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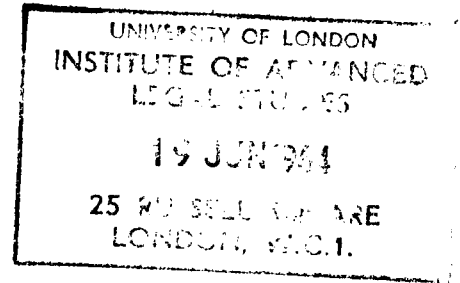
31/1963

1.

IN THE PRIVY COUNCIL

No. 3 of 1962

ON APPEAL
FROM THE SIERRA LEONE AND GAMBIA
COURT OF APPEAL



IN THE MATTER of the LEGAL PRACTITIONERS
(DISCIPLINARY COMMITTEE) ORDINANCE
C.118 of the LAWS of SIERRA LEONE

- and -

74081

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IN THE MATTER of FREDDIE A. SHORT, A
Legal Practitioner

FREDDIE A. SHORT ... Appellant

- and -

THE ATTORNEY GENERAL OF SIERRA LEONE
Respondent

C A S E FOR THE APPELLANT

Record

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1. This is an Appeal from a Judgment of the Sierra Leone and Gambia Court of Appeal, dated the 4th April, 1961, dismissing an Application for an Order to restore an Appeal from a decision of the Supreme Court of Sierra Leone, dated the 12th October, 1960, which had been dismissed on the ground of failure by the Appellant to fulfil punctually some of the conditions of appeal laid down by the Acting Registrar of the Court of Appeal. The said Decision of the Supreme Court, which was made under the Legal Practitioners (Disciplinary Committee) Ordinance, imposed penalties upon the Appellant for alleged professional misconduct. The Application to restore the said Appeal was made under Rule 23(3) of the Court of Appeal Rules, which gives the Court power "for good and sufficient cause" to order that an appeal dismissed on such a ground as aforesaid be restored.

2. The Complaint which resulted in the said decision of the Supreme Court was made by one Christopher Alphonso Hollist against the Appellant

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and another legal practitioner, one Berthan Macaulay, who is senior to the Appellant and whom the Appellant was assisting in a professional capacity during the period in which the alleged professional misconduct is said to have occurred. The charges against Mr. Macaulay (hereinafter called the First Defendant) and the Appellant (hereinafter called the Second Defendant) were dealt with together.

- p.4, 1.29. 3. The principal matter of complaint, which formed the subject of the charge against the First Defendant, was that the First Defendant improperly retained the sum of £58.5.10 out of a sum of £136.15.0 received by him as a Solicitor for the Complainant in an action in the Supreme Court in which the Complainant was the plaintiff. The charge against the Second Defendant in relation to this matter was that he "concurrent" in the conduct alleged against the First Defendant. This charge against the Second Defendant could not succeed if the charge against the First Defendant failed. 10
- p.5, 1.24. 4. There were two other charges against the Second Defendant, viz. (i) that, having received Counsel's fees of £10, he failed to give a receipt, contrary to the relevant provision of the Legal Practitioners Ordinance, and (ii) that he issued or caused to be issued a fictitious receipt for the said £10, in that the receipt actually issued by the First Defendant's firm described the said amount as "fees for disbursements". 20 30
- p.5. 5. The charges against both the Defendants having been found proved (wrongly, it is submitted), the Supreme Court by its said Decision imposed disciplinary penalties upon them. The First Defendant was ordered to be suspended from practice for one year. The Second Defendant was ordered to pay a fine of £10 on the charge of failure to give a receipt, and on each of the other two charges ordered to be suspended from practice for 3 months (to run concurrently). Each of the Defendants appealed to the Court of Appeal, and by a Judgment of that Court dated the 3rd November, 1960, in favour of the First Defendant, the finding against him was set aside and the order for his suspension quashed. The Second Defendant's appeal, however, being dismissed on the procedural ground mentioned above in paragraph 1, has never been heard on the merits. In particular, the finding against him that he "concurrent" in the alleged misconduct of the First Defendant still 40
- p.47.
p.51.

stands, notwithstanding that the finding against the latter has been set aside.

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6. In these circumstances, the principal questions which arise for determination upon this Appeal are as follows:-

- (1) Whether in justice to the Second Defendant his appeal to the Court of Appeal ought to be heard on the merits.
- 10 (2) Whether the Court of Appeal, in dismissing the Application to restore the said Appeal, gave any or sufficient consideration to the matters which it ought to consider upon such an application, having regard to the provisions of Rule 23(5) of the Court of Appeal Rules.
- (3) Whether there is "good and sufficient cause" within the meaning of the said Rule 23(3), why the said Appeal should be restored.

20 There also arise for determination certain questions relating to the Order dismissing the said Appeal on the ground of failure to fulfil punctually some of the conditions of appeal, namely :-

- (4) Whether the Court of Appeal, which purported to make the said Order under Rule 23(1) of the Court of Appeal Rules, had jurisdiction under that provision so to do.
- 30 (5) Whether, if the Court of Appeal had jurisdiction to make the said Order, it was misled as to the matters to be considered, by the fact that it purported to act under the said Rule 23(1).
- (6) Whether, if the Court of Appeal had jurisdiction to make the said Order, it was wrong in doing so, in the circumstances of this case.

Finally, there also arise for consideration the questions:-

- 40 (7) Whether the Grounds of Appeal upon which the Second Defendant relies in his said Appeal are good and substantial; and whether the findings against him ought to be set aside.
- (8) Whether in any event the fine of £10 imposed

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upon him ought to be quashed on the ground that the Supreme Court had no jurisdiction to impose it.

The Appellant respectfully submits that all the said questions ought to be resolved in his favour.

(The relevant provisions of the Court of Appeal Rules are set out in the Annexure hereto.)

7. The proceedings were instituted by a Complaint brought before the Legal Practitioners Disciplinary Committee, supported by an Affidavit sworn by the Complainant, on the 28th June, 1960. This was in accordance with the provisions of the Legal Practitioners (Disciplinary Committee) Ordinance, which authorises the Committee to hold an enquiry into any complaint made to them alleging misconduct against a legal practitioner, and requires them to embody their findings in the form of a report to the Supreme Court. If the Committee are of the opinion that a prima facie case of misconduct has been made out, the Supreme Court, after considering the evidence and the report -

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"may admonish the legal practitioner or suspend him from practising within the jurisdiction of the Supreme Court during any specified period, or may order the Master to strike his name off the Roll of the Court".

(Section 25).

8. The charges against the Defendants, founded upon the Complainant's said Affidavit, were as follows:-

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Against the First Defendant:-

p.4, l.29.

"That you being a registered Legal Practitioner of the Supreme Court of Sierra Leone and acting as Legal Practitioner in the Supreme Court Case of "C.A. Hollist versus B.E. Vincent" No. 406/1957 you committed an act of professional misconduct in that you improperly retained the sum of £58.5.10 out of the sum of £136.5.0 received by you as Solicitor for the said C.A. Hollist in the said matter."

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p.11, l.30.

Against the 2nd Defendant (as amended, by consent):-

p.5

"1. That you being a registered Legal Practitioner of the Supreme Court of Sierra Leone having received Counsel fees of £10 charged by

you on the 19th day of March, 1960, from Mr. C.A. Hollist to represent him in the Supreme Court Case of "C.A. Hollist versus B.E.Vincent" No.406/1957 you failed to give a receipt contrary to Section (13)(1)(a) of the Legal Practitioners Ordinance (Cap.117).

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10 2. That you being a registered Legal Practitioner of the Supreme Court of Sierra Leone having received fees of £10 on the 19th day of March, 1960, from Mr. C.A. Hollist as Counsel fees, to represent him in the Supreme Court Case of "C.A. Hollist versus B.E. Vincent" No.406 /1957 you committed an act of professional misconduct in that you issued or caused to be issued to the said Mr. C.A. Hollist a fictitious receipt for the said £10 on the 29th day of April, 1960, stating that the amount was for "fees for disbursements".

20 3. That you being a registered Legal Practitioner of the Supreme Court of Sierra Leone having been briefed by Mr. C.A. Hollist to represent him in the Supreme Court Case of "C.A. Hollist versus B.E. Vincent" No.406/1957 you committed an act of professional misconduct in that you concurred with Mr. Berthan Macaulay a registered Legal Practitioner of the Supreme Court of Sierra Leone to improperly retain the sum of £58.5.10 out of the sum of £136.5.0 received by him as Solicitor for the said C.A. Hollist in the said matter."

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9. The Complaint was heard before the Committee on four days between the 4th and the 26th August, 1960. The Complainant and both the Defendants gave evidence.

pp.6 et seq.

The case put forward by the Complainant in his evidence in chief was, in substance, as follows:-

40 In November, 1957, the Complainant instructed Mr. C.B. Rogers-Wright, a Legal Practitioner, to institute proceedings on his behalf against a Mr. Vincent for damage to his motor-car. He agreed to pay Mr. Rogers-Wright 15 guineas for the case, paid him that sum by cheque, and received from him a receipt for the same (Exhibit A). The proceedings were instituted by Mr. C.B. Rogers-Wright but later it became impossible for him to continue to act, as his name ceased to be on the Roll of Court. On about the 14th March, 1959, the Complainant was told

p.6, 1.25

p.63.

p.6, 1.37

p.6, 1.39

<u>Record</u>		
p.7, 1.3	by a Mr. Rosenior (the First Defendant's managing clerk) that the First Defendant would like to see him, and the next day he went to the First Defendant's chambers. The First Defendant asked the Complainant how much he was prepared to accept in connection with his claim in the case Mr. C.B. Rogers-Wright was conducting, the Complainant told him that he had told Mr. Rogers-Wright that he was prepared to accept £110, the First Defendant said	
p.7, 1.6	"All right. You will hear from me later", and the Complainant then left. On the 6th March, 1960, Mr. Rosenior came to his house and told	10
p.7, 1.15	him that his case was coming up next morning and that "a Mr. Short" (the Second Defendant) would be representing him. The next morning the Complainant went to the Supreme Court and there met the Second Defendant - the First Defendant was not there - and the Second Defendant asked the Complainant what about his fees. The Complainant told the Second Defendant that he had paid his former Solicitor Mr. Rogers-Wright, but the Second Defendant said he knew nothing about that, and the Complainant said that he was prepared to pay. The case was adjourned to the 21st March, 1960. Later the same day the Complainant went to the Second Defendant's chambers and told the Second Defendant that he would like to engage his professional services for the case. In a discussion with the Complainant, the Second Defendant informed him that the First Defendant was away, but was expected back before the 21st March, and told the Complainant to wait for a week and see what happened. On the 19th March 1960, the Complainant went again to the Second Defendant's chambers, and was told that the First Defendant had still not arrived in Freetown. After some discussion he agreed to pay the Second Defendant £10 to appear for him on the 21st March, and gave him a cheque for that sum for his professional fees. On the 21st March, 1960, in the Supreme Court, a settlement of the claim was discussed between Counsel, and the Second Defendant asked the Complainant how much he would be prepared to accept and what about Costs. The Complainant told the Second Defendant that he would accept £110 and, as regards costs, that he had paid Mr. Rogers-Wright 15 guineas and the Second Defendant himself £10. A settlement was reached upon the terms of £110 damages £26.5.0 Costs.	
p.7, 1.20		
p.7, 1.20		
p.7, 1.33		20
p.7, 1.50		
p.8, 1.1.		
p.8, 1.3		
p.8, 1.11		30
p.8, 1.16		
p.8, 1.31		40
p.9, 1.1.		
p.9, 1.5.		
p.8, 1.50	The Second Defendant did not give the Complainant a receipt for the £10 which he had paid, and when asked for one on the 25th March, he replied	50
p.9, 1.13.		

- "You need not worry about that one". The Complainant again asked the Second Defendant for a receipt at an interview at his chambers on the 9th April, 1960; the second Defendant said "What do you want to do with my receipt? I won't deny that you gave me £10." However, the Second Defendant told his clerk to obtain a receipt-book and issue a receipt to the Complainant for £10, but the next morning when he went to the chambers and asked the clerk for his receipt she told him that the supply of receipt-books at the Bookshop was exhausted.
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- At the interview on the 9th April, 1960, the Second Defendant told the Complainant that the Costs of 25 guineas were not his, and started to give reasons, to which the Complainant paid no attention.
- On the 20th April, 1960, the Complainant received a letter dated the 19th April, 1960 (Exhibit B) from the First Defendant (who practises under the name "Macaulay & Co.") which stated as follows:-
- 20
- " C.A. Hollist vs. B.E. Vincent
- We are now in a position to hand to you our Mr. Short's cheque for £77.19.2 due you. Would you call at this Office in time before 4.00 p.m. on Friday to collect the cheque.
- Yours faithfully,
- (Sgd.) MACAULAY & CO. "
- By a letter dated April 20, 1960 (Exhibit C) the Complainant replied to the First Defendant and inter alia requested the remittance to him of the full amount of £136.5.0. A further letter from the First Defendant, dated the 25th April, 1960, invited the Complainant to telephone for an appointment and stated inter alia:-
- 30
- "Mr. Short's receipt for the sum of £10 which you paid on the 19th March is in your file and will be handed over to you by Mr. Macaulay (i.e. the First Defendant)."
- On the 29th April, 1960, the Complainant went to the First Defendant's chambers and there had a meeting with both the Defendants. The First Defendant handed to the Complainant a receipt (Exhibit E) which read as follows:-
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Record
p.9, 1.30

p.9, 1.31

p.9, 1.40

p.9, 1.48

p.9, 1.25

p.10, 1.1

p.63.

p.10, 1.4
pp.64-65

p.10, 1.6
p.65

p.65, 1.34

p.10, 1.8

p.10, 1.27

<u>Record</u>	"No.CF8	19th March, 1960	
p.66	Received from Mr. C.A. Hollist the sum of Ten pounds -- shillings and -- pence being fees for Disbursements.		
	£10.--.	pp (Sgd.) ? ? for Macaulay & Co. "	
p.10, 1.34	The First Defendant informed the Complainant that he was going to prepare his bill, and offered him a cheque for £77.19.2, which the Complainant declined to accept.		10
p.10, 1.43 p.66	The next day the Complainant received from the First Defendant a letter dated the 29th April, 1960 (Exhibit F) enclosing the Second Defendant's cheque for £77.19.2 and a bill showing how the said sum was arrived at, by reference to the monies received (including the £10 paid to the Second Defendant, described as "deposit") and various items of charges and disbursements. The said letter stated <u>inter alia</u> :-		
p.67			
p.66, 1.25	<u>"Although we acted as your Solicitor, you will recall that Counsel for Mr. Short had to be briefed to appear."</u>		20
p.10, 1.50 pp.67-69 p.68, 1.4 p.68,1.25	The Complainant replied by letter dated the 4th May, 1960 (Exhibit G) in which he <u>inter alia</u> (i) stated that he paid to the Second Defendant the sum of £10 as fees, not a deposit, (ii) requested that the bill be taxed, (iii) referred to the events which had occurred and described the bill as incorrect and intended to force him to pay the First Defendant's firm unreasonable and unnecessary monies, and (iv) stated he did not accept the bill as true, but accepted two items of charges in it.		30
p.68, 1.41			
p.11, 1.1	The Complainant did not receive any reply to his letter of the 4th May, 1960, and had not been paid the £58.5.10. He deposited the cheque for £77.19.2 with his Bank.		
p.11, 1.38			
	In cross-examination the Complainant stated <u>inter alia</u> :-		
p.12, 1.39	"My complaint is as to the contents of the bill apart from the items of notice of change of Solicitors and filing judgment."		40
p.14, 1.23	"You (i.e. the Second Defendant) have always admitted receiving £10 from me."		

.....

"I have since received a receipt for £10. That was handed to me in your (i.e. the Second Defendant's) present. I did not tell the First Defendant that you had taken £10 from me as full Counsel's fees. It was not necessary."

p.14, 1.47

10. The First Defendant's answer to the case against him was that he was entitled as a Solicitor to retain, as his costs, a portion of the sum of £136.5.0 received by him, and had a lien on the same; and that the Complainant's proper remedy, in disputing the First Defendant's bill, was to apply for a taxation of the bill. In his evidence in chief the First Defendant stated inter alia as follows :-

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p.29, 1.20

"If I may express my personal view I was entitled to keep the sum of £136.5.0 which sum until such time as complainant agreed to my bill or had an order for taxation thereof. 2nd Defendant was working with me helping me in my office as a Solicitor, not as a partner and I sometimes instruct him as Counsel and paid him for it. I also paid him for the work he did for me as a Solicitor. 2nd Defendant had full authority to sign letters on behalf of Macaulay & Co., the name under which I practice. He had full authority to do everything I do myself with the exception of signing my cheques. I left Freetown sometime in February this year for England. I left 2nd Defendant in charge of my office and practice. "

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p.16, 1.47

.....

"I returned from England about 25.3.60 and 2nd Defendant handed me all my files with his notes in them as to what he had done together with a note in each and every one of them as to what monies he had received. Amongst these was Complainant's file with a note "19.3.60 £10 paid".

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p.17, 1.29

.....

"I gave instructions after 2nd Defendant and I had settled accounts to make a receipt from Macaulay & Co., on the note which was in the file of Complainant - made by 2nd Defendant - I told her to issue receipt as fees for disbursements - she did. At the interview at which 2nd Defendant was present I told Complainant that he had paid the sum of £10 to 2nd Defendant in my absence and handed my receipt to him for the amount. "

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p.17, 1.49

Record

- p.18, 1.33 In cross-examination, the First Defendant said that it was he, and not the Second Defendant, who received the sum of £136.5.0 on behalf of the Complainant from the Solicitor acting for the Defendant in the action. And in answer to the question: "In what capacity was the Second Defendant acting during your absence, for Macaulay & Co?" he said: "As agent".
- p.21, 1.11
- p.30, 1.25 11. The Second Defendant's answers to the charges against him were:- (i) As regards the alleged failure to give a receipt, that the Ordinance does not state when the receipt is to be given, and, in due course, a receipt for the £10 was in fact given by his principal the First Defendant; (ii) as regards the second charge, that as the receipt for the £10 was given by the First Defendant not the Second Defendant, it was therefore not his act, that he did not concur in the writing on the receipt describing the money paid as "fees for disbursements", and that in any event it was not a fictitious receipt; (iii) as regards the third charge, he relied upon the argument put forward on behalf of the First Defendant. 10 20
- The Second Defendant's evidence included the following:-
- As regards the payment to him of £10 and his failure to give a receipt, he said inter alia :-
- p.23, 11.6-20 (i) That immediately after he was paid he wrote upon a sheet of paper (Exhibit L) a note, which he put in the First Defendant's file relating to the Complainant's case:- 30
- p.70 "Interview with client on Saturday 19/3/60. Client pays £10.0.0."
- p.25, 1.16 (ii) That upon the First Defendant's return he accounted to him for the £10.0.0.
- p.27, 1.35 (iii) That his reasons for not giving a receipt for the said sum were as follows :-
- "There were considerations which prevented me issuing a receipt on the 19th March. These were - 40
- (1) Mr. Macaulay was due 2 days after the payment was made

- (2) Mr. Hollist was saying that he ought not to have been asked to pay this £10 or any money at all because he had already paid Mr. C.B. Rogers-Wright for the case and Mr. Macaulay had been paid sic Rogers-Wright. "

Record

As regards the dispute regarding the retention by the first Defendant of the sum of \$58.5.10, he said inter alia :-

- 10 (iv) That on the 9th April, 1960, he told the Complainant that he was not entitled to the whole of the money which would be received from the defendant in this action, and proceeded to explain why -
- "I told him that in a matter like this he would have to await the return of Mr. Macaulay 1st Defendant who would determine what proportion would go to him and what would go to Mr. Macaulay".
- 20 (v) In answer to the question? "In what capacity did you yourself think you were acting when the First Defendant left for England?" he said: "In Court, Counsel, outside as Agent."
12. The Committee found all the charges proved. They stated their findings and opinion in a Report dated the 2nd September, 1960, as follows :-
1. That the sum of £15.15.0 was paid by the Complainant to Mr. C.B. Rogers-Wright as full payment of Counsel fee for the case of Hollist vs. Vincent.
2. That the case was handed over by Mr. C.B. Rogers-Wright to Mr. Berthan Macaulay for Macaulay & Co., to continue.
3. That at the time the case was handed over Mr. C.B. Rogers-Wright could not practice as a Barrister and Solicitor as he had then been struck off.
- 40 4. That at the time the case was handed over the case was ripe for hearing.
5. That 2nd Defendant Mr. Short subsequently demanded money from the Complainant and was then paid an agreed sum of £10 in respect of the case.

p.24, 1.10

p.24, 1.14

p.28, 1.5

pp.33, 36
p. 32

pp.33-34

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- 6. That the sum of £58.5.10 was retained and is still retained by 1st Defendant.
- 7. That 2nd Defendant demanded and received the £10 from Complainant as Counsel fee. Committee believed the Complainant and accept his evidence and does not believe either 1st Defendant Macaulay or 2nd Defendant Short.
- 8. That 2nd Defendant did not give a receipt for the £10 he received from Complainant and therefore violated the provisions of Section 13(1) (a) of the Legal Practitioners Ordinance, Cap. 117. The Committee finds the 1st charge against 2nd Defendant Short proved and that it amounts to professional misconduct.
- 9. As regards the 2nd Count against the 2nd Defendant .. (the Committee referred to the evidence, and stated their conclusion -)

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p.34, l.34.

"In view of the finding of the Committee that the £10 was paid by Complainant to 2nd Defendant as his Counsel fee the Committee finds that the receipt Exhibit "E" was to say the least incorrect and misleading and that 2nd Defendant was a party to its issue.

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The Committee finds that the 2nd charge against 2nd Defendant substantially proved and in the Committee's view this act constitutes professional misconduct."

p.34, l.46

- 10. With regard to the charge against the 1st Defendant and the third charge against the 2nd Defendant, the Committee finds that the sum of £136.5.0 i.e. £110 plus 25 guineas costs awarded Complainant by the Court, was received through the instrumentality of 2nd Defendant. The question to be decided is whether 1st Defendant had a lien on £58.5.10 deliberately retained by 1st Defendant. There is a conflict in the evidence before the Committee as to whether or not Complainant retained 1st Defendant or for that matter Macaulay & Co. Complainant said, and he was quite definite in his evidence, that he neither retained Macaulay & Co., nor 1st Defendant. 1st Defendant on the other hand said that Complainant retained him (the Committee referred to the evidence, and stated their conclusion -) "The Committee

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p.36, l.28

finds that the Complainant never retained 1st Defendant. That being so 1st Defendant had no right either to have received the £136.5.0 or to have retained any part of it at all. The Committee finds that the 1st Defendant improperly retained the sum of £58.5.10 the property of the Complainant and that 2nd Defendant concurred in its improper retention.

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10 The Committee finds that this constitutes professional misconduct.

13. The Report of the Committee was considered by the Supreme Court (S.B. Jones J. and Luke Ag.J.) on the 3rd, 4th and 5th October, 1960. The Acting Solicitor-General appeared on behalf of the Committee.

pp.37 et seq.

20 With regard to the Committee's finding against the Defendants on the principal matter of complaint, i.e. the alleged improper retention by the First Defendant of the sum of £58.5.10. and the alleged "concurrence" on the part of the Second Defendant, it was strongly contended that the First Defendant appeared before the Committee to meet a charge of improperly retaining his client's money, upon the basis that he was the Solicitor for the client (the Complainant), and it was quite a different thing to find against him that he was not the Complainant's Solicitor and so acted without authority. It was pointed out that the Complainant never asserted that he did not retain the First Defendant, and contended that the Committee misled itself by "accepting" evidence which was not in fact given.

p.38, 1.1.

pp.38-39

p.49, 1.8

30 The Supreme Court, however, took the view that the substance of the Complainant's evidence did imply an assertion that he did not retain the First Defendant, and upheld the finding of the First Defendant. The Court also upheld the finding against the Second Defendant that he "concurred" with the First Defendant in improperly retaining the said sum.

p.49, 1.15

p.49, 1.22

p.50, 1.6

40 The Committee's findings against the Second Defendant upon the other two charges were also upheld.

p.49, 1.29

p.50, 1.2

14. In a Notice of Appeal dated the 31st October, 1960, the Second Defendant set out Grounds of Appeal against the said Decision of the Supreme Court as follows:-

p.51

Record"Grounds of Appeal

p.52, 1.3

- (i) That the Court was wrong in law in holding that the 2nd Defendant caused to be issued a receipt which he knew to be false.
- (ii) That the Court was wrong in law in holding that the 2nd Defendant concurred with the 1st Defendant in improperly retaining the sum of £58.5.10.
- (iii) That the findings of the Disciplinary Committee, and the Court was unreasonable having regard to the evidence. 10
- (iv) That the facts found by the Disciplinary Committee and Court did not, in law constitute professional misconduct.

The Second Defendant relies upon the said grounds of appeal and, in addition, upon the grounds of appeal relied upon by the First Defendant in support of his said successful Appeal, the principal grounds being (in substance) (a) that he was found guilty of an offence other than that with which he had been charged, (b) that on the question of retainer, the burden of proof was placed upon him, (c) that the Committee had not considered whether he honestly believed that he was entitled to retain the said sum of £58.5.0, and (d) that the Committee did not apply the high standard of proof required (Bhandari v. Advocates Committee (1956) 1 W.L.R. 1442). The Second Defendant further submits that the Supreme Court had no jurisdiction to impose the said fine upon him. 20 30

p.57

15. By a letter dated the 18th January, 1961, the Acting Registrar of the Court of Appeal informed the Second Defendant that he was required to fulfil certain conditions, as follows :-

"Pursuant to Rules 16(4) and 17 of W.A.C.A. Rules, as applied to the Sierra Leone and the Gambia Court of Appeal, you are hereby required to fulfil the following conditions :-

- (a) To deposit the sum of £20 (Twenty pounds) forthwith to abide the cost of compilation and transmission of record of Appeal. 40
- (b) To deposit into Court the sum of £20

(twenty pounds) to abide costs of appeal or give security therefor by bond with one surety to be approved by the Acting Registrar.

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(c) To pay forthwith the sum of £1 (one pound) for settling the record.

(d) To pay in advance the hearing fee of £4 (four pounds).

10 (e) To pay a further £1 (one pound) for the Registrar's Certificate required under Rule 19(b).

It is to be observed that of the said conditions, the first and the third each required payment of the sum therein mentioned to be made "forthwith", but that no time-limit was imposed for the fulfilment of the other three conditions.

(The Rules referred to in the said letter are set out in the Annexure hereto)

20 16. The said Appeal of the Second Defendant was included in the printed and published list of appeals for hearing at the sittings of the Court of Appeal which began on the 15th March, 1961. By that date, the office records of the Court of Appeal showed that the Second Defendant had fulfilled all the conditions of appeal but, as regards the first and the third conditions, that they had not been fulfilled punctually, i.e. in the sense that he did not appear to have made the payments respectively required by those conditions "forthwith" as required by the said letter from the Acting Registrar. The record showed the following:-

30	Condition (a) The sum of £20 deposited 13th March, 1961.	p.59, 1.29
	" (b) Bond filed on 15th March, 1961	p.61, 1.10
	" (c))	
	" (d) } Paid on 13th March, 1961	
	" (e))	

40 17. On the 21st March, 1961, the Second Defendant's said Appeal came before the Court of Appeal (Ames P., Benka-Coker, C.J. Sierra Leone and Marke J., Sierra Leone). The Court dismissed the said Appeal with Costs; under Rule 23(1) of the Court of Appeal Rules. (See the Annexure hereto). p.53

Record

The Second Defendant, who had substantially fulfilled the conditions laid down, submits that the Court of Appeal had no jurisdiction to dismiss his said Appeal under Rule 23(1) which gives power to the Court to dismiss an appeal only if "none of the requirements" of Rules 16(4) and 17 have been complied with, and the Registrar of the Court below has so certified. Neither of these conditions existed in the present case.

It is further submitted that the Court of Appeal was misled as to the matters to be considered, by the fact that their Lordships purported to act under the said Rule 23(1), which contemplates a case in which there has been a complete failure on the part of an appellant to comply with the requirements mentioned.

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18. The Second Defendant further submits that in any event his said Appeal ought not to have been dismissed on the ground of his failure to fulfil punctually two of the said conditions laid down by the Acting Registrar.

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p.59 19. On the 24th March, 1961, the Second Defendant applied by Motion for his said Appeal to be restored, under Rule 23(3). (See the Annexure hereto.)

p.59, 1.14 Counsel for the Committee, the Respondent to the Motion, stated that he did not oppose the Application.

pp.55-56 The Application was supported by an Affidavit, sworn by the Second Defendant on the 21st March, 1960. He referred to the said letter from the Acting Registrar and went on as follows :-

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p.56, 1.3 "(4) That the said letter did not specify the time within which the conditions were to be fulfilled, notwithstanding the provisions as to time contained in Rule 16(4) and 17 of the said Rules.

(5) That consequently, I as Appellant fulfilled all the conditions before the hearing of the said Appeal.

(6) That before the commencement of the sitting for which the appeal was set down, I had paid the amount fixed by the Registrar and had had the bond executed.

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(7) That I paid these amounts and had the bond executed when I did for the following reasons:-

Record

(i) That it was not clear from the Registrar's letter that there was any time limit fixed within which the conditions were to be fulfilled.

(ii) That I was unable to pay the amounts before I paid them because I did not have money, having been out of practice for one month in consequence of my suspension. "

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On behalf of the Second Defendant, it was submitted in argument that the said Appeal ought to be restored, in the interests of justice.

p.59, 1.37

20. The Judgment of the Court of Appeal (constituted as before) dismissing the Application to restore the said Appeal. was delivered on the 4th April, 1961. The reasons for dismissing the Application are indicated in the following passages :-

p.60

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"What are the Applicant's grounds for asking to have the matter restored to the list? One is that the Registrar's letter did not specify the time within which the conditions were to be fulfilled. Well, it specified the time as to two items but not as to the bond. The other is that the Applicant was unable to pay the amounts before he did for lack of money, having been unable to practise for one month in consequence of his suspension

p.61, 1.28

.....

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"It must be remembered that the Applicant is a legal practitioner and fully conversant with the Rules, and decisions of the Court refusing extension of time where there is no adequate excuse. The long and short of it appears to us to be that the Applicant has been not merely dilatory but very dilatory and no Appellant should be dilatory, least of all a legal practitioner.

p.61, 1.43

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It is respectfully submitted that the Court of Appeal failed to give any or sufficient consideration to the broader matters, other than the question of delay, which ought to have been considered, Viz:-

(i) The submission that the said Appeal ought to be restored, in the interests of justice.

Record

- (ii) The gravity of the matter in issue on the said Appeal.
- (iii) The strength of the Second Defendant's Grounds of Appeal.
- (iv) The question whether there was "good and sufficient cause", within the meaning of Rule 23(3), why the said Appeals should be restored.
- (v) The question whether the order dismissing the said Appeal had rightly been made.

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p.62

21. On the 3rd November, 1961, the Second Defendant was granted Final Leave to Appeal to Her Majesty in Council.

22. The Second Defendant respectfully submits that this Appeal ought to be allowed with Costs, and that his said Appeal to the Court of Appeal ought to be restored: alternatively the said Decision of the Supreme Court and the findings against him by the Legal Practitioners' Disciplinary Committee and the Supreme Court ought to be set aside, for the following, amongst other,

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R E A S O N S

- (1) BECAUSE in justice to the Second Defendant his said Appeal to the Court of Appeal ought to be heard on the merits.
- (2) BECAUSE the Court of Appeal, in dismissing the Application to restore the said Appeal, failed to give any or sufficient consideration to:-

(i) The submission made on behalf of the Second Defendant that in the interests of justice the said Appeal should be restored; or

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(ii) The gravity of the matter in issue and the stigma attaching to the Second Defendant as a result of the said Decision of the Supreme Court against which he seeks to appeal; or

(iii) The strength of the Second Defendant's Grounds of Appeal; or

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(iv) The question whether there was "good

and sufficient cause" within the meaning of Rule 23(3) of the Court of Appeal Rules, why the said Appeal should be restored; or

(v) The question whether the Order dismissing the said Appeal had rightly been made.

- (3) BECAUSE in the circumstances of the case there is "good and sufficient cause", within the meaning of the said Rule 23(3), why the said Appeal should be restored.
- 10 (4) BECAUSE the Court of Appeal had no jurisdiction under Rule 23(1) of the said Rules to dismiss the said Appeal on the 21st March, 1961.
- (£) BECAUSE the Court of Appeal, in dismissing the said Appeal, was misled as to the matters to be considered, by reason of the fact that the said Court purported to act under the said Rule 23(1).
- 20 (6) BECAUSE in the circumstances of the case, there was no ground or justification for dismissing the said Appeal under the said Rule 23(1).
- (7) BECAUSE in the circumstances of the case, the Court of Appeal ought not to have dismissed the said Appeal either under the said Rule 23(1) or at all.
- 30 (8) BECAUSE the Grounds of Appeal relied upon by the Second Defendant against the said Decision of the Supreme Court are good and substantial and the said Decision, and the findings against him by the Legal Practitioners Disciplinary Committee and the Supreme Court, ought to be set aside.
- (9) BECAUSE the Supreme Court has no jurisdiction to impose the said fine upon the Second Defendant.
- 40 (10) BECAUSE the finding against the Second Defendant on the third charge depends upon the finding against the First Defendant; and the finding against the First Defendant contained in the said Decision of the Supreme Court and in the Report of the Legal Practitioners Disciplinary Committee have been set aside by the Court of Appeal.
- (ii) BECAUSE the dismissal of the said Application was wrong in fact and in law and was not a proper or judicial exercise of the Court's discretion.

A N N E X U R E

West African Court of Appeal Rules.

- p. 328. Rule 12. (Prescribes the form of the Notice of Appeal and deals with related matters.)
- p. 330. Rule 16(4) The appellant shall within such time as the Registrar directs deposit with him a sum fixed to cover the estimated expense of making up and forwarding the record of appeal calculated at the full cost of one copy for the appellant and one-quarter cost for each of the three copies for the use of the Court.
- p. 330. Rule 17. The appellant shall, within such time as the Registrar of the Court below shall fix, deposit such sum as shall be determined by such Registrar or give security therefor by bond with one or more sureties to his satisfaction as such Registrar may direct for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.
- p. 331. Rule 19(1) The Registrar of the Court below shall transmit the record when ready together with -
.....
(b) a certificate that the conditions imposed under Rules 16(4) and 17 have been fulfilled.
.....
- p.332. Rule 23(1) If the appellant has complied with none of the requirements of rules 16(4) and 17 the Registrar of the Court below shall certify such facts to that Court, which may thereupon order that the appeal be dismissed with or without costs.
- (2) If the respondent alleges that the appellant has failed to comply with a part of the requirements of rule 12, 16(4) or 17 the Court, if satisfied that the appellant has so failed, may dismiss the appeal for want of due prosecution or make such other order as the justice of the case may require.
- (3) An appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored and the Court may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit.

ON APPEAL
FROM THE SIERRA LEONE AND GAMBIA
COURT OF APPEAL

IN THE MATTER of the LEGAL
PRACTITIONERS (DISCIPLINARY
COMMITTEE) ORDINANCE Cap.118 of
the LAWS of SIERRA LEONE

- and -

IN THE MATTER of FREDDIE A. SHORT,
A Legal Practitioner

FREDDIE A. SHORT Appellant

- and -

THE ATTORNEY GENERAL OF SIERRA
LEONE Respondent

C A S E

FOR THE APPELLANT

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