but it would not follow that this Court does not have jurisdiction in those circumstances.

Turning to section 42(2), Mr. Amerasinghe submitted that "malpractice" necessarily referred to an act after enrolment, as that term must refer to conduct contrary to the standards accepted in the legal profession. Mr. Amerasinghe contended that the *noscitur a sociia* rule of interpretation was applicable, and that the other terms – deceit, crime, offence must be interpreted with the like restriction. "Where two or more words *which are susceptible of analogous meaning* are coupled together .... they are understood to be used in their cognate sense. They take, as it were, colour from each other, *the meaning of the more general being restricted* to a sense analogous to that of the less general." *(Maxwell,* Interpretation of Statutes, 12th ed. p. 289). Maxwell's comment that this maxim is always a treacherous one "unless you know the *societas* to which the *socii* belong" is apposite; "deceit", "crime" and "offence" can hardly be regarded as words "which are susceptible of analogous meaning", and certainly not of the same *societas,* as "malpractice". Further, "malpractice" appears to be the more general word – for

offences may all be malpractices, but most malpractices would not be offences; and the rule cannot be applied to place a restriction on the *less* general words. In any event, we are doubtful whether "malpractice" is confined to acts committed after enrolment: for it may well include an act of corruption or breach of confidentiality committed by an attorney-at-law, during his period of apprenticeship, in relation to such apprenticeship.

The phrase "who shall be guilty of" in section 42(2) points to the future: but does it mean "who shall *commit* any deceit ....." or "who shall be *found guilty* of any deceit ....."? It is clear from section 42(3) that "guilty" refers to a finding by the Supreme Court, for that section requires the service of charges and an opportunity to show cause. Had section 42(2) used the expression "who shall be *found* guilty", it might well have been argued that an Attorney-at-law "found guilty", and reported, under section 42(4) was liable to be removed without the need for a further finding by the Supreme Court. I am of the view that section 42(2) requires in every case a finding of guilt by the Supreme Court – whether such finding be upon evidence, or upon an admission, or by way of presumption, or by estoppel. The proof of a conviction by another Court would facilitate, but not dispense with, such a finding; the conviction cannot be re-argued on the evidence upon which it was based, but other evidence can (exceptionally) be adduced: *Re Kandiah* (7) – despite a doubt expressed in *Seneratne's case* (8). The words in question thus refer to a finding of guilty, and not to the commission of the act of deceit or other misconduct. This interpretation of section 42(2) is confirmed upon a consideration of the nature of the jurisdiction thereby conferred: whereas a strict construction is required where a statutory provision empowers the infliction of punishments and penalties, the decisions cited earlier demonstrate that this jurisdiction relates to the protection of the public, litigants, and the legal profession. Had there been any ambiguity, therefore, section 42(2) must be given a wider, rather than a narrower, construction. Likewise, we are not dealing with the limited jurisdiction conferred on a tribunal created by statute, where a narrow construction is sometimes proper, but with the jurisdiction of a Superior Court, the Court of last resort; with a jurisdiction possessed since 1801, in relation to persons always regarded as standing in a special relationship to the Court. Any supposed ambiguity in regard to the extent of that jurisdiction must be resolved in favour of the wider, rather than the narrower, interpretation. I am of the view that this

court has jurisdiction under section 42(2) in regard to acts of deceit committed prior to enrolment, while recognising that this Court will be slow to exercise that jurisdiction in regard to matters long past, or of trifling relevance to the interests for the protection of which that jurisdiction exists. I hold that the conduct of the Respondent amounts to deceit, within the meaning of section 42(2).

Even if a narrow interpretation be given to section 42(2), nevertheless this Court has an inherent jurisdiction to deal with the Respondent's act of deceit. That deceit did not impinge directly on the very act of enrolment (as, for instance, the submission of a forged Law College final examination certificate would have); however it was not a merely collateral matter, or a disputed question of interpretation of the relevant Rules, or a defect which was curable (such as the omission to furnish a character certificate or being a few months under-age), but a total lack of qualification for entry to the Law College. Had these facts been known, the Respondent would not have been considered to be a person of good repute, or of competent knowledge and ability. It is not that I take a different view as to his knowledge, ability or reputation, but rather that the act of enrolment, and of the formal entry of his name on the Roll of Attorneys-at-law, has been induced by misrepresentation or mistake, if not worse. The inherent jurisdiction of a court springs from its very nature; the grant of a statutory power to deal with a particular act, in a particular manner, does not necessarily exclude such inherent jurisdiction, nor are the boundaries thereof immutable or circumscribed. Such inherent jurisdiction exists, and is exercised, because it is essential for the administration of justice. Thus in *Hunter vs. Chief Constable, West Midlands Police* (9) this jurisdiction in relation to abuse of procedure was referred to as:

> " ..... the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.

The traditional jurisdiction of this Court in regard to Attorneys-at-law is recognised, by implication, in Article 136(1)(g) of the Constitution; section 42(2) of the Judicature Act does not purport to restrict that jurisdiction. If this Court were powerless to remove from office an

Attorney-at-law whose admission and enrolment was obtained in these circumstances, undoubtedly the administration of justice would be brought into disrepute among right-thinking people. This Court has in any event an inherent jurisdiction to deal with this act of deceit.

In *Peiris vs. Commissioner of Inland Revenue* (10), Sansoni, J., as he then was, observed –

> "It is well settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power."

The only facts and charges relied on are those set out in the Rule; the omission to refer to the inherent jurisdiction of this Court has not in any way prejudiced the Respondent in showing cause. I therefore hold that, in any event, the conduct of the Respondent amounts to deceit, in respect of which disciplinary action may be taken against him under the inherent powers of this Court.

The Respondent's conduct, particularly in relation to the affidavit filed in these proceedings and his unrepentant attitude in respect of the use of a certificate admittedly known by him to be incorrect in material respects, makes it clear that there is neither an acknowledgment of wrongdoing nor repentance. It is therefore unnecessary to consider whether an order for suspension from practice would be sufficient. The Rule is made absolute, and I direct that the Respondent be removed from office as an Attorney-at-law, and that his name be struck off the Roll of Attorneys-at-law.

ATUKORALE, J. – I agree

BANDARANAYAKE, J. – I agree

Rule made absolute.
Name struck off Roll of Attorneys-at-law