

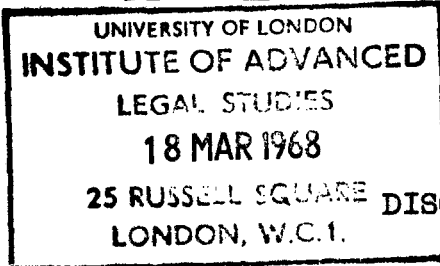
91465

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCILO N A P P E A L

1967/14

FROM THE HIGH COURT OF SINGAPORE

A B E T W E E N :-



LAU LIAT MENG

Appellant

- and -

DISCIPLINARY COMMITTEE

Respondents

B IN THE MATTER OF ORIGINATING SUMMONS
NO. 86 OF 1965 IN THE HIGH COURT OF
SINGAPORE

IN THE MATTER OF THE ADVOCATES AND
SOLICITORS ORDINANCE (CHAPTER 188)

C - and -

IN THE MATTER OF AN ADVOCATE AND
SOLICITOR

CASE FOR THE APPELLANT

D 1. This is an appeal from the decision of High Court of Singapore (Wee Chong Jin, C.J. Singapore, Tan Ah Tah, F.J. and Buttrose J.), constituted under Section 30 (7) of the Advocates and Solicitors Ordinance (Chapter 188) dated 28th February 1966, ordering that

E the Appellant be struck off the roll of advocates and solicitors of the High Court of Singapore, thereby "accepting" the findings and opinion of the Disciplinary Committee, dated 9th April 1965, that the Appellant had

F been guilty of grossly improper conduct in the discharge of his professional duties within the meaning of the Advocates and Solicitors Ordinance (Chapter 188) of

Record
 p.76, l.7-11;
 p.77, l.19-25

p.60, l.20 -
 p.63, l.27

Singapore. The Federal Court of Malaysia (Tan Ah Tah, F.J., Buttrose and Winslow JJ.) granted, on 20th June 1966, the Appellant conditional leave to appeal to the Judicial Committee of the Privy Council, which conditional leave was made final on 12th September 1966 by the Federal Court of Malaysia (Wee Chong Jin, C.J. Singapore, Tan Ah Tah, F.J. and Chua J.).

p.79,1.28 -
p.81,1.6

p.81,1.7 -
p.82,1.14

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2. The grounds of the appeal are as follows:-

(a) That the High Court of Singapore, by virtue of the disciplinary powers conferred on it by Section 25 of the Advocates and Solicitors Ordinance (Chapter 188), is required to exercise an original jurisdiction, whereas in the instant case the High Court of Singapore approached the issues before it as if exercising an appellate jurisdiction, of simply affirming the opinion expressed by the Disciplinary Committee;

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p.71,11.21-
22 p.73,
1.42 - p.74,
1.1; p.74,
11.26-30;
p.75,11.38-
40.

p.61,1.37 -
p.62,1.3;
p.73,11.27-
34; p.74,
11.5-14

(b) That both the Disciplinary Committee and the High Court of Singapore were wrong in concluding that the receipt or acceptance by the Appellant of \$500.00 party-and-party costs (although subject to the process of taxation), nevertheless constituted a breach of Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960;

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25 RUSSELL SQUARE
LONDON, W.C.1.

15 MAR 1968

(c) That since the Disciplinary Committee and the High Court of Singapore rightly concluded that the Appellant was not guilty of the offence charged in paragraph 8 (1) of the Amended Statement of Case, the Appellant could not properly be found guilty of the offence charged in paragraph 8 (ii) of the Amended Statement of Case, which

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p.63,11.25-27;
p.75,11.22-25.

offence was recognised as alternative to paragraph 8 (i);

(d) That both the Disciplinary Committee and the High Court of Singapore, in concluding that the Appellant entered into a champertous agreement in seeking, by way of professional fees, a percentage of the damages recovered on behalf of a client, overlooked Section 49 (1) of the Advocates and Solicitors Ordinance.

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p.60, l.22 -
p.61, l.9;
p.63, ll.18-24;
p.73, ll.35-41;
p.74, ll.15-25

(e) That in any event both the Disciplinary Committee and the High Court of Singapore were wrong in concluding that the agreement between the Appellant and his Client constituted a champertous agreement

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3. The uncontraverted facts before the Disciplinary Committee were as follows :-

(a) The Appellant was an advocate and solicitor of the High Court of Singapore of two years' standing and was the sole proprietor of the firm of Lau Liat Meng & Co., practising in Singapore.

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p.1, ll.23-25,
p.37, ll.6-10;
p.53, ll.30-38.

(b) In or about September 1963 the Appellant was consulted by Cham Siew Why and asked to act in connection with the death of Cham Siew Why's son, Cham Siak Hoy, who on 7th August 1963 had been knocked down and killed by a bus owned by the Singapore Traction Co. Ltd., and a warrant to act, dated 11th September 1963, was duly executed by Cham Siew Why in favour of Oehlers and Choa, Solicitors, for whom the Appellant then worked, "for the purpose of obtain-

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p.58, ll.31-33;
p.56, l.34 -
p.57, l.8;
p.60, ll.22-23.

p.56, ll.19-22

p.86

- ing probate and claim damages for loss of my son", and there was executed a further warrant in favour of the Appellant to act, dated 11th January 1964, which declared that "no special agreement has been made ... with regard to ... costs of such matter".
- p. 89, 11.14-30 A
- p. 89, 11.23-25
- p. 88, 1.14 (c) The Appellant duly acted by attending the coroner's inquest on 14th November 1963, by conducting negotiations with the solicitors acting for the Singapore Traction Co., Ltd., by preparing an estate duty affidavit in respect of the deceased Cham Siak Hoy, and by successfully negotiating a settlement of the claim for damages by the receipt of \$4,000.00, which sum the said Cham Siew Why agreed by letter, dated 17th January 1964, to accept. B C
- pp. 92, 93, 94 and 95
- p.91 (d) The Appellant received a letter, dated 11th January 1964, from Cham Siew Why, authorising the deduction of the Appellant's party-and-party costs from any sum of money received in respect of a claim for damages, and the Appellant duly received \$500.00 from the solicitors acting for the Singapore Traction Co. Ltd. D E
- p.95, 11.1-20 (e) The said \$500.00 party-and-party costs were the subject to taxation before Registrar T.C. Cheng on 14th April 1964, pursuant to a notice of such taxation having been given to the solicitors acting for the Singapore Traction Co. Ltd., on 13th April 1964, such taxation being "as between party and party under the Lower Scale of Costs pursuant to Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960". F G
- p.106, 1.1 - p.108, 1.51
- p.101 (f) By a receipt, dated 27th February 1964,
- p.101, 11.16-19

- the Appellant received from Cham Siew Why of \$700.00 representing agreed costs for the Appellant's attendance at the Coroner's inquest on Cham Siak Hoy and the criminal prosecution of Loh Teck Poh, the driver of the bus owned by the Singapore Traction Co. Ltd. By letter, dated 13th April 1964, the Appellant returned to the said Cham Siew Why the sum of \$350.00 in respect of his proposed attendance at the said criminal proceedings which he did not attend due to the client's failure further to instruct him.
- (g) On 11th February 1964 the Appellant's solicitor-and-client's bill of costs was the subject of taxation before Registrar T. S. Sinnathuray for the amount of \$705.50, notice of which taxation was given to the said Cham Siew Why on 30th January 1964. The sum of \$705.50 represented the taxed "bill of costs of the estate of Cham Siak Hoy (deceased) for taxation as between solicitor and client under the Lower Scale of Costs pursuant to Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960". The sum of \$3,244.50 representing the agreed damages of \$4,000.00 less the tax costs of \$705.50 plus the Public Trustee's fee of \$50/- was paid on 19th February 1964 by the Public Trustee to the said Cham Siew Why.
4. The sole issue of fact in controversy before the Disciplinary Committee was the alleged agreement between the Appellant and
- p.98, 11.23-36
p. 100 &
p.109,11.12-36
pp.102 - 105
p.96,11.8-38
p.102,11.18-23
p.72,11.14-20
p.58,1.29 -
p.60,1.18

Cham Siew Why that the former was to receive by way of professional fees 25 per cent. of any amount recovered by Cham Siew Why in respect of the claim to compensation for the death of his son, Cham Siak Hoy.

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p.53,1.30 -
p.54,1.2

5. In pursuance of Section 42 of the Advocates and Solicitors Ordinance, the Chief Justice of Singapore appointed H. L. Wee (Chairman), Miss M. Lim and J. Grimberg members of the Disciplinary Committee to hear and investigate the complaint of the Bar Committee against the Appellant in accordance with the provisions of Section 26 of the Advocates and Solicitors Ordinance, Section 26 of the said Ordinance provides :-

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"26. Any application by any person that the name of a solicitor be struck off the roll or that he be otherwise dealt with by the Supreme Court under Section 25 and any complaint of the conduct of a solicitor in his professional capacity shall in the first place be made to the Bar Committee who shall examine the application or complaint and if they consider it necessary that there should be a formal investigation of such application or complaint shall apply in writing to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate such application or complaint. The Bar Committee shall inform the person making any application or complaint whether or not the said Committee has considered it necessary that there should be a formal investigation and, in the event of their decision being that such investigation is unnecessary, shall on the request of such person furnish him with their reasons in writing :

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Provided that nothing in this Section

shall affect the jurisdiction which apart from the provisions of this Section is exercisable by the Supreme Court or by any judge thereof over Solicitors."

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6. The Appellant was charged in an amended Statement of Case, paragraph 8 of which read as follows :-

p.2,1.6

p.3,1.41-

p.5,1.14

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"8. It is alleged against the said Lau Liat Meng that he, in his capacity as an Advocate and Solicitor of the High Court, Singapore

p.3,11,41-43

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(1) received or accepted payment of money from the said Cham Siew Why, namely, \$700.00, contrary to the provisions of Section 17 (3) of the Motor Vehicles (Third-party Risks and Compensation) Ordinance 1960, and thereby committed an

p.4,11.1-11

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~~offence under Section 17 (4) of the said Ordinance;~~ has been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 25 (2) (b) of the Advocates and Solicitors Ordinance (Chapter 188);

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~~(ii) entered into an agreement with the said Cham Siew Why which he knew or ought to have known was an agreement to commit an unlawful act, namely an agreement to receive or accept monies contrary to Section 17 (3) of the Motor Vehicles (Third party Risks and Compensation) Ordinance 1960, and was thereby guilty of grossly~~

p.4,11.12-23

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~~improper conduct in the discharge~~
of his professional duty within the
meaning of Section 25 (2) (b) of the
Advocates and Solicitors Ordinance
(Chapter 188);

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p.4,11.24-
32

(ii) by such act, namely the receipt
or acceptance of such money as
aforesaid, did an act which would
render him liable to be disbarred
or struck off the rolls of the court
or suspended from practice or cen-
sured if a barrister or solicitor in
England within the meaning of Section
25 (2) (i) of the Advocates and
Solicitors Ordinance (Chapter 188):

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p.4,11.32-
45

(iii) entered into an agreement with
the said Cham Siew Why which he knew
or ought to have known was champertous,
namely, an agreement to receive or
remuneration for his professional
services by way of percentage on the
amount which might be recovered by the
said Cham Siew Why and was thereby
guilty of grossly improper conduct in
the discharge of his professional
duty within the meaning of Section 25
(2) (b) of the Advocates and Solicitors
Ordinance (Chapter 188) ; or alternativ-
ely, within the meaning of Section 25
(2) (ii) of that Ordinance.

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p.5,11.1-9

(iv) by such act, namely, the said
champertous agreement as aforesaid,
did an act which would render him
liable to be disbarred or struck off
the rolls of the court or suspended
from practice or censured if a barr-
ister or solicitor in England within
the meaning of Section 25 (2) (i) of

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the Advocates and Solicitors
Ordinance (Chapter 188).

A Whereby he the said Lau Liat Meng is p.5,11.10-14
liable to be struck off the roll of the
court or suspended from practice or
censured in pursuance of the provisions
of Section 25 (1) of the Advocates and
Solicitors Ordinance (Chapter 188).

~~Dated this 6th day of October, 1964.~~

B Redated this 11th day of December,
1964."

C As the Disciplinary Committee recognised p.63,11.
and the High Court of Singapore accepted, 25 - 27;
the complaints under paragraph 8 (ii) and p.74,11.
(iv) were alternative complaints to those 22-25
contained in paragraph 8 (i) and (iii) res-
pectively.

D 7. The Disciplinary Committee reported its p.60,1.20-
findings in relation to the facts of the case, p.62,1.40
on 9th April 1965, to the High Court of
Singapore and in accordance with the provis-
ions of Section 28 of the Advocates and
Solicitors Ordinance expressed its opinion p.62,1.41-
as to the Appellant's conduct, including p.63,1.27
E that the facts of the case constituted due
cause for disciplinary action by the High
Court of Singapore. Section 28 of the
Advocates and Solicitors Ordinance provides:-

F "28. (1) After hearing and investigat-
ing any application or complaint under
Section 26 the Disciplinary Committee
shall record their findings in relation
to the facts of the case and their
opinion as to the conduct of the solicitor
G concerned and as to whether or not the
facts of the case constitute due cause
for disciplinary action under Section 25.

(2) The findings and opinion of the Disciplinary Committee shall be drawn up in the form of a report of which copies shall on request be supplied to the solicitor concerned and to the person who made the application or complaint. A

(3) If the opinion of the Disciplinary Committee as so recorded is that due cause exists for disciplinary action under Section 25 the Disciplinary Committee shall without further directions proceed to make application in accordance with the provisions of Section 30. B

(4) If in the opinion of the Disciplinary Committee as so recorded due cause does not exist for disciplinary action under Section 25 the record and report shall be delivered to and kept in the custody of the Secretary of the Bar Committee and it shall not be necessary for the Disciplinary Committee to take any further action in the matter unless directed so to do by the court." C D

8. The Disciplinary Committee expressed its opinion that the receipt of payment of \$700.00, referred to in paragraph 3 (d) hereof and forming the substance of the complaint in paragraph 8 (i) of the Amended Statement of Case, was not contrary to Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 which provides :- E F

p.62,1.42-
p.63,1.5

"17. (3) Notwithstanding the provisions of any other written law any costs payable to a public officer or an advocate and solicitor acting in respect of the matters referred to in sub-Section (2) of this Section shall be taxed and such public officer or advocate and solicitor shall not receive or accept G

any payment or money for so acting
other than such taxed costs."

9. The Disciplinary Committee, however,
concluded that it was satisfied that the
A receipt of \$500 party-and-party costs, re-
ferred to in paragraph 3 (d) and (e) hereof,
over and above the permissible receipt of
\$705.50 solicitor-and-client costs, referred
to in paragraph 3 (g) hereof, and over and
B above the permissible receipt of \$350.00 for
the Appellant's attendance at the Coroner's
inquest was "contrary to the provisions of
Section 17 (3) of the Motor Vehicles (Third
Party Risks and Compensation) Ordinance 1960,
C and that he is guilty of grossly improper
conduct in the discharge of his professional
duty within the meaning of Section 25 (2) (b)
of the Advocates and Solicitors Ordinance
(Chapter 188)", despite the fact that no
D mention of any such sums was made in the com-
plaints set out in paragraph 8 (i) and (ii)
of the Amended Statement of Case.

p.63,1.6-16

10. The Disciplinary Committee further
expressed the opinion that "the agreement for
E a fee based on the percentage of 25% of
damages recovered was champertous", and that
the Appellant was guilty of grossly improper
conduct in the discharge of his professional
duty within the meaning of Section 25 (2) (b)
F of the Advocates and Solicitors Ordinance, as
set out in paragraph 8 (iii) of the Amended
Statement of Case

p.63,1.17-24

11. In accordance with Section 28 (3) of
the Advocates and Solicitors Ordinance the
G Secretary of the Singapore Bar, in pursuance
of Section 30 of the said Ordinance, applied
on 7th October 1964 to the High Court of

p.1,1.14 -
p.2,1.5

p.63,1.35-
p.64,1.27

Singapore for an order calling upon the Appellant to show cause; and to that end the said Secretary swore an affidavit annexing the original report of the findings and opinion of the Disciplinary Committee. Section 30 of the said Ordinance provides :-

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"30. (1) An application that a solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons ex parte intituled "In the matter of an Advocate and Solicitor" for an order calling upon the solicitor to show cause.

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(2) An application under sub-Section (1) may be made to a judge.

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(3) If an order to show cause is made a copy of the affidavit or affidavits upon which the order was made shall be served with the order upon the solicitor named in the order.

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(7) The application to make absolute and the showing of cause consequent upon any order to show cause made under sub-Sections (1) and (2) shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of that court there shall be no appeal to any court in Singapore. For the purposes of an appeal to the President an order made under this sub-Section shall be deemed to be an order of the Court of Appeal. (As amended by Section 10 of the Advocates and Solicitors (Amendment) Act 1966).

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(8) The judge who made the order to show cause shall not thereby be disqualified

from sitting as a member of the court of three judges under sub-Section (7).

A (9) Subject to the provisions of this Section the Rules Committee may make rules for regulating and prescribing the procedure and practice to be followed in connection with proceedings under this Section and in the absence of any rule or rules dealing with any point of procedure or practice the Civil Procedure Rules of the Supreme Court may be followed as nearly as the circumstances permit."

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12. The application that the Appellant's name be struck off the roll of solicitors was made under Section 25 (2) (b) of the Advocates and Solicitors Ordinance which provides :-

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"25. (1) Advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll of the court or suspended from practice for any period not exceeding two years or censured.

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(2) Such due cause may be shown by proof that such person -

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(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such breach of any rule of usage or conduct made by the Bar Committee as hereinafter provided as in the opinion of the court amounts to improper conduct or practice as an advocate and

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solicitor; or

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(i) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England; " A

13. The main judgment of the High Court of Singapore dated 28th February 1966, was delivered by Buttrose J., with which Wee Chong Jin, C.J., Singapore and Tan Ah Tah F.J., formally agreed. The said judgment set out the charges and the relevant statutory law and then prefaced a recitation of the facts by saying: "The facts as found by the Disciplinary Committee were as follows :-" In the following further passages the judgment of Buttrose J. restated and affirmed the findings and opinions of the Disciplinary Committee. C

p.69,1.14

p.69,1.20-
p.71,1.20
p.71,1.23-
p.73,1.41

p.71,11.
21-22

p.73,11.
35-41

(a) "The Disciplinary Committee accepted the evidence of Cham Siew Why and his witness as being clear and the truthful version of what took place and found that the Respondent [the Appellant before the Board] did enter into an agreement with Cham Siew Why to charge him fees based on a percentage of the damages or compensation recovered. In the light of these findings the Disciplinary Committee was of the opinion" D E F

p.73,1.42-
p.74, 1.1

There is then set out the opinion referred to in paragraphs 8, 9 and 10 hereof;

p.74,11.26-
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(b) "there was, in our view, ample evidence to justify the findings of the Disciplinary Committee and in the

light of these findings we do not see how they could have arrived at any other conclusions than the ones which they did";

- A (c) "it was urged upon us that the extra amounts charged merely amounted to excessiveness but in our opinion it went far beyond that and constituted a flagrant
B breach of the express provisions of Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960";
- C (d) "in the result we have no hesitation in accepting their the Disciplinary Committee's view" that the Appellant was guilty of grossly improper conduct. p.75,11.38-40

D 14. The Appellant respectfully submits that for the following reasons the High Court of Singapore failed to exercise at all, or failed to exercise adequately, its jurisdiction under Part III of the Advocates and Solicitors Ordinance (Chapter 188) (Sections 25-43
E inclusive), thereby constituting a fundamental disregard of the procedural requirements which have to be observed as a prerequisite to the power to strike a solicitor off the roll.

F (a) The High Court of Singapore as indicated by the passages referred to in paragraph 13 hereof, acted as if it were exercising its ordinary appellate jurisdiction, whereas the scheme of legisla-
G tion giving the court disciplinary powers over advocates and solicitors predicates the court, it is respectfully submitted, exercising an original jurisdiction.

The following matters indicate that the nature of the disciplinary jurisdiction is an original one :-

(i) The court by Section 25 (1) and (2) of the Advocates and Solicitors Ordinance has to be satisfied "by proof" that the solicitor concerned has been "guilty" of professional misconduct. A

(ii) The solicitor concerned is struck off the rolls or suspended from practice only "on due cause shown" (Section 25 (1)). B

(iii) The Disciplinary Committee, unlike its English counterpart (see Sections 47 and 48 of the Solicitors Act 1957, as amended by Sections 20 and 21 of the Solicitors Act 1965), has no power to make any order against any solicitor but records only its findings and its opinion as to the solicitor's conduct, and whether the facts "constitute due cause for disciplinary action under Section 25": See Section 28 (1). C D E

(iv) The proviso to Section 26 envisages that applications for disciplinary action against solicitors can be made direct to the Court in its original jurisdiction: Re An Advocate (1964) 30 Malayan Law Journal 1. It cannot be envisaged that the jurisdiction is different where the Disciplinary Committee acts as a fact-finding tribunal for the Court. F G

(v) The Rules Committee has made no rules under Section 30 (a) of the

Advocates and Solicitors Ordinance, and the prevailing rules of the Civil Procedural Rules of the Supreme Court require that for the Court to be satisfied "by proof" there must be an exercise of original jurisdiction.

(vi) Precedents of disciplinary proceedings under the Advocates and Solicitors Ordinance indicate that the Court, under Section 25, exercises original jurisdiction: Re J.L.P. Harris, an advocate & solicitor (1953) 19 Malayan Law Journal 161; Rajasooria v. Disciplinary Committee [1955] 1 W.L.R. 405, 415.

(b) The High Court of Singapore, it is respectfully submitted, treated the Disciplinary Committee's findings and opinions as prima facie proof of the Appellant's guilt, as is evidenced by the passages in the judgment of Buttrose J., referred to in paragraph 13 hereof. It is respectfully submitted that :

(i) in the absence of any specific statutory provision giving probative value to the opinion of the Disciplinary Committee's views, the High Court of Singapore was bound to decide the fundamental issue of the Appellant's guilt on evidence properly adduced before the Court;

(ii) the affidavit of Mr. Emanuel Albuquerque, Secretary of the Bar Committee, did not prove the facts

p.63,1.35 -
p.64,1.27

and matters contained in the Disciplinary Committee's report annexed to the affidavit;

(iii) the findings of the Disciplinary Committee constituted, in the absence of evidence from the Appellant, a prima facie case to answer, but that the inferences to be drawn from the findings of primary facts were matters for the High Court, and that such opinions as the Disciplinary Committee expressed were of guidance only;

(iv) the High Court was bound to judge for itself the probative value of the evidence in the light of the applicable law.

15. If (which is denied) the High Court of Singapore was rightly exercising an appellate jurisdiction under Section 25 of the Advocates and Solicitors Ordinance, the Court was nevertheless, it is respectfully submitted, wrong in affirming the findings and opinion of the Disciplinary Committee that the Appellant was guilty of professional misconduct as alleged in paragraph 8 of the Amended Statement of Claim.

16. The Disciplinary Committee, rightly it is submitted, found that the receipt of \$700 - subsequently reduced to \$350 by the return of \$350 in respect of the proposed fee for attendance at the criminal proceedings against the bus driver - did not contravene Section 17 (3) of the Motor Vehicles (Third Party Risk and Compensation) Ordinance 1960. The Committee said :

" . . . we also find that the sum, whether it be \$700 or \$350 does not fall within the restriction of receiving only taxed costs in respect of a claim for

compensation . . . as Lau Liat Meng, it is not disputed, had attended the Coroner's inquiry";

A and ". . . we are of opinion that the receipt on payment of \$700 as set out in paragraph 8 (1) of the Amended Statement of the Case is not contrary to Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960".

p.62,1.42 -
p.63,1.5

This finding was tacitly accepted by the High Court of Singapore: "In the light of these findings the Disciplinary Committee was of the opinion that the receipt of payment of \$700 was not contrary to Section 17 (3)."

p.73,1.42 -
p.74,1.3

C 17. The Appellant respectfully offers the following comments on the reasoning of the judgment :-

D (a) Neither the Disciplinary Committee nor the High Court of Singapore specifically stated that the receipt of fees in respect of attendance at the Coroner's inquest and/or the Criminal proceedings fell outside the provisions of Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 on the grounds that such professional work was not done in pursuance of any claim for compensation contemplated by the Ordinance.

E (b) The failure of the Disciplinary Committee and the High Court of Singapore to dissociate the receipt of \$700 from the receipt of taxed costs in respect of the claim for compensation, led, in part at least, to the erroneous finding that such taxed costs

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infringed Section 17 (3) of the said Ordinance. The Disciplinary Committee's opinion on this matter was :-

p.63,11.6-
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- (i) ". . . we are satisfied that the receipt of \$500 "party- and-party" costs by Lau Liat Meng in addition to the other sums of \$705.50 on his solicitor-client bill and \$350 for his attendance at the Coroner's inquiry is contrary to the provisions of Section 17 (3) . . .",

and this was echoed by the High Court of Singapore :-

p.74,11.5-
10.

- (ii) "they [the Disciplinary Committee] were satisfied however that the receipt of \$500 party-and-party costs by the respondent in addition to the \$705.50 solicitor and client costs and \$350 for his attendance at the Coroner's inquiry was contrary to the provisions of Section 17 (3) . . ."

(c) Since both the Disciplinary Committee and the High Court of Singapore recognised that paragraph 8 (ii) and (iv) of the Amended Statement of Case were alternative complaints to paragraph 8 (i) and (iii) :-

p.63,11.25-27

- (i) "we are of opinion that the complaints under paragraph 8 (ii) and (iv) are likewise made out but we propose to treat them as alternative complaints";

p.74,11.22-
25

and (ii) "they were also of the opinion that the complaints under para-

graphs (2) and (4) were likewise made out but they proposed to treat them as alternative complaints"

A the logical result would have been to dismiss the complaints under paragraph 8 (i) and (ii) of the Amended Statement of Case. And in any event, since the Appellant was found not guilty of the offence under paragraph 8 (i) he could not logically be found guilty of an offence under paragraph 8 (ii).

18. The Disciplinary Committee and the High Court of Singapore in identical terms, however, found that the receipt of \$500

p.61,11.27-36;
p.73,11.27-35.

C party-and-party taxed costs, over and above the receipt of \$705.50 solicitor-and-client taxed costs, did infringe Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960, although the Appellant was never called upon to meet any such complaint, and no amendment or addition to the Statement of Case was permitted by the Disciplinary Committee under Rule 10 of the Advocates and Solicitors (Disciplinary Proceedings) Rules 1963.

(a) The Disciplinary Committee found that "Lau Liat Meng received two sets of taxed costs . . . in respect of the claim for compensation.

p.61,11.27-28

F Although Lau Liat Meng appears to have received an authority from Cham Siew Why to pay this sum of \$500.00 into his own account this undisclosed payment is beyond or over and above the taxed costs which Section 17 (3) of the Ordinance of 1960 permits.

p.61,11.29-36

Counsel for Lau Liat Meng has

p.61,11.37-43

suggested that this extra amount is merely a matter of excessiveness. We consider it goes far beyond and would result, if we do not make a finding on this, that we will be failing in our duty to do so on the evidence given in this inquiry. We accordingly find that the additional \$500 . . . has exceeded the payment allowed by Section 17 (3) of the Ordinance of 1960."

A

p.62,11.1-3

(b) The High Court of Singapore endorsed this finding :

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p.73,11.27-28

"The respondent, therefore, received two sets of taxed costs . . .

p.73,11.31-34

and the Disciplinary Committee found that this undisclosed payment of

C

\$500 was beyond or over and above the taxed costs which Section 17 (3) of the Ordinance permits

.

p.73,1.42 - p.75,1.1

In the light of these findings the Disciplinary Committee . . . were

D

p.74,11.5-10

satisfied, however, that the receipt of \$500 party-and-party costs by the respondent in addition to the \$705.50 solicitor and client costs and \$350 for his attendance at the Coroner's inquiry was contrary to the provisions of Section 17 (3) of the Ordinance . . .";

E

and "it was urged upon us that the extra amounts charged merely amounted to excessiveness but in our opinion it went far beyond that and constituted a flagrant breach of the express provisions of Section 17 (3) . . . "

F

p.74,11.31-35

The Appellant respectfully offers the following comments on the reasoning of the judgment, apart

from the comment already made that the Appellant was not charged with any such offence of professional misconduct :-

- A (i) Section 17 (3) prohibits only the receipt of costs payable to a solicitor acting in respect of a claim for personal injuries over and above "taxed costs". Both items of costs in respect of the claim for compensation -
- B \$705.50 solicitor-client costs and \$500.00 party-and-party costs - had been taxed.
- C (ii) The High Court of Singapore was wrong in saying that the receipt of the \$500 was an "undisclosed payment" and failed to take cognizance of the practice of taxing bills of costs under Section 17 (3) of the said Ordinance as explained subsequently in a Practice Direction,
- D No.1 of 1966, dated 2nd April 1966, of the High Court of Singapore. This practice, which was ordered to cease as from 2nd April 1966, was in the following terms :- "Bills of Costs for taxation
- E under Section 17 (3) of Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960.

F For purposes of taxation under Section 17 (3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, most Members of the Bar draw solicitor and client Bills of Costs without itemising the work done and disbursements incurred. Further

G where there is a party-and-party Bill of Costs in an action with the solicitor-and-client Bill is often made supplementary to it. Few Members of the Bar however

itemise all work they had undertaken on behalf of their clients in such Bills. The difference in practice has given rise to confusion and often difficulties in taxation."

A

(iii) Both the Disciplinary Committee and the High Court of Singapore wrongly interpreted the provisions of Section 17 (3) of the said Ordinance as prohibiting the amount of any such taxed costs. Section 17 (3) placed a restriction on the receipt of fees in excess of "taxed" costs; it placed no ceiling on the amount of taxed costs. Nor does Section 17 (3) prohibit the receipt of more than one form of taxed costs.

B

C

(iv) Both the Disciplinary Committee and the High Court of Singapore wrongly concluded that the total amount of the taxed solicitor-and-client and party-and-party costs were excessive since there was no evidence adduced to indicate what would in the circumstances be reasonable costs.

D

19. The Disciplinary Committee found that the Appellant had agreed with his client Cham Siew Why that the Appellant should receive by way of professional fees a percentage - namely, 25 per cent. - of the damages recovered by way of compensation for the death of Cham Siak Hoy. The Disciplinary Committee was of the opinion that the Appellant knew or ought to have known that such an agreement was champertous and as such constituted professional misconduct as alleged in paragraph 8 (iii) and (iv) of the Amended Statement of Case.

p.60,1.40 -
p.61,1.7;
p.62,11.18-
23;
p.63,11.18-
24

E

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(a) The Disciplinary Committee's findings on this issue, the evidence for which was strongly controverted by the Appellant, was

G

as follows :-

p.60,11.22-33

A "we find that on the 11th September
1963 Lau Liat Meng entered into an
agreement with Cham Siew Why to
act for him, the fee to be 25% of
the damages or compensation recov-
ered and that such percentage was
agreed to after a certain amount
of bargaining which took place at
B the office of Lau Liat Meng and
subsequently at his residence.
Although the warrants to act in
favour of Lau Liat Meng were limited
and somewhat vague it is clear that
C Cham Siew Why intended Lau Liat Meng
to act for him in his Claim for
Damages arising out of the death
of his son Cham Siak Hoy

D We also find that Lau Liat
Meng met his client Cham Siew Why
and son at his office and claimed
that his fee of 25% of the damages
recovered was based on the net of
E \$3,244.50 received by his client
from the Public Trustee and not on
the total of \$4,000.00 implying
thereby that the sum paid by the
Public Trustee to him for his
solicitor and client costs was
F excluded from the 25% agreed to
be paid by Cham Siew Why. After
some bargaining had taken place
Lau Liat Meng however fixed his
fee at 25% in a round figure of
G \$750 - which he later reduced to
\$700. This sum was eventually
paid to Lau Liat Meng but \$350 was
refunded to Cham Siew Why."

p.60,1.40 -
p.61,1.9

In its opinion the Disciplinary Committee concluded :-

p.63,11.18-
24

"We are of opinion that the agreement for a fee based on the percentage of 25% of damages recovered was champertous and that Lau Liat Meng is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 25 (2) (b) of the Advocates and Solicitors Ordinance (Chapter 188) as set out in paragraph 8 (iii) "

A

B

p.71,1.35 -
p.72,1.20

(b) The High Court of Singapore repeated the findings of the Disciplinary Committee on this point and affirmed the Disciplinary Committee's opinion :

C

p.74,11.15-
17

"They were further of the opinion that the agreement for a fee based on the percentage of 25% of the damages recovered was champertous "

D

p.74,11.26-
30

There was, in our view, ample evidence to justify the findings of the Disciplinary Committee and in the light of those findings we do not see how they could have arrived at any other conclusions than the ones which they did."

E

The Appellant respectfully offers the following comments on the reasoning of the judgment :-

pp.86 & 89,
11.14-30

(i) The two warrants to act, dated 11th September 1963 and 11th January 1964, were not "limited and somewhat vague". The latter warrant clearly indicated that "no special agreement has been made with them with regard to their costs of such matter".

F

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(ii) The payment of \$700 to the Appellant could not have been referable to any alleged

A agreement to pay a percentage of the damages recovered, since the receipt of \$700 was specifically referable to the Appellant's attendance at "the Coroner's inquiry and the coming criminal trial. P.P. vs. Loh Teck Poh", as appears in a receipt dated 27th February 1964.

B (iii) Even if (which is denied) the Appellant was rightly held to have entered into an agreement as alleged in paragraph 8 (iii) of the Amended Statement of Case, such an agreement was not champertous and could not constitute professional misconduct for the following reasons :-

C (a) Section 49 of the Advocates and Solicitors Ordinance specifically reverses the English rule that agreements for remuneration by reference to a percentage of damages recovered. Section 49 provides :

D "4. (1) A solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such solicitor, either by a gross sum, or by commission, or percentage, or salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated.

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(2) Every such agreement shall be subject to the provisions and conditions contained in this Part."

(b) The fact of the statutory provision contained in Section 49 would tend to negative the finding that such agreement was in fact made by the Appellant and Cham Siew Why, since the Appellant would be entitled to make such an agreement and would have no cause to conceal any such agreement if made. There would be little point in the Appellant agreeing orally to be paid on a contingency fee basis - an unlawful act - which if done in writing was statutorily sanctioned.

(c) Even if the findings of the Disciplinary Committee and the High Court of Singapore can stand, nevertheless such finding cannot, in the light of Section 49, support the opinion that the agreement was champertous.

(d) The High Court of Singapore was wrong in law in endorsing the opinion of the Disciplinary Committee that such an agreement was champertous since the invalidity of a champertous agreement in England by virtue of Section 65 (1) (c) of the Solicitors Act 1957 had been statutorily reversed in Singapore.

The Appellant will submit that this appeal should be allowed for the following (among other)

R E A S O N S

(1) BECAUSE the High Court of Singapore

failed to exercise the functions of a court of original jurisdiction.

- A (2) BECAUSE the High Court of Singapore, in exercising the functions of a court with appellate jurisdiction, fundamentally disregarded the mandatory provisions of Part III of the Advocates and Solicitors Ordinance (Chapter 188).
- B (3) BECAUSE the High Court of Singapore wrongly held that the receipt by the Appellant of \$500 taxed party-and-party costs over and above the receipt of \$705.50 taxed solicitor-and-client costs contravened Section 17 (3) of the Motor Vehicles (Third Party Risks and C Compensation) Ordinance 1960.
- (4) BECAUSE the Appellant was never charged with an offence of receiving any items of costs in contravention of the said Section 17 (3) other than the receipt of \$700.00, which D receipt the High Court of Singapore rightly held did not contravene the said Section 17 (3).
- (5) BECAUSE the High Court of Singapore wrongly held that the Appellant had entered into an agreement to receive payment for professional work by way of a percentage of E damages recovered as compensation for personal inquiries.
- (6) BECAUSE the High Court of Singapore was wrong in law in concluding that any such F agreement was champertous having regard to the provisions of Section 49 of the Advocates and Solicitors Ordinance (Chapter 188).
- (7) BECAUSE the High Court of Singapore was wrong in finding that the Appellant was G guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 25 (2) (b) of the

Advocates and Solicitors Ordinance (Chapter 188)
as alleged in paragraph 8 of the Amended
Statement of Case.

(8) BECAUSE the Disciplinary Committee was
wrong in its findings and opinion submitted in A
its report to the High Court of Singapore under
Section 28 of the Advocates and Solicitors
Ordinance (Chapter 188).

(9) BECAUSE the judgment of Mr. Justice
Buttrose was wrong for the reasons given in para- B
graphs 17, 18 and 19 of this case.

(10) BECAUSE the High Court of Singapore was
wrong and its judgment ought to be reversed.

E. F. N. GRATIAEN

L. J. BLOM-COOPER

C

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

O N A P P E A L

FROM THE HIGH COURT OF
SINGAPORE

B E T W E E N :-

LAU LIAT MENG

Appellant

- and -

DISCIPLINARY COMMITTEE

Respondents

IN THE MATTER OF ORIGINATING
SUMMONS NO. 86 OF 1965 IN
THE HIGH COURT OF SINGAPORE

IN THE MATTER OF THE ADVOCATES
AND SOLICITORS ORDINANCE
(CHAPTER 188)

- and -

IN THE MATTER OF AN ADVOCATE
AND SOLICITOR

CASE FOR THE APPELLANT

INGLEDEW BROWN BENNISON &
GARRETT,
51 Minories,
LONDON, E.C.3.

Solicitors for the Appellant.