

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

KENNETH EDWARD HILBORNE Appellant

- and -

THE LAW SOCIETY OF SINGAPORE Respondent

CASE FOR THE RESPONDENT

RECORD

- 10 1. This is an appeal from an order of The Court of Appeal of the Republic of Singapore (Wee Chong Jin, C.J., and Winslow and Kulasekaram, J.J.) dated the 23rd November 1972, the reasons for which were given in a judgment dated the 5th day of March 1973, whereby the appeal of the Appellant from an Order of Chua, J. dated the 20th day of June, 1972, affirming an Order made by the Respondent on the 5th day of May, 1972, that the Appellant should pay a penalty of 250 dollars pursuant to Section 89(1) of the Legal Profession Act (Cap.217 of Singapore Statutes, Revised Edition, 1970) was dismissed.
- 20 2. The relevant statutory provisions are set out in the Appendix to this Case.
- 30 3. The Appellant is an advocate and solicitor of the Supreme Court of Singapore and a member of the firm of Messrs. Hilborne and Company. That firm acted for the Brothers of St. Gabriel, the plaintiffs in Suit No. 1093 of 1970, hereinafter referred to as "the action", in which the Writ of Summons was issued on the 29th day of May 1970. The Appellant had the conduct of the action on behalf of the plaintiffs.
4. There were two defendants in the action: Tang Eng Hunt, the first defendant; and Golden Palace Private Limited, the second defendants. The plaintiffs' claim was for an unpaid balance of \$2,510.00 of the agreed price for furniture

p.25, 1.1

p.26, 1.8

p.19, 1.1
p.19, 1.26
p.92, 1.13
p.19, 1.19
p.93, 1.2

p.25, 1.32

p.8, 1.20
p.8, 1.24-29
p.27, 1.34-39

p.36, 1.1
Exhibit KEH1

p.36, 1.23-29
Exhibit KEH1

RECORD

p.81, 1.6-28 Exhibit KEH16B p.37, 1.1-34 Exhibit KEH 2	manufactured and delivered by the plaintiffs at the request of the first defendant, who was at the time of such request the second defendants' managing director, to the second defendants' premises. The Plaintiffs claimed in the alternative against the second defendants, if the first defendant had ordered the furniture on their behalf, as had been asserted by his solicitor in a letter to the Appellant's firm dated the 1st day of April 1970. That assertion was repeated by his defence filed on the 12th day of June, 1970.	10
p.40, 1.1 - p.41, 1.9 Exhibit KEH 4 p.48, 1.1-38 Exhibit KEH 8 p.40, 1.20-24 Exhibit KEH 4 p.48, 1.17-21 Exhibit KEH 8 p.40, 1.31-34 Exhibit KEH 4 p.48, 1.28-31 Exhibit KEH 8 p.38, 1.11 - p.39, 1.28 Exhibit KEH 3 p.9, 1.13-20 p.87, 1.6-12	5. On the 4th day of June 1970 the second defendants' solicitors, Chung and Company, wrote to the Appellant's firm stating, inter alia, first, that the furniture had been ordered by the first defendant for the firm of Golden Pagoda Garden Nite-Club in which he was a partner and, secondly, that it had at no time been ordered by the second defendants or by the first defendant on their behalf nor had any part of it been made use of by the second defendants. By a separate letter of the same date Chung and Company required further particulars of the Statement of Claim from the Appellant's firm.	20
p.43, 1.1- p.44, 1.34 Exhibits KEH 6 and 7 p.50, 1.1-56 1.23 Exhibit KEH 8 p.9, 1.39-42 p.87, 1.13-23 Exhibit KEH16E	6. Correspondence passed between the two firms as to whether the plaintiffs should furnish the particulars sought, and, on the 14th day of July 1970, whilst an application by the second defendants for an order to file such particulars was pending, the plaintiffs obtained judgment against them in default of their having filed a defence for the amount claimed and costs.	30
p.9, 1.42-47 p.45, 1.1- p.47, 1.38 Exhibit KEH 8 p.45, 1.21-30 Exhibit KEH 8	7. On the 21st day of July 1970, the second defendants applied for an order setting aside the said judgment. That application was supported by an affidavit sworn on the 21st day of July, 1970 by Mokhtar bin Shariff, a clerk employed by Chung and Company. In that affidavit Mokhtar bin Shariff repeated the two assertions referred to in paragraph 5 herein and also averred, inter alia, that the second defendants at no time had any interests in the Golden Pagoda Nite-Club and Restaurant.	40 50

RECORD

8. The second defendants' application to set aside the default judgment was heard by Wee Chong Jin, C.J. in Chambers on the 27th day of July 1970. Without giving reasons, the learned Chief Justice ordered that the said judgment be set aside. p.10, 1.7-15
9. The plaintiffs appealed to the Court of Appeal from the learned Chief Justice's Order. Before the hearing of the appeal, a Defence was filed on behalf of the second defendants in which it was averred that the first defendant became a shareholder in the second defendants on the 2nd day of July 1969. p.10, 1.16-44
p.10, 1.22-44
p.10, 1.29-34
10. On the 21st day of January, 1971, the plaintiffs' appeal was heard by the Court of Appeal (Tan Ah Tah, Winslow and Choor Singh, J.J.) and was dismissed. The Court of Appeal pointed out that the plaintiffs, by their Statement of Claim, had failed affirmatively to allege that the first defendant had ordered the furniture on behalf of the second defendants, that in correspondence they had indicated that they did not know whether the first defendant acted for the second defendants or not, and that the second defendants denied that they had ordered the furniture. The Court went on to comment unfavourably on the position taken by the plaintiffs' solicitors (the Appellant's said firm) in relation to the second defendants' solicitors' requests for particulars and for time to deliver a Defence. p.11, 1.1-4
p.78, 1.9-10
Exhibit KEH16E
p.84, 1.1
p.87 1.43
Exhibit KEH16E
p.86, 1.9-25
p.86, 1.26-
p.87, 1.5
Exhibit KEH16E
p.86, 1.6-23
Exhibit KEH16E
11. On the 13th day of March 1971, before the Order of the Court of Appeal dismissing the plaintiffs' appeal had been passed and entered, the plaintiffs, who were represented by the Appellant, applied to the Court of Appeal (Tan Ah Tah and Choor Singh, J.J.; Winslow, J. being indisposed) to re-open their appeal on the grounds that the learned Chief Justice and the Court of Appeal had been misled as to the true facts concerning the status of the first defendant and his relationship, at the material times, to the second defendants. In support of their application, the Plaintiffs relied upon a Statutory Declaration by Ong Swee Keng, an advocate and solicitor of the Supreme Court of Singapore and a director of the second defendants from the 28th day of February, 1967, who, at the time of making the said Declaration, was in the course of petitioning for the winding up of the second defendants. In it, p.11, 1.20-27
p.11, 1.25-27
p.28, 1.24-30
p.88, 1.1-
p.90, 1.16
Exhibit KEH16F
p.88, 1.5-6
Exhibit KEH16F
p.88, 1.9-10
p.88, 1.10-13

RECORD

p.88, 1.38-
p.89, 1.17

Mr. Ong stated, inter alia: (1) that the first defendant had charge of the management of the second Defendants at all material times after the 8th day of February 1969, was a director thereof from the 28th day of February 1969 and that even before then it had been agreed that he should become managing director, which appointment was formally confirmed on the 18th April, 1969; (2) that when the furniture had been ordered in or about March, 1969, the second defendants had recently started business and they had to purchase the necessary equipment therefor; (3) that he did not understand the second defendants' suggestion that the furniture was ordered by the first defendant for a firm of which he was a partner; (4) that the first defendant had become a lessee of the Golden Pagoda Nite-Club as from the 1st day of August, 1969, but that the second defendants had carried on the running of the said club for some three weeks in July, 1969 prior to leasing it to the first defendant, which lease had included the furniture. The plaintiffs also relied upon an invitation card which they produced purporting to be issued by the second defendants for the opening of the night club, in which appeared the words: "The Management of Golden Palace (Pte.) Ltd. on the opening of their Golden Pagoda Nite-Club cordially invites the company of ..."

p.89, 1.25-29

10

p.89, 1.30-33

p.89, 1.32-44

p.78, 1.35-39
Exhibit KEH16

20

p.90, 1.18-132
Exhibit KEH16G

30

p.11, 1.28-32
p.28, 1.32-35
p.78, 1.49-
p.79, 1.17
p.13, 1.20-23
p.15, 1.8-13
p.33, 1.36-41

12. The Learned Judges refused to re-open the appeal and the Appellant thereupon uttered the words that, in refusing to do so, the Judges were setting a seal on dishonesty.

p.72, 1.1-25
Exhibit KEH13

13. After the said hearing, the Appellant wrote the following letter to Messrs. Chung and Company :-

40

"I am writing in connection with these proceedings this morning during which I stated to the two Judges present that in my opinion in refusing to reopen this appeal, they were setting a seal on dishonesty. Mr. Chung challenged me to repeat these words outside the Court, and this is the purpose of this letter. I am suggesting that the paragraphs complained of are not true, in the sense that they accurately convey the substance of the matter. I am further suggesting that

50

either Mr. Chung knew this at the time or that if he discovered it afterwards he took no steps to correct the false impression that these paragraphs conveyed. The same remarks apply to the defence.

What this amounts to, I am not prepared to say, but it is certainly what I meant when I used the word "dishonesty" before the Judges."

- 10 14. On the 15th day of March, 1971, Messrs. Chung and Company wrote to the private secretaries to Tan Ah Tah and Choor Singh J.J. enclosing a copy of the Appellant's said letter and asking whether any action would be contemplated by the Bench. p.71, 1.1-40
Exhibit KEH13
15. On the 19th day of March, 1971, the Registrar of the Supreme Court of Singapore wrote the following letter to the Respondent: p.71, 1.31-32
- 20 "I am directed by Mr. Justice Tan Ah Tah and Mr. Justice Choor Singh to forward herewith a photostat copy of each of the following letters :-
- (1) Letter dated 13th March 1971 from Mr. K.E. Hilborne to Messrs. Chung and Co.
- (2) Letter dated 15th March 1971 from Messrs. Chung & Co. to the respective Private Secretaries to their Lordships.
- 30 These documents are referred to the Law Society under section 89(2) of the Legal Profession Act, 1966.
- 40 Their Lordships are of the view that the conduct of Mr. Hilborne in expressing the opinion, after the decision not to reopen the appeal had been pronounced, that "in refusing to reopen this appeal, they (i.e. Their Lordships) were setting a seal on dishonesty" merits investigation."
16. On the 12th day of April, 1971, the Inquiry Committee of the Respondent, pursuant to what is now Section 87(5) of the said Legal Profession Act, wrote to the Appellant inviting him to explain his statement to the Court of p.74, 1.1-41
Exhibit KEH15
p.74, 1.28-31

RECORD

Appeal and to advise the Committee if he wished to be heard by them.

p.75, 1.1-
p.79, 1.40
Exhibit KEH16
p.75, 1.20-
p.78, 1.49
Exhibit KEH16
p.78, 1.49-
p.79, 1.26

17. On the 24th day of May, 1971, the Appellant replied by letter to the Inquiry Committee to explain his position. After outlining the history of the said action the Appellant stated :

"... The object of appearing before their Lordships on the 13th March 1971, was to re-open hearing of the appeal on the ground that both Courts had been misled, inasmuch as the true and material facts had not been disclosed at any time from the commencement of the correspondence (4.6.1970) to the hearing of the Appeal (21.1.1971). In the event, their lordships did not deem fit to re-open the hearing of the appeal. It seemed, and still seems, to me that for a litigant to misinform the Court in circumstances such as these was dishonesty in the legal, if not the actual sense, and for a Court, having been apprised of the nature of the falsity, to fail to express any disapproval of the same, let alone investigate the matter further, was tantamount to condonation of that dishonesty. It was these circumstances that led to the observation which I made. No doubt it was a somewhat blunt expression of opinion but I do not recall either of their lordships taking objection at the time, either to the content of the words or the manner on which they were expressed. The letter written to Mr. Chung's firm was in response to a challenge by him, in front of their lordships, to repeat the substance of my remarks in circumstances where privilege would not obtain."

10

20

30

40

p.1, 1.1-
p.2, 1.15

18. By a letter dated the 27th day of July, 1971, the Secretary of the Respondent informed the Appellant that the Council of the Respondent had determined that, under what is now Section 88(1)(b) of the Legal Profession Act, no cause of sufficient gravity existed for a formal investigation but, as the Appellant's behaviour towards the learned Judges had been improper, it was the Council's then intention that the Appellant should pay a penalty of \$200 under Section 89(1) of the Act. The letter went on to enquire whether the Appellant wished to be heard by the Council before such an order was made.

50

p.2, 1.6-11

- 10 19. The Appellant clarified in correspondence with the Council that the basis of their determination was their opinion that his statement that in refusing to re-open the appeal the Judges were setting a seal on dishonesty was, on his own construction of the words as set out in his letter of the 24th day of May, 1971, to the Inquiry Committee, improper. The Appellant then by a letter dated the 24th day of August, 1971 requested a hearing before the Council of the Respondent. p.4, l.1-20
- 20 20. On the 28th day of April, 1972 the Council, after hearing the Appellant, confirmed its previous decision and ordered that the Appellant should pay a penalty of \$250 pursuant to the provisions of Section 89 of the Legal Profession Act. The Appellant was informed of this Order by a letter from the Respondent dated the 5th day of May 1972. p.92, l.13-
p.93, l.15
Exhibit KEH17
- 20 21. By an Originating Summons dated the 26th day of May, 1972, issued pursuant to Section 95 of the said Legal Profession Act, the Appellant applied for the said Order to be set aside. p.6, l.21-
p.7, l.23
22. The said application was supported by an affidavit sworn by the Appellant on the 25th day of May, 1972. In this he deposed, (inter alia) that :
- 30 "... Their Lordships, notwithstanding the facts brought to their notice, did not see fit to entertain further hearing of the appeal, and it was during the course of this hearing that I uttered the words which are the subject of these proceedings. ..."
- and
- 40 "No comment was made by either of their Lordships at the time when I uttered the words complained of, and in the light of the further material and relevant information which had come to my knowledge and which knowledge I put before their Lordships it seemed to me that to take no cognisance thereof nor express disapproval thereof was in effect to approbate conduct which had caused false or misleading facts to be put before no less than four Judges. I am therefor aggrieved at the Order made against me by p.11, l.49-
p.12, l.12

RECORD

the Defendants and desire that it be set aside."

- p.12, 1.19-
p.18, 1.38
p.19, 1.1-30
23. The said summons was heard by Chua, J. on the 19th and 20th days of June, 1972 and dismissed with costs. The learned Judge was of the view that the Appellant had been guilty of contempt of Court and that the Council of the Respondent had been right to impose their penalty. The Appellant was granted leave to appeal to the Court of Appeal in Singapore on the 23rd day of June 1972. 10
- p.18, 1.25-29
p.18, 1.34-37
24. On the 23rd day of November, 1972 the Court of Appeal (Wee Chong Jin, C.J., Winslow and Kulasekaram, J.J.) dismissed the Appellant's appeal. The reasons for the judgment of the Court were delivered by Wee Chong Jin, C.J. on the 5th day of March, 1973.
- p.25, 1.1-
p.26, 1.7
- p.26, 1.8-
p.30, 1.48
- p.29, 1.37-46
25. The learned Chief Justice said it was irrelevant whether or not the Appellant had been guilty of contempt of Court as it was for the Council of the Respondent to determine under Section 88 of the Legal Profession Act whether or not in the circumstances the Appellant had said something which in the view of the Council ought not to have been said by a member of the profession, and, if so, whether or not the impropriety was sufficiently serious to merit the imposition of a monetary penalty. The Court could see no reason to interfere with the order of the Council as the words, which the Court found to have been uttered by the Appellant after the learned Judges hearing the application of the 13th day of March, 1971 had refused to re-open the appeal, were in its view improper and ought not to have been used. 20
- p.29, 1.28-32
- p.28, 1.32-35
- p.29, 1.30-32
26. The Court also held that the said Order of Chua, J. was not an order made by the High Court in the exercise of its original or of its appellate jurisdiction and that thus Section 29 of the Supreme Court of Judicature Act (Cap.15) did not confer jurisdiction on the Court of Appeal to entertain an appeal from it. Nor could an appeal be brought under Section 34 of the said Act as the said Order was not an interlocutory order within the meaning of that Section. The Court held that there was no jurisdiction to entertain such an appeal at all. 40
- p.30, 1.1-11
- p.30, 1.33-36
- p.30, 1.37-40
27. On the 20th day of February, 1973, after his appeal had been dismissed but before the Court of Appeal had delivered its said reasons, 50

the Appellant applied to the Court of Appeal for leave to appeal to the Judicial Committee of the Privy Council. In support of this application, the Appellant swore an affidavit in which he deposed, inter alia, that :

RECORD
p.31, 1.1-
p.32, 1.13

p.32, 1.14-
p.34, 1.50
p.33, 1.36-
p.34, 1.1

10

"... their Lordships did not dispute their relevance, they appeared reluctant to re-open the appeal, and I thereupon made the following observation, namely, that if they declined to re-open the appeal they would be 'setting a seal on dishonesty'. I meant by that, that if false, material, and misleading facts were placed before a Court which were later brought to its notice, it was the duty of the Court to express its disapprobation and to take such as might ensure that the perpetuation of that dishonesty did not ensue to the advantage of those responsible for it, and that if a Court did not respond in such manner that would be approbating or setting a seal of approval on such conduct."

20

30

28. Leave having been refused by the Court of Appeal, on the 6th day of October 1975 the Right Honourable the Lords of the Judicial Committee of the Privy Council granted special leave to the Appellant to appeal against the said Judgment of the Court of Appeal in Singapore.

p.35, 1.1-46

29. The Respondent concedes that the Court of Appeal had jurisdiction to hear and determine this appeal, but, submits that the appeal should be dismissed with costs for the following amongst other

R E A S O N S

40

- (1) BECAUSE the Appellant's statement to the learned Judges of the Court of Appeal on the application to re-open the plaintiff's appeal that in refusing to do so, they were setting a seal on dishonesty:
- (a) was capable of meaning that the learned judges approved or countenanced the alleged dishonesty;
 - (b) was intended by the Appellant to have the said meaning; and/or
 - (c) was reasonably capable of being

RECORD

construed as having the said meaning and was so construed by the Council, by Chua, J., and by the Court of Appeal.

- (2) BECAUSE the Appellant in making the said statement with the said meaning and effect was guilty of improper conduct or practice as an advocate and solicitor so as to bring himself within the provisions of Sections 88 (1) (b) and 89 of the Legal Profession Act.
- (3) BECAUSE the decision of the Court of Appeal was right and should be affirmed. 10

ROBIN AULD

IAN GLICK

A P P E N D I X

CONTENTS

	<u>Page</u>
Supreme Court of Judicature Act (Singapore Statutes, Revised Edition 1970, cap.15)	
Ss. 7,	i
15,	i
16,	i
29,	ii
34.	ii
Legal Profession Act (Singapore Statutes, Revised Edition 1970, cap.217)	
Ss. 83,	iii
84,	iii
85,	v
86,	vi
87,	vi
88,	vii
89,	vii
90,	vii
91,	viii
92,	viii
93,	ix
94,	x
95,	x
96,	xi
98(1)	xi
(6)	xii

CAP.15 Supreme Court of Judicature

Powers and Jurisdiction of the Supreme Court

Divisions and jurisdiction of Supreme Court.

7. The Supreme Court shall be a court of record and shall consist of -

- (a) the High Court, which shall exercise original and appellate criminal and civil jurisdiction;
- (b) the Court of Appeal, which shall exercise appellate civil jurisdiction; and
- (c) the Court of Criminal Appeal, which shall exercise appellate criminal jurisdiction.

Original Jurisdiction

Criminal jurisdiction.

15. (1) The High Court shall have jurisdiction to try all offences committed -

- (a) within Singapore;
- (b) on the high seas on board any ship or aircraft registered in Singapore;
- (c) by any person who is a citizen of Singapore on the high seas or on any aircraft; and
- (d) by any person on the high seas where the offence is piracy by the law of nations.

(2) The High Court may pass any sentence allowed by law.

Civil jurisdiction - general.

16. (1) The High Court shall have jurisdiction to try all civil proceedings where -

- (a) the cause of action arose in Singapore;
- (b) the defendant or one of several defendants resides or has his place of business or has property in Singapore;
- (c) the facts on which the proceedings are based exist or are alleged to have occurred in Singapore; or
- (d) any land the ownership of which is disputed is situated within Singapore.

Provided that the High Court shall have no jurisdiction to try any civil proceeding which comes within the jurisdiction of the Shariah Court constituted under the Administration of Muslim Law Act.

(2) The High Court shall also have jurisdiction to try any civil proceedings where all the parties consent in writing to have the proceedings tried in Singapore.

(3) Without prejudice to the generality of subsection (1) of this section, the High Court shall have such jurisdiction as is vested in it by any written law which is in force in Singapore.

PART IV

THE COURT OF APPEAL

Jurisdiction to hear and determine civil appeals.

29. The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

Non-appealable matters.

34. (1) No appeal shall be brought to the Court of Appeal in any of the following cases :-

- (a) where the amount or value of the subject matter at the trial is less than one thousand dollars, except with the leave of the Court of Appeal or a Judge of the Supreme Court;
- (b) where a Judge makes an order giving unconditional leave to defend an action;
- (c) where the judgment or order is made by consent of parties;
- (d) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal or a Judge of the Supreme Court;
- (e) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) No appeal shall lie from an interlocutory order made by a Judge in chambers unless the Judge has certified after application, within four days after the making of such order by any party for further argument in court, that he requires no further argument, or unless leave is obtained from the Court of Appeal or from the Judge

who heard the application.

(3) No appeal shall lie from a decision of a Judge in chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal or a Judge of the Supreme Court, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

CAP.217

Legal Profession

DISCIPLINARY PROCEEDINGS

Jurisdiction
of Supreme
Court over
solicitors.

83. (1) Any person duly admitted as an advocate and solicitor shall be an officer of the Supreme Court:

Provided that the provisions of any written law which imposes on officers of the Supreme Court any restrictions as to practice as advocates or solicitors shall not apply to any advocate and solicitor by virtue only of this subsection.

(2) Nothing in this Part affects the jurisdiction referred to in subsection (3) of this section which is exercisable by the Supreme Court or any judge thereof over any advocate or solicitor practising before it.

(3) The Supreme Court or any judge thereof may exercise the same jurisdiction in respect of advocates and solicitors as can be exercised by a superior court in England over barristers or solicitors practising before any such court.

Power to strike
off the roll or
suspend or
censure.

84. (1) All 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 or suspended from practice for any period not exceeding two years or censured.

AM.16 of 1970

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

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession; or

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such

a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor; or

Cap. 18

- (c) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (d), (e), (f), (h) or (i) of subsection (6) of section 33 of the Bankruptcy Act; or
- (d) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor; or
- (e) has directly or indirectly procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given; or
- (f) has accepted employment in any legal business through a person who has been proclaimed a tout under any written law relating thereto; or
- (g) allows any clerk or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision; or
- (h) 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 due regard being had to the fact that the two professions are fused in Singapore; or
- (i) carries on by himself or any person in his employment any trade, business or

calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling; or

(j) has contravened or failed to comply with the provisions of this Act or of any rules made thereunder in relation thereto if in the opinion of the court such contravention or failure warrants disciplinary action; or

(k) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country.

(3) Pupils and articled clerks shall *mutatis mutandis* be subject to the same jurisdiction as can be exercised over advocates and solicitors under this Part but in lieu of an order striking him off the roll or suspending him an order may be made prohibiting the pupil or articled clerk from petitioning the court for admission until after a date to be specified in the order:

Provided that the jurisdiction given by this sub-section shall be exercised by a single judge.

(4) In any proceedings under this Part the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.

Appointment of
Inquiry
Committee.

85. (1) At the first meeting of the Council held after the 1st day in January in any year, the Council shall appoint an Inquiry Committee comprising five members or former members of the Council of whom three shall constitute a quorum.

(2) Each Inquiry Committee shall hold office until the next Inquiry Committee is appointed.

(3) The Inquiry Committee may act notwithstanding any vacancy in their body and, in case of a vacancy, the Council may appoint a member or former member of the Council to fill the vacancy.

(4) The Inquiry Committee shall meet from time to time for the dispatch of business and, subject to any rules made by the Council may regulate the convening, notice, place, management and adjournment of such meetings,

the appointment of a chairman, the mode of deciding questions, and generally the transaction and management of business.

Applications
and complaints.

86. (1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.

(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee.

(3) Every written application or complaint received by the Inquiry Committee shall be supported by such statutory declarations or affidavits as the Inquiry Committee may require.

(4) Before proceeding to inquire into or investigating into any matter under the provisions of section 87 of this Act the Inquiry Committee may require any person making a written application or complaint to deposit with the Society a reasonable sum not exceeding five hundred dollars to cover necessary costs and expenses and in case the application or complaint is found to be frivolous or vexatious, the sum so deposited or such part thereof as the Inquiry Committee may determine shall be applied for the payment of such costs and expenses; otherwise, the sum so deposited shall be returned to the person making the same.

Investigation.

87. (1) Where the Inquiry Committee has -

- (a) received a written order;
- (b) decided of its own motion to inquire into any matter; or
- (c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

Council's consideration of report.

88. (1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall determine -

- (a) that a formal investigation is not necessary; or
- (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 89 of this Act; or
- (c) that there should be a formal investigation by a Disciplinary Committee; or
- (d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration.

Am. 16 of 1970

(2) The Council shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of that person furnish him with their reasons in writing.

Council's power to order penalty
Am. 16 of 1970

89. (1) If the Council determines under Section 88 of this Act that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty it may order the advocate and solicitor to pay a penalty of not more than two hundred and fifty dollars.

(2) The provisions of section 95 of this Act apply to any penalty ordered to be paid under sub-section (1) of this section.

(3) Before the Council makes an order for the payment of a penalty under this section it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard by the Council.

Application to appoint a Disciplinary Committee

90. If the Council determines under section 88 of this Act that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter.

DISCIPLINARY COMMITTEE

Appointment of Disciplinary Committee

91. (1) The Chief Justice may from time to time appoint a committee from among solicitors who have in force a practising certificate to be known for the purpose of this Act as a Disciplinary Committee.

(2) A Disciplinary Committee shall consist of such number of members not being less than three nor more than five as the Chief Justice may from time to time think fit and shall be appointed in connection with one or more matters or for a fixed period of time or as the Chief Justice may think fit.

(3) The Chief Justice may at any time revoke the appointment of any Disciplinary Committee or may remove any member of a Disciplinary Committee to fill any vacancy in a Disciplinary Committee or subject to the limits aforesaid increase the number of the members of a Disciplinary Committee.

(4) Every Disciplinary Committee shall appoint a solicitor to be the secretary of that Disciplinary Committee.

(5) The production of any written instrument purporting to be signed by the Chief Justice and making an appointment, revocation or removal referred to in this section shall be evidence that such appointment, revocation or removal has been duly made.

Proceedings and powers of Disciplinary Committee.

92. (1) The Rules Committee may from time to time make rules for regulating the hearing and investigation of matters before or by a Disciplinary Committee.

Provided that no such application or complaint shall be heard or investigated before less than three members of a Disciplinary Committee.

(2) For the purpose of any application or complaint heard and investigated by them under this Act the Disciplinary Committee may administer oaths and the Society or the applicant or person making the complaint and the solicitor to whom the application or complaint relates and (if so instructed by the Disciplinary Committee) the secretary of the Disciplinary Committee may sue out writs of subpoena ad testificandum and of duces tecum but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(3) The writs referred to in subsection (2) of this section shall be served and may be enforced as if they were writs issued in connection with a civil action in the High Court.

(4) Any person giving evidence before a Disciplinary Committee shall be legally bound to tell the truth.

(5) No fees or other charges shall be payable for any writ sued out by the secretary of the Disciplinary Committee under subsection (2) of this section.

(6) In sections 172, 173, 174, 175, 177, 179, 182 and 228 of the Penal Code the words "public servant" shall be deemed to include a member of a Disciplinary Committee taking part in any investigation under this section, and in sections 193 and 228 of the Penal Code the words "judicial proceeding" shall be deemed to include any such investigation as aforesaid.

Findings of
Disciplinary
Committee
Am;16 of 1970

93. (1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine -

- (a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act; or
- (b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or
- (c) that cause of sufficient gravity for disciplinary action exists under that section.

(2) In the event of the Disciplinary Committee making a determination under paragraph (b) or (c) of subsection (1) of this section the Committee may make an order for payment by any party of costs or of such sums as the Committee may consider a reasonable contribution towards costs.

(3) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which -

- (a) a copy shall be submitted to the Chief Justice and the Society; and

- (b) a copy shall on request be supplied to the advocate and solicitor concerned and to the person who made the application or complaint.

Society to apply to court.

94. (1) If the determination of the Disciplinary Committee under section 93 of this Act is that cause of sufficient gravity for disciplinary action exists under section 84 of this Act the Society shall without further direction or directions proceed to make an application in accordance with the provisions of section 98 of this Act.

(2) If the determination of the Disciplinary Committee under section 93 of this Act is that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act it shall not be necessary for the Society to take any further action in the matter unless so directed by the court.

Provisions as to penalties.
Am.16 of 1970

95. (1) Within twenty-one days of being ordered to pay a penalty by the Council the advocate and solicitor concerned may apply to a judge to set aside the order.

(2) Such an application shall be made by way of originating summons and shall be served on the Society and shall be heard in chambers unless the judge of his own motion or on the application of any party sees fit to order a hearing in open court.

(3) Upon the hearing of the application the judge may -

- (a) affirm or vary the penalty; or
(b) set aside the order for a penalty,

and may make an order for payment of costs by or to either the Society or the applicant as may be just.

(4) If no such application is made or if the order for a penalty is affirmed or varied by the court the advocate and solicitor shall pay the penalty to the Society and the Society shall pay the penalty into the Consolidated Fund.

Am.16 of 1970.

(5) Any penalty not paid may be recoverable by the Society as a judgment debt.

Procedure for complainants dissatisfied with the Council's decision.

96. (1) Where a person has made a written application or complaint to the Society and the Council has determined -

- (a) that a formal investigation is not necessary; or
- (b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

that person, if he is dissatisfied with the decision may within fourteen days of being notified of the Council's determination apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be 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 originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under subsection (2) of section 88 of this Act.

(3) The application accompanied by a copy of each of the documents referred to in subsection (2) of this section shall be served on the Society.

(4) Upon the hearing of the application the judge may make an order -

- (a) affirming the determination of the Council; or
- (b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,

and such order for the payment of costs as may be just.

(5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the court under section 98 of this Act, and any such proceedings shall be brought in the name of the applicant.

Order to show cause.

98. (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 for an order calling upon the solicitor to show cause.

- - - - -

(6) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) of this section 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 except to the Judicial Committee of Her Britannic Majesty's Privy Council. For the purposes of an appeal to that Committee an order made under this subsection shall be deemed to be an order of an appellate court.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

KENNETH EDWARD HILBORNE Appellant

- and -

THE LAW SOCIETY OF SINGAPORE
Respondent

CASE FOR THE RESPONDENT

MESSRS. JAQUES & CO.,
2 South Square,
Gray's Inn,
London, WC1R 5HR.