The learned judge took a serious view of the matter and it is not possible to take any other view. Nevertheless, and with all respect to the learned judge, we do not think that it required the desperate remedy of fines of £300 and £200. We are in a position to take an objective view of the matter and from that viewpoint we think that the fines should be reduced to fines of £100 and £25 respectively.

Freetown
Nov. 3,
1960
Ames P.
Wiseham C.J.
Marke J.

[COURT OF APPEAL]

IN THE MATTER OF A COMPLAINT BY C. A. HOLLIST AGAINST MR. S. C. BERTHAN MACAULAY AND MR. F. A. SHORT

[Civ. App. 44/60]

Allegation of professional misconduct by legal practitioner—Proceeding before Legal Practitioners Disciplinary Committee—Finding of Committee not in conformity with charge—Legal Practitioners (Disciplinary Committee) Ordinance (Cap. 118, Laws of Sierra Leone, 1946).

A charge was preferred by Mr. C. A. Hollist against Mr. Macaulay before the Legal Practitioners Disciplinary Committee as follows:

"That you being a registered legal practitioner of the Supreme Court of Sierra Leone and acting as legal practitioner in the Supreme Court case of *C. A. Hollist* v. *B. E. Vincent* No. 406/1957 you committed an act of professional misconduct in that you improperly retained the sum of £58 5s. 10d. out of the sum of £136 5s. 0d. received by you as solicitor for the said C. A. Hollist in the said matter."

The Committee found Mr. Macaulay guilty of retaining money improperly as a solicitor, but not as Mr. Hollist's solicitor. This finding formed the basis of a decision by the Sierra Leone Supreme Court which ordered that Mr. Macaulay be suspended from practice for one year. From this decision, Mr. Macaulay appealed.

Held, allowing the appeal, that the Legal Practitioners Disciplinary Committee cannot find a legal practitioner guilty of something absolutely different from, and inconsistent with, the charge made against him.

The court also said, by way of obiter dicta, that it did not accept the Committee's finding that Mr. Hollist never retained Mr. Macaulay in connection with his case, and that, even if he had not been retained by Mr. Hollist, it was still necessary to consider whether Mr. Macaulay honestly thought he was entitled to retain the money.

Case referred to: *Bhandari* v. *Advocates Committee* [1956] 3 All E.R. 742.

Thomas O. Kellock for the appellant.
John H. Smythe, Ag. Solicitor-General, for the respondent.

AMES P. This is an appeal against a decision of the Supreme Court of Sierra Leone, given as the culmination of proceedings against the appellant, a legal practitioner, under the provisions of the Legal Practitioners (Disciplinary Committee) Ordinance, Chap. 118, and ordering that he be suspended from practice for one year.

The complainant was one C. A. Hollist, who was the plaintiff in a claim for damages against B. E. Vincent. The suit was eventually ended by agreement with judgment for the complainant for £110 damages and 25 guineas costs. This amount was paid by the defendant's solicitor and eventually received by the appellant, who practises as Macaulay and Co. although he has no partner. The appellant proposed to pay to the complainant £77 19s. 2d., which was the balance left after crediting £10 paid by the complainant to one Mr. Short, also a legal practitioner, who was agent for the appellant during his absence from Sierra Leone, and debiting him with various items of out-of-pocket expenses and professional charges. No bill of account had been given by the appellant to the complainant at this stage. The complainant was aggrieved at not receiving more and wrote to the appellant. The appellant replied, enclosing a bill and telling him if he disputed it, he could take it to the Master and Registrar. The complainant took no steps to have the bill of costs taxed. He complained to the Attorney-General and swore to an affidavit, which led to proceedings under the Ordinance.

There was more to it than the foregoing might suggest and the matter was complicated by the fact that the complainant at first retained Mr. C. B. Rogers-Wright as his solicitor in the matter, who ceased to practise after the case was ready for hearing and before the hearing, and also by the fact that the appellant was out of Sierra Leone, when the case came on for trial although he had made arrangements for the carrying on of his business during his absence; but it is not necessary to go into the details of the matter.

The charge preferred against the appellant before the Disciplinary Committee (whom I will call the Committee) was this:

> "That you being a registered legal practitioner of the Supreme Court of Sierra Leone and acting as legal practitioner in the Supreme Court case of *C. A. Hollist* v. *B. E. Vincent*, No. 406/1957, you committed an act of professional misconduct in that you improperly retained the sum of £58 5s. 10d. out of the sum of £136 5s. 0d. received by you as solicitor for the said C. A. Hollist in the said matter."

Now I should have thought that this charge very clearly meant that the appellant, being solicitor for the plaintiff in the suit *Hollist* v. *Vincent* committed an act of professional misconduct by improperly retaining £58 odd out of the £136 odd paid by the defendant's solicitor and eventually received by the appellant as the plaintiff's solicitor.

But I should have been wrong, completely. Mr. Smythe, who appeared to support the order made by the Supreme Court, had some difficulty in explaining what it meant; but eventually it appeared that it meant that the appellant was not solicitor for the plaintiff at all, and that nevertheless, when the defendant's solicitor handed him the £136 for Hollist, he retained it improperly as a solicitor although not Hollist's solicitor.

This aspect of the matter was raised in the second ground of appeal and the first additional ground of appeal. Mr. Kellock for the appellant, summarised these as: Appellant was charged with improperly withholding funds received as solicitor but found guilty of another offence, namely, of retaining money received as an outsider or interloper.

Mr. Smythe pointed out to us that the Ordinance contains no provisions as to what the procedure should be, in an inquiry into a charge by the Committee. But every inquiry by the domestic tribunal of any profession must be

in accordance with some few basic principles. One such must be that the person charged must be told, and told reasonably clearly, what the charge against him is. Another must be that the tribunal cannot find him guilty of something absolutely different from, and inconsistent with, the charge as was done in this case. The Committee appear to have found him guilty of having done what is Mr. Smythe's interpretation of the charge.

The learned judges of the Supreme Court said in their judgment: ". . . It seems to us that whatever construction is placed on the meaning of the charge . . ."; but I presume that they approved of the construction put upon it by Mr. Smythe and the Committee, because they upheld the findings of the Committee and found the charge proved.

With all respect to the learned judges and to the Committee I cannot see how the charge can be read to mean this absolutely different thing.

I would allow the appeal on this ground. This really disposes of the appeal. Nevertheless I ought perhaps to refer briefly to one other aspect of the matter which was raised by other grounds of appeal. It arises out of the Committee's finding, which the learned judges accepted, that the complainant never retained the appellant in connection with his case. I myself do not accept the finding as the consequence of the proceedings before the Committee, because it was necessary to apply a high standard of proof and I would not assume, as in proper cases one should assume (*Bhandari* v. *Advocates Committee* [1956] 3 All E.R. 742) that the Committee had applied that standard, because in so far as there are any indications as to whether they did or not, the indications are that they did not.

But assuming that the charge had been that, although not retained by the complainant, the appellant had retained improperly part of the money which came into his hands for the complainant, and that it had been proved by the proper standard, that the appellant had not been retained by the complainant, it was still necessary to consider whether or not the appellant honestly thought that he was entitled to retain it. This was not considered at all, either by the Committee or in the Supreme Court. Had it been considered, who knows what the result might have been? There is much in the evidence tending to show that he would have been justified in so thinking.

As I have said, I would allow the appeal and set aside the order suspending the appellant for one year and substitute an order dismissing the charge against him.

Freetown
Mar. 30,
1961

Ames P.
Benka-Coker
Ag. C.J.
Marke J.

[COURT OF APPEAL]

REGINA . . . . . *Respondent*

v.

VANDY KOROMA . . . . . *Appellant*

[Cr. App. 51/60]

Criminal law—Homicide—Murder—Manslaughter—Judge's failure to submit defence of self-defence to assessors.

Appellant was charged with murder before the Supreme Court of Sierra Leone sitting at Bo, was tried by that court with the aid of assessors and was convicted