1953 *Present :* **Rose C.J., Swan J. and de Silva J.**

In re W. A. P. JAYETILLEKE

S. C. 297—Application by W. A. P. Jayetilleke to be re-enrolled as a Proctor of the Supreme Court

Proctor—Application for re-enrolment—Palpable and definite repentance—Condition precedent.

The petitioner, whose name had been struck off the roll of Proctors in consequence of the commission by him of certain grave offences when he was 31 years of age and of 6 years standing in the legal profession, made application after 20 years to be re-enrolled as a Proctor. He suggested that the grave offences of which he had been convicted were the result of " youthful indiscretion ".

Held, that the petitioner failed to establish the existence on his part of that palpable and definite repentance which was a necessary pre-requisite of the consideration of the question whether the grave offences committed by him could even after 20 years be condoned.

APPLICATION for re-enrolment as a Proctor.

N. E. Weerasooria, Q.C., with *W. D. Gunasekere* and *O. S. M. Seneviratne*, for the petitioner.

H. A. Wijemanne, Crown Counsel, with *G. F. Sethukavaler*, Crown Counsel, as *amicus curiae*.

N. K. Choksy, Q.C., with *Cyril E. S. Perera, Q.C.*, and *C. G. Weeramantry*, for the Incorporated Law Society of Ceylon, on notice.

Cur. adv. vult.

July 9, 1953. ROSE C.J.—

This is an application by Mr. W. A. P. Jayatilleke to be re-enrolled as a Proctor of the Supreme Court.

The petitioner was enrolled as a Proctor of the Supreme Court on the 20th day of April, 1925, and practised his profession at Badulla from that date until the 21st of June, 1932, when he was convicted at the Midland Circuit with six other persons on five counts of an indictment laid against him, involving his being a member of an unlawful assembly, whose common object was to take possession of property by criminal force, and his having in prosecution of that common object committed house-trespass and caused hurt to two women and one man. For these offences he was sentenced to periods of six, nine and fifteen months imprisonment, the sentences to run concurrently.

At the hearing before us Mr. Wijemanne who appeared on behalf of the Attorney-General as *amicus curiae* drew our attention to certain facts, which if established, would have aggravated Mr. Jayatilleke's offence. Moreover, as was pointed out by Dalton A.C.J. when the matter was first considered by the Supreme Court (*35 N. L. R. 376*), there was medical evidence to support the complaint of one of the women

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that a criminal assault was committed on her by one of the gang brought there by the respondent, although it was not alleged that the respondent could be held responsible for this. I do not consider, however, that it would be correct for this Court—nor is it in my opinion necessary for the decision of this matter to do so—to take into consideration any of those matters, as there may be some dispute as to them, and I propose to confine myself to the facts as accepted by this Court when Dalton A.C.J. delivered his judgment on the 3rd August, 1933.

With regard to the facts which were established in the criminal case Dalton A.C.J. says at page 378, that on arrival at the scene "The respondent with others entered the house, assaulted the inmates, the two women being seriously assaulted according to the medical evidence, and there is evidence to show that respondent personally took part in inflicting some of these injuries . . . . The occupants being then turned out of the house spent the rest of the night in fear, hiding from their assailants, and reported the occurrence to the Police at Lunugala next morning".

The learned Judge adds at page 378, "This is not a simple case of criminal trespass where a party has taken a mistaken view as to his rights. The evidence shows that respondent was the moving spirit in the incidents of that night. He has in fact been dealt with as such, since no other of the accused (all but the 2nd, 8th and 9th being convicted) has received more than 5 months' rigorous imprisonment. His disputes with Ellen Perera explain his conduct, although of course they cannot justify it. He decided to take the law into his own hands to expel her from the property and recover possession of it, collected a gang of persons to help him in his project, coming with some from a considerable distance, and under cover of darkness entered the premises with them and attacked the three inmates, two of them being defenceless women, inflicting numerous injuries on them and afterwards driving them out in terror into the night. The conduct of the respondent—an educated man, and one who has on his own showing occupied public positions in the Uva Province—apart from the criminality of it, was most disgraceful and reprehensible even as an ordinary subject of the King, and still more so as a member of the legal profession. It makes him unfit to remain a member of an honourable profession".

As is clear from the many authorities which learned Counsel cited to us, it has been the practice of this Court to decide each case upon its particular facts. It seems to me that the principle is well stated by Bertram C.J. in the Matter of Application for Re-admittance as a Proctor in *39 N. L. R. p. 517*, when he said, "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

[1] *L. R. C. P. 360 (1869)*.

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 ".

Bertram C.J. goes on to say " 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 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 ".

As regards the present matter the question of reparation hardly arises. In the light of the facts there was perhaps no scope for any reparation. As regards the manifestation of an honest career during a considerable period of time, the documents which have been adduced by the petitioner would seem to indicate—and I have no reason to doubt—that for the last 20 years the petitioner has pursued a blameless and even a useful life.

As to the first ground however, the existence of a palpable and definite repentance, I am not satisfied. The facts of the case as established in the criminal Assizes, and set out by Dalton A.C.J. in the passages to which I have already referred, are in my opinion extremely serious and would, on their own account, make it difficult, in my view, for a Court to hold that the dignity of the profession and the safety of the public would be adequately safeguarded by the restoration of this Proctor to the Roll of Proctors of the Supreme Court. The petitioner, however, in paragraph 12 of his petition refers to the matter in the following terms: " The petitioner tenders to Your Lordships' Court his sincere apologies for the incident in respect of which he was convicted and sentenced and for the regrettable indiscretion which he committed ".

Moreover in some of the documents submitted by the petitioner in support of his petition the same position is adopted. Mr. M. I. Packir Saibo, a Justice of the Peace, writes, " . . . . Apart from his conviction there is nothing that can be said against him. He has paid dearly for this youthful indiscretion ". And Mr. Walter Pinto a Proctor of Badulla writes, " All those who know the facts of his case are aware that he has paid a very heavy penalty for a youthful indiscretion ". Further Mr. Henry Pinto, who is apparently a partner of Mr. Walter Pinto says, " His conduct has not been considered as anything more than his having indiscreetly taken the law into his own hands at the youthful age of 28 ".

It seems to me that the reference in the petitioner's own petition to which I have referred and the above passages from the documents in support show a complete lack of understanding of the extreme seriousness of the offences which the petitioner has committed. He was, according to his own Counsel, 31 years of age at the time of the offence and was

already at that time a professional man of six years standing. To suggest that in those circumstances the grave offences of which he was convicted and sentenced to a substantial term of imprisonment can be dismissed as a youthful indiscretion seems to me to be quite unwarranted and leads me reluctantly to the conclusion that the petitioner has failed to establish the existence on his part of that palpable and definite repentance which is a necessary pre-requisite of our consideration of the question whether his grave offences can even after 20 years be condoned. For these reasons the application is refused. There will be no order as to costs.

SWAN. J.—I agree.

DE SILVA J.—I agree.

Application refused.