Privy Council Appeal No. 28 of 1966

Lau Liat Meng – – – – – – – – *Appellant*

v.

Disciplinary Committee – – – – – – *Respondent*

FROM

THE HIGH COURT OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH JUNE 1967

Present at the Hearing:

VISCOUNT DILHORNE
LORD HODSON
LORD GUEST
LORD UPJOHN
SIR HUGH WOODING

[*Delivered by* LORD HODSON]

This is an appeal from the decision of the High Court of Singapore constituted under section 30 (7) of the Advocates and Solicitors Ordinance dated 28th February 1966 ordering that the appellant be struck off the roll of advocates and solicitors of the High Court of Singapore.

The High Court accepted the findings and opinion of the Disciplinary Committee, dated 9th April 1965, that the appellant had been guilty of "grossly improper conduct in the discharge of his professional duty" within the meaning of section 25 (2) (*b*) of the Ordinance. In stating their conclusions they said that there was in their view ample evidence to justify the findings of the Disciplinary Committee and that in the light of these findings they did not see how the Committee could have arrived at any other conclusion than the one which they did reach.

The appellant was called to the Bar on 9th November 1962 and was attached to a firm of advocates and solicitors in Singapore until December 1963 after which date he started to practise on his own account.

In September 1963 he was consulted by members of the family of a 16 year old boy called Cham Siak Hoy who on 7th August 1963 had been knocked down and killed by a bus owned by the Singapore Traction Co. Ltd.

On 11th September Cham Siew Wai, the boy's father, executed a warrant to act in favour of the solicitors to whose firm the appellant was attached. This was expressed to be "for the purpose of obtaining probate and claim damages for loss of my son". A further warrant to act was executed by Cham Siew Wai on 11th January 1964 in favour of the appellant himself declaring that no special agreement had been made between them with regard to costs.

The appellant attended the Coroner's Inquest on 14th November 1963 and also conducted negotiations with the solicitors acting for the Singapore Traction Co. Ltd. in respect of the claim for damages. This claim was settled by the payment of $4,000 which Cham Siew Wai, by letter dated 17th January 1964, agreed to accept. He had previously authorised the appellant to pay to himself, and Co., all Party and Party Costs received

in connection with the matter. $500 was paid over to the appellant on 22nd January 1964 by Messrs. Rodyk and Davidson acting for the Singapore Traction Co.

Although no action was ever brought so that there were strictly no parties thereto there was a taxation of these costs on a party and party basis on notice given to the solicitor for the Singapore Traction Co. Ltd. on 13th April 1964.

This taxation was said to be required by virtue of the provisions of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960. Section 17 (2) provides that only public officers or advocates and solicitors may act on behalf of others for gain in claims or actions for damages for death or personal injury arising out of the use of a motor vehicle or negotiate or settle such claims or actions.

Section 17 (3) reads as follows:

> "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 subsection (2) of this section shall be taxed and such public officer or advocate and solicitor shall not receive or accept any payment of money for so acting other than such taxed costs."

Before the taxation of the $500 bill on a party and party basis took place however the appellant had taxed a solicitor and client bill before a Registrar of the High Court other than the Registrar who taxed the bill drawn on the party and party basis. This took place, after notice to Cham Siew Wai, on 11th February 1964. On the face of it the solicitor and client bill included some if not indeed all of the matters contained in that taxed on a party and party basis. The general damages had been paid to the Public Trustee in pursuance of the provisions of the Motor Vehicle Ordinance, section 5, and, the solicitor and client bill having been taxed at $705·50, the sum of $3,244·50 was paid on 22nd February 1964 by the Public Trustee to Cham Siew Wai. This figure was arrived at by deducting the $705·50 together with the Public Trustee's fee of $50 from the agreed damages of $4,000.

In addition to these sums which related to the claim for compensation and thus necessitated taxation under the Motor Vehicles Ordinance the appellant received on 27th February 1964 from Cham Siew Wai $700, representing agreed costs for the appellant's attendance at the Coroner's Inquest held on the deceased boy and on the criminal prosecution of the driver of the bus involved in the accident.

On 13th April 1964 the appellant through his solicitors returned the $350 of this $700 as it had been paid in respect of the proposed attendance at the prosecution. The appellant did not attend on the ground that Cham Siew Wai had failed to give further instructions in the matter.

This sum of $700 did not require the special taxation required by the Ordinance since it had nothing to do with the claim for compensation.

The appellant thus received in all by way of costs three sums, one of $500 on 22nd January 1964, one of $705·50 on 19th February 1964 and one of $700 (of which $350 was returned subsequently) on 27th February 1964.

As has already been stated the so-called party and party bill, in respect of which the appellant received $500 from the solicitors for the Singapore Traction Company, on the face of it was overlapped by the solicitor and client bill in respect of which he received $705·50 from his client Cham Siew Wai.

Before the $500 cheque was paid the appellant had written ostensibly on behalf of his client Cham Siew Wai a letter dated 18th January 1964

addressed to the solicitors acting for the Singapore Traction Company saying:

> " We have now received instructions to accept your clients' offer of a sum of $4,000 in full settlement of our client's claim and $500 towards our agreed Party and Party costs. We appreciate that you will now forward your clients' cheque for $4,000 to the Public Trustee and our agreed Party and Party costs directly to us."

The statement as to the $500 was untrue. So far from having received instructions from his client about this sum of money, the latter was unaware of it as the appellant admitted when under cross-examination before the Disciplinary Committee. The client had, it is true, by letter of 11th January 1964 authorised him to pay to himself all party and party costs he might at any time receive in connection with the matter without the necessity of paying it into the client's account with his bankers, but the actual receipt of the sum of $500 was not disclosed to his client. When he was examined before the Disciplinary Committee he gave evidence that the only money he had received was $705·50 in respect of the civil claim. Under cross-examination he was asked " Do you wish to adhere to your statement that you received only $705·50 for the civil proceedings? " (A question repeated several times.) His answer was " No. $500 was paid to me for party and party costs by Rodyk to me. I put in a party and party bill for taxation on the 13th and it was taxed on 14th April 1964. On the 11th January 1964 when the letter was signed the client did not know that I was to receive $500 as party and party costs." Later he said " I don't think my client ever knew that I was receiving previously $500. The phrasing of my letter of the 18th January was loose that I was instructed to accept $4,000 and $500 party and party costs." The letter of the 11th January 1964 was the one which authorised the appellant to retain any party and party costs paid to him.

The Disciplinary Committee found that this undisclosed payment received by the appellant should have formed part of the solicitor and client costs recoverable by him.

The High Court in accepting the findings of the Disciplinary Committee stressed the non-disclosure of the $500 and pointed out that the appellant had therefore received two sets of taxed costs, $500 on the party and party bill and $705·50 on the solicitor and client bill, in respect of the claim for compensation.

There was in addition a charge investigated before the Disciplinary Committee that the appellant had entered into a champertous agreement with the client Cham Siew Wai to take 25% of the damages if any were recovered by way of remuneration for his service.

The appellant was charged in the amended Statement of Case, omitting charges 8 (ii) and 8 (iv), which were treated as alternative charges, as follows:

> " 8 (i) received or accepted payment of money from the said Cham Siew Why, namely, $700, contrary to the provisions of Section 17 (3) of the Motor Vehicles (Third-party Risks and Compensation) Ordinance 1960, and thereby 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);
>
> (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 for 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)."

The champertous agreement alleged in paragraph 8 (iii) can be dealt with shortly.

There was an acute conflict of evidence; the appellant denied that he had entered into any agreement as to his professional fees, but he was disbelieved and the evidence of the client Cham Siew Wai and his witnesses was accepted.

It was contended on behalf of the appellant that the finding of champerty should not stand since the vice of champerty is payment only in the event of success in a claim brought by action and that no action was taken or contemplated here. Their Lordships reject that contention since the terms of the first warrant to act related to a " claim for damages for the loss of my son " and clearly contemplated an action.

The appellant relied on s. 49 of the Advocates and Solicitors Ordinance Cap. 188, which permits a solicitor to make an agreement in writing with his client for the payment of his costs by commission or percentage, so that any agreement for such payment should not be regarded as champertous unless it stipulated expressly for payment only in the event of success [see s. 57 (*b*)] and that there was no such stipulation here.

The answer to this contention is that an express stipulation is unnecessary since an agreement calling for payment by percentage of the amount recovered on the claim or in an action is undeniably one stipulating for payment only in the event of success.

It was further submitted that by the warrant to act, later executed by the client, he declared that there had been no special agreement as to costs and that the Disciplinary Committee and the High Court had ignored this document so far as the findings and judgment showed.

Their Lordships reject the submission that the finding of fact on the conflicting evidence ought to be disturbed on this account. The charge of champerty therefore stands proved.

The charge contained in paragraph 8 (i) relates to the sum of $700 of which $350 was returned. This disappeared from the case for it related to attendance at the Coroner's Inquest and the proposed attendance at a criminal prosecution and is therefore outside the instructions as to receiving only taxed costs in motor compensation cases under section 17 (3) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960.

The position is accordingly that the finding of champerty stands but no other charge made in the Statement of Case was established.

Notwithstanding that no charge had been made in respect of the $500 the Disciplinary Committee held against the appellant as one of the grounds for their opinion that he was guilty of grossly improper conduct in the discharge of his professional duty, that he had contravened section 17 (3) of the Motor Vehicles Ordinance 1960. In this respect also the High Court confirmed the finding and opinion of the Disciplinary Committee.

Since the $500 Bill had been taxed there was no contravention of the section save in so far as it was contravened by the money having been paid before taxation. This of itself would not be likely to be made the subject of a serious charge involving being struck off the roll of advocates. The contravention of the section was regarded by the Disciplinary Committee as consisting of receiving an additional sum of $500 over and above the solicitor and client costs recoverable by him whereas it should have formed part of those costs. Not only was the appellant not charged with this offence but it cannot be treated as a breach of section 17 (3) of the Motor Vehicles Ordinance 1960 unless the taxation of the $500 bill be treated as a nullity which their Lordships are not prepared to do on the information available. The only heading under which the $500 could have been thought to be included in the statement of case would be paragraphs 8 (i) and (ii) which concerned the payment of the

$700 by Cham Siew Wai which was not subject to taxation under the Ordinance. The payment of the $500 was moreover not made by Cham Siew Wai but by the solicitors for the Singapore Traction Co. Ltd.

While acknowledging the gravity of the admission made by the appellant as to this $500 which he put into his own pocket without disclosure to his client and as to which he gave no satisfactory explanation it must be recognised that he was not charged either with having made excessive charges for professional work or having committed any specific fraudulent act. The case against him was contained in the statement quoted above which was made pursuant to Rule 2 of the Advocates and Solicitors (Disciplinary Proceedings Rules) 1963. It was once amended but no amendment was made or sought to be made after the appellant had made his admission: (See Rule 10 of the same Rules which expressly provide for amendment of or addition to the case). Formal amendment might have been dispensed with provided adequate notice of the charge had been given. but natural justice requires adequate notice of charges and also the provision of opportunity to meet them. This requirement was not met.

Their Lordships are accordingly of opinion that it would be unjust to allow the finding with regard to the $500 to stand. If disciplinary proceedings are hereafter at any time taken against the appellant in respect of this sum no conviction or acquittal will stand in their way for no charge relating to this matter has ever been made.

Before giving effect to the conclusions which have so far been expressed their Lordships must deal with the contention made on behalf of the appellant that the High Court of Singapore failed to exercise the functions of a Court of original jurisdiction as it should have done in that it wrongly regarded itself as bound by the findings of fact of the Disciplinary Committee instead of insisting upon the charges being proved by evidence brought before the Court itself. This point has been taken for the first time before their Lordships not having been taken before the High Court of Singapore.

Part III of the Advocates and Solicitors Ordinance (Cap. 188) deals with "Control of Solicitors and Striking off the Roll". Sections 25 to 30 of the Ordinance omitting, as immaterial, section 27 and some subsections, read as follows:

> "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.
>
> (2) Such due cause may be shown by proof that such person—
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> (*a*) has been convicted of a criminal offence, implying a defect of character which unfits him for his profession; or
>
> (*b*) had 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 solicitor; or
>
> (i) has done some other act which would render him liable to be debarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England; or
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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:

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.

[Substituted by Ordinance 6 of 1936]

27. The Supreme Court or any Judge thereof may at any time refer to the Bar Committee any information touching the conduct of a solicitor in his professional capacity and thereupon the Bar Committee shall proceed as if a complaint against the said solicitor had been made to it with the Secretary of the Bar Committee as complainant.

[Added by Ordinance 6 of 1936]

28. (1) After hearing and investigating 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 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.

(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.

(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.

[Added by Ordinance 6 of 1936]

29. (1) When a person has made an application or complaint to the Bar Committee and the Bar Committee has decided that it is not necessary that there should be a formal investigation by a Disciplinary Committee the person who has made the application or complaint, if he is dissatisfied with such decision, may apply to the Chief Justice nevertheless to appoint a Disciplinary Committee to hear and investigate his application or complaint. This application shall be made by originating summons intituled 'In the matter of an Advocate and Solicitor' *ex parte* accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint as originally made to the Bar Committee together with a copy of the Bar Committee's reasons in writing supplied to the applicant in accordance with the provisions of section 26.

(2) When an application or complaint has been heard and investigated by a Disciplinary Committee and the Disciplinary Committee has recorded its opinion that due cause does not exist for disciplinary action under section 25 the person who made the

application or complaint may apply to a judge to direct the Disciplinary Committee nevertheless to take further action in the matter. The application to a judge for such directions shall be made by originating summons intituled 'In the matter of an Advocate and Solicitor' to be served on the Secretary of the Disciplinary Committee who shall thereupon file in court the record and report of the hearing and investigation by the Disciplinary Committee. After hearing the applicant and the Disciplinary Committee the judge may confirm the report of the Disciplinary Committee or may direct that an application be made under section 30 or may immediately make an order to show cause. In any case where the judge does not confirm the report of the Disciplinary Committee both the Disciplinary Committee and the person who made the application shall have the right to be heard in all subsequent proceedings.

[Added by Ordinance 6 of 1936]

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.

(2) An application under subsection (1) may be made to a judge.

(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.

(7) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (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 this Colony. For the purposes of an appeal to Her Majesty in Council an order made under this subsection shall be deemed to be an order of the Court of Appeal.

(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 subsection (7).

(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."

[Added by Ordinance 6 of 1936]

Section 25 (1) vests in the Supreme Court the power to strike Advocates and Solicitors off the roll of the Court or to suspend them from practice for any period not exceeding two years or to censure them.

This takes place on due cause shown by proof and there follows a list, alphabetically set out in subparagraphs (*a*) to (*l*) inclusive, of various matters proof of which amounts to due cause for action by the Court.

Reading section 25 by itself there is force in the contention that proof means proof before the Court itself, and not the acceptance or rejection of the findings of another tribunal. In effect therefore the person accused obtains, so it is said, a double chance of acquittal.

The argument runs as follows: The Court's disciplinary powers under section 25 can only be exercised in three situations, viz:

A. Where the Disciplinary Committee having recorded its opinion that due cause exists for disciplinary action proceeds as required by section 28 (3) to apply for an order to show cause under section 30. That course was followed in this case.

B. If a Judge of the High Court notwithstanding the opinion of the Disciplinary Committee makes an Order under section 29 (2) directing the Committee to apply under section 30.

C. If a Judge makes a direct Order under section 29 (2) calling upon the solicitor to show cause.

In each of these cases section 30 (3) requires the affidavit on which the order to show cause was made to be served on the solicitor. If he appears and denies his guilt the prosecution must show due cause under section 25 by tendering proof to establish his guilt. The power of the Court to make an order under section 25 (1) can only be exercised if the Court is satisfied upon the evidence placed before it that a specified charge which the solicitor has been required to meet has been made out.

Finally it is said that, while in some cases affidavit evidence may suffice, yet where there is an issue of fact involving the credibility of witnesses, who testify before the Committee (as in this case) proof of guilt before the Court itself is required. In such a case the finding of the Committee is said to be irrelevant to the final decision for the Court must reach its own independent conclusion upon the evidence adduced to establish guilt.

The report of the Disciplinary Committee containing its findings and opinion will be supplied to the solicitor concerned and also to the person who made the application or complaint, but there is no provision in the Ordinance for the filing in Court of the findings or opinion of the Disciplinary Committee see section 28 (2).

It is contended accordingly that the substantive law is contained in section 25 which regulates " proof ", sections 26 to 30 being concerned only with procedure.

Their Lordships do not take this view. There is in section 26 a statutory delegation to the Disciplinary Committee of the duty to hear and investigate the application that the solicitor be struck off or the complaint as to his conduct in a professional capacity. The Committee is composed of solicitors appointed by the Chief Justice from among those who are in possession of a practising certificate: see sections 42 and 24 of the Ordinance. Although their findings are not conclusive (as section 29 shows) and the Supreme Court is not shut out, there is nothing to prevent the Supreme Court receiving the findings of the Committee and acting upon them. On the other hand in any case in which it seems to the Supreme Court proper there is nothing to prevent it hearing the matter *de novo,* as for example if fresh evidence is found.

Powers of the Disciplinary Committee are more extensive than those of a mere filter and its composition is appropriate for the hearing and determination of matters concerning the conduct of a solicitor in his profession. It is unnecessary for the Supreme Court to hear evidence in every disputed case. It can say as it did in this matter that the case can be proved before the Disciplinary Committee. This is not to deny that the Supreme Court retains control and has a discretion to hold a rehearing in a proper case.

Their Lordships will accordingly allow the appeal so far as the finding against the appellant relates to the receipt of $500 party and party costs in addition to the solicitor and client costs.

The finding against the appellant that he entered into a champertous agreement with Cham Siew Wai will stand and the Case will be remitted to the High Court of Singapore to reconsider the sentence passed upon the appellant if that Court thinks fit.

There will be no Order as to the costs of the appeal.

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In the Privy Council

LAU LIAT MENG

v.

DISCIPLINARY COMMITTEE

DELIVERED BY
LORD HODSON

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