*Privy Council Appeal No. 3 of 1962*

**Freddie A. Short** – – – – – – – – *Appellant*

*v.*

**The Attorney General of Sierra Leone** – – – – – *Respondent*

FROM

**THE SIERRA LEONE AND THE GAMBIA COURT OF APPEAL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1963

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*Present at the Hearing:*
VISCOUNT RADCLIFFE.
LORD EVERSHED.
LORD DEVLIN.
(*Delivered by* LORD EVERSHED)

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The appellant before the Board in this case is a legal practitioner, that is to say a member of the Bar and a solicitor of the Supreme Court of Sierra Leone. The appeal is from a decision of the Sierra Leone and Gambia Court of Appeal dated 4th April 1961 whereby that Court refused to restore an earlier appeal on the part of the appellant (which had been dismissed on the 21st March 1961) from an order of the Supreme Court of Sierra Leone dated 12th October 1960.

The order last mentioned had been made upon three charges of professional misconduct preferred against the appellant as a legal practitioner; and by the order the appellant had been required to pay a fine of £10 and had been suspended from practice as a legal practitioner for 3 months.

Having regard to the view which the Board has taken upon the appeal, in light of what appears to their Lordships to be the duty of the Board in a case where it is of the essence of the appellant's case that the Court of Appeal had wrongly exercised a discretion, it is not necessary to go at length into the nature of the charges of unprofessional conduct or into the circumstances from which they arose; and not the less so since no argument was in fact addressed to the Board to the effect that the decision of the Supreme Court upon the charges was unjustifiable in any case. Suffice it then to say that the charges were in relation to the conduct of the appellant when he had been instructed to act on behalf of one Christopher Alphonso Hollist in a claim arising out of a motor accident which claim was ultimately settled (according to the instructions of Mr. Hollist) by payment to him or his representatives of the sum of £110 plus £26 5*s*. 0*d*. in respect of costs. At the material time the appellant was acting in the place of another and a senior legal practitioner, one Berthan Macaulay, who was absent from Sierra Leone at the time when the instructions were given to the appellant and when the action in question came before the court and was settled. The appellant was charged with unprofessional conduct and Mr. Berthan Macaulay was also similarly charged at the same time. The charges rested upon complaints made by Mr. Hollist, the main complaint relating to the retention out of the total sum above-mentioned of £136 5*s*. 0*d*., received by way of settlement, of £58 5*s*. 10*d*. in respect of alleged fees and disbursements. In respect of

this retention Mr. Macaulay was charged with having improperly retained such sum " as Solicitor " for Mr. Hollist and the appellant was charged with concurring with Mr. Macaulay " to improperly retain the sum of £58 5*s*. 10*d*. out of the sum of £136 5*s*. 0*d*. received by him . . . ". The appellant was also charged with having failed to give a proper receipt in accordance with the Legal Practitioners' Ordinance for Sierra Leone for a sum of £10 paid to him (as admittedly it was) on the 19th March 1960 as Counsel's fee by Mr. Hollist and for having later, (namely on the 29th April 1960) issued or caused to be issued a receipt back-dated to the 19th March for the same sum as " fees for disbursements ".

It is necessary to refer briefly to the relevant Ordinances of Sierra Leone in order to make clear how cases of complaints of professional misconduct are dealt with and how this matter came eventually before the Court of Appeal for Sierra Leone and Gambia. By the Legal Practitioners (Disciplinary Committee) Ordinance of Sierra Leone a committee consisting of the Attorney-General and the Solicitor-General as ex-officio members together with three practising members of the local Bar has the duty laid upon it of investigating any complaint of professional misconduct on the part of a legal practitioner. By section 20 of the Ordinance the committee (if satisfied that the charge is well-founded) has to make a report to the Supreme Court supplying to the Court at the same time a note of the evidence given and any documents. produced. It is then the duty of the Supreme Court itself to hear the matter.

In the present case the Disciplinary Committee reported to the Supreme Court and before that Court both Mr. Macaulay and the appellant were represented by Counsel and the Acting Attorney General appeared for the Disciplinary Committee. The Supreme Court is by the Ordinance empowered, if it thinks the charges made out, to suspend from practice the practitioner against whom the complaint has been made; but (by sec. 27 of the Ordinance) a decision of the Supreme Court upon such a matter is appealable to the Court of Appeal in the same way as a decision of the Supreme Court is appealable in an ordinary civil suit.

As regards the fine imposed upon the appellant it is by what is now sec. 14 of the Legal Practitioners' Ordinance the obligation of a legal practitioner to give a receipt for any fees or other sums received and to keep a counterfoil receipt book for such purpose; and it is further provided by that Ordinance that failure to comply with section 14 renders a practitioner liable to a fine. As already indicated the Supreme Court by its order of the 12th October 1960 imposed a fine upon the appellant in respect of his failure to give a receipt on the 19th March and further suspended him from practice for 3 months upon both the other charges made against him, such periods however to run concurrently. By the same order the Supreme Court also found the charge against Mr. Macaulay to have been made out and suspended him from practice for 12 months.

Their Lordships do not forget that the order of suspension made against Mr. Macaulay was upon the hearing of his appeal subsequently discharged on the ground that Mr. Macaulay never in fact acted as solicitor for Mr. Hollist—the appellant having, as already noted, in the absence of Mr. Macaulay carried on professional business for him. It was the appellant and not Mr. Macaulay who was originally instructed by Mr. Hollist and who subsequently appeared for him when his case was settled. The Board therefore ventures to note that the reversal of the order made against Mr. Macaulay on the ground stated does not by any means necessarily involve (nor was it so argued) that the charge against the appellant in respect of the receipt and retention of the sum of £58 5*s*. 10*d*. thereby became unsustainable.

On the 31st October 1960 the appellant gave notice of appeal together with grounds of his appeal in accordance with rule 12 of the West African Court of Appeal Rules; that date (31st October 1960) being also the date on which notice of appeal was given by Mr. Macaulay. It is by rules 16 (4) and 17 of the West African Court of Appeal Rules provided that an appellant

should " within such time as the Registrar directs " deposit with him sums fixed to cover the expense of making up and forwarding the record of appeal and also to cover the payment of any costs which may be ordered to be paid by the appellant, the Registrar as regards the latter sum being empowered to require security by bond to his satisfaction in lieu of payment of cash. In pursuance of the Rules last mentioned the Acting Registrar of the Court of Appeal on the 18th January 1961 wrote a letter to the appellant sending a copy to the Attorney-General. By that letter the appellant was required to deposit " forthwith " two sums amounting to £21, to " pay in advance " the hearing fee of £4 and a further £1 for the Registrar's certificate to the effect that the terms of rules 16 (4) and 17 had been complied with (no precise date for payment being stated in either of the last two cases); and also (again without any stated limitation of time) to deposit £20 in the Court to provide for the costs of the Appeal or to give security therefor by bond. As was pointed out in the judgment of the Court of Appeal which is the subject of the present appeal to the Board, the form of the Acting Registrar's letter was " undesirable " both because of the absence of time limits in certain of the cases and because the word " forthwith " did not sufficiently indicate the actual time within which the payments should be made. In fact, however, it was not until as late as the 13th March 1961 that the appellant paid the several sums for which payment was required and two days later, on the 15th March (which was the date on which the Appeal Court sittings began), he filed a bond to give security for the costs of the appeal as contemplated by the Acting Registrar's letter. Although therefore the use of the word " forthwith " was, as the Court of Appeal pointed out, " undesirable " as lacking in definition it was thought by the court that payment after so long a period as that which elapsed between 19th January and the 13th March could not sensibly be regarded as having been made " forthwith ".

The appellant's appeal came on for hearing on the 21st March 1961 and the Board's attention was drawn to the fact that of the three judges then composing the Court (being the same three judges who composed the Court on the further hearing from which the present appeal is made) two had been members of the Court which had earlier allowed Mr. Macaulay's appeal.

At this stage it is necessary to set out the terms of rule 23 of the West African Court of Appeal Rules. They are as follows:—

" (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 rules 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."

From the note which the Board has of the argument before the Court of Appeal on the 21st March the only question debated appears to have been the fact of the appellant having been so late in complying with the terms of the Acting Registrar's letter of the 18th January 1961. It does not indeed appear from the note that there had in fact been any certificate by the Registrar such as indicated in sub-rule (1) of rule 23 and no copy of any such certificate was included in the documents before their Lordships. Nevertheless in a further certificate dated 22nd March 1961 and signed by the Acting Registrar it is stated that the appellant's appeal was dismissed under sub-rule (1) of rule 23. Moreover in the course of the recorded judgment of Ames P. on the 4th April 1961, being the judgment upon the appellant's application to restore his appeal under sub-rule (3) of rule 23 (that is, the judgment from which the appellant now appeals to the Board), it is stated that there was in fact such a certificate.

However that may be, it is quite clear that the appellant did apply under sub-rule (3) of rule 23 that his appeal should be restored and that application, as already stated, came before the same three judges who had, on the 21st March 1961, dismissed his substantive appeal. Again it seems clear from the note of the argument before their Lordships that no point was taken on the appellant's behalf that his appeal had been wrongly dismissed under sub-rule (1) of rule 23 on the ground that there had been no such certificate as that sub-rule indicated.

Their Lordships further note that the appellant has not appealed against the first judgment of the Court of Appeal dated 21st March 1961. The present appeal is against the refusal of that Court to restore his earlier appeal; but it is of course true that if such application were allowed and the original appeal were restored the effect would be that the Court of Appeal's judgment of the 21st March 1961 would then cease to be finally effective. Nonetheless it is quite clear that the present appeal before the Board must be treated as one against the exercise by the Court of Appeal of the discretion conferred upon it by rule 23 of the West African Court of Appeal Rules.

What then is the duty of the Board in such a case ?

Their Lordships were referred to the well-known statement by Atkin L.J. (as he then was) in the case of *Maxwell v. Keun* [1928] 1 K.B. 645 of the principle upon which Appellate Courts in England will review the exercise of a discretionary power by a judge (in the case cited the refusal of the L.C.J. to postpone the hearing of an action); that is to say, when it appears to the appellate court " that the result of the order made below is to defeat the interests of the parties altogether or to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties ". The principle was accepted as regards English courts by the House of Lords nine years later in the case of *Evans v. Bartlam* [1937] A.C. 473 in which case Lord Wright expressly adopted in his opinion (see p. 487) the statement of Atkin L.J. in the earlier case. Their Lordships were also referred to the judgment of the Board written by Lord Haldane in the case of *Kojo Pon v. Atta Fua* (P.C. cases for 1925 No. 48) where the Board did review the exercise of a discretionary power by the Court of the Gold Coast. Their Lordships will therefore assume that the Board may review an exercise of a discretionary power by a court within the British Commonwealth; but in their Lordships' view the Board will only do so where the question involved is one of real public significance and where the Board is fully satisfied that the exercise of the discretion has effected a substantial injustice to one or other of the parties; and the Board will be most reluctant to review an order made by the Supreme Court of a Dominion or Colony in regulating its own business.

In the present case although the form of the Acting Registrar's letter of the 19th January 1961 was not entirely satisfactory, nonetheless it is impossible to say (as Ames P. in the Court of Appeal observed) that the appellant did not fail to comply with its purpose and terms. Rules such as those of the West African Court of Appeal Rules which have been involved in the present case are, after all, necessary for the proper functioning of the appellate court and it seems to the Board that that court reasonably took the view that it is particularly incumbent upon members of the legal profession (who must well understand the Rules and appreciate their necessity) properly to observe them.

Their Lordships do not forget that the Attorney-General did not oppose the appellant's application for the restoration of his appeal—and that fact is perhaps the most significant in the appellant's favour. It was also conceded before their Lordships on the Attorney-General's behalf that the order of the Supreme Court the subject of the present appeal was somewhat " stringent ". On the other hand it has not been suggested that the appellant did not in fact fail fairly to comply with the terms of the Acting Registrar's letter nor has it been suggested that the charges made against the appellant's professional conduct were without any justification. Finally, questions affecting the professional conduct of legal practitioners in Sierra Leone are in the Board's view essentially questions for determination by the local

courts who must be peculiarly acquainted with the standards, conditions and character of the legal profession in that country. In the result it has not seemed to their Lordships that the present is a case in which it would be properly in accordance with the Board's duty to review the exercise of its discretion by the Sierra Leone and Gambia Court of Appeal. Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the respondent.

(88821) Wt. 8052/97 75 12/63 Hw.

**In the Privy Council**

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**FREDDIE A. SHORT**

*v.*

**THE ATTORNEY GENERAL OF SIERRA LEONE**

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DELIVERED BY
LORD EVERSHED

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