

1967/14

IN THE PRIVY COUNCIL

No. 28 of 1966

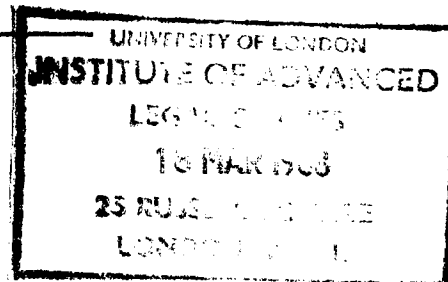
ON APPEAL
FROM THE HIGH COURT OF SINGAPORE

BETWEEN :

LAU LIAT MENG Appellant

- and -

DISCIPLINARY COMMITTEE Respondents



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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 RESPONDENTS

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1. This is an appeal from a decision of the High Court of Singapore (Wee Chong Jin, C.J., Tan Ah Tah and Buttrose J.) dated 28th February 1966, ordering that the Appellant, an Advocate and Solicitor of the High Court, be struck off the Roll of Advocates and Solicitors of the Court and that he should pay the taxed costs of the proceedings before that court and before the Disciplinary Committee.

p. 76-77

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2. On the 20th August 1964, the Honourable the Chief Justice of the High Court of Singapore in exercise of his powers under Section 26 of the Advocates and Solicitors Ordinance appointed a Disciplinary Committee consisting of Mr. H.L. Wee, Miss Mary Lim Cheow Sim and Mr. G. Abisheganaden

to hear and investigate a complaint of the State Advocate-General against the Appellant. On the 22nd August 1964 the Honourable the Chief Justice substituted Mr. J. Grimberg as a member of the said Committee.

3. THE STATEMENT OF THE CASE

- p. 1 On the 7th October 1964 pursuant to Rule 3(1) Advocates and Solicitors (Disciplinary Proceedings Rules) 1963, the Secretary to the said Disciplinary Committee made an application that the Appellant be required to answer allegations set out in a Statement of the Case which accompanies the application. The investigation opened on the 8th December 1964 and, on that day, Counsel for the complainant asked and was granted leave to amend paragraph 8 of the Statement of Case. On the 11th December 1964, Counsel asked to make further amendments to paragraph 8 and by leave of the Court this was granted subject to the condition that the words "further or alternatively" be inserted between paragraph 8(1) and paragraph 8(2) of the Statement of Case, which paragraph appears in paragraph 8 hereof 10
- p. 8 1. 8
- p. 26 1.38
4. In paragraph 1 of the Statement of Case the complainant alleged that the Appellant was an Advocate and Solicitor of about two years standing and was the sole proprietor of the firm of Lau Liat Meng and Company. In paragraph 2 it was alleged that in or about October 1963 one Cham Siew Why, hereinafter called "the client", consulted the Appellant regarding the death of his (the client's) son, hereinafter called "the deceased", as a result of a road accident. 20
- p. 1
- p. 1
5. In paragraph 3 of the Statement of Case it was alleged that there was an agreement between the Appellant and the client that the client should pay the Appellant, as his professional fees, 25% of the damages which might be recovered by the client if the damages recovered as a result of the said accident were in excess of \$3000, or 20% if such damages were a less sum. 40
- p. 1

6. In paragraph 4 of the Statement of Case it was alleged that on the 24th January 1964, the

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18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

client on the advice of the Appellant accepted \$4000 in full satisfaction of his claim arising out of the death of the deceased. (No writ in respect of this claim had been issued).

p. 1 & 2

7. In paragraph 5 of the Statement of Case it was alleged that on the 11th February 1964 the Registrar of the High Court of Singapore taxed the Appellant's Solicitor and client's Bill of Costs against the client, including stamp duty of \$19 at \$705.50. It was further alleged that on the 19th February 1964 the Public Trustee (to whom the \$4000 had been paid pursuant to paragraph 5(1) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance No. 1 of 1960) paid the Appellant \$705.50 and paid the balance to the client subject to a statutory deduction of \$50.

p. 3

8. In paragraph 6 of the Statement of Case it was alleged that at an interview between the client and the Appellant at the Appellant's office, the Appellant first claimed that he was entitled to a further \$750 in respect of his professional fees; that the client maintained that the Appellant was only entitled to \$294.50 being the difference between \$1000 (25% of \$4000) and \$705.50 (the amount already received by the Appellant); and that the Appellant then reduced his claim to \$700.

p. 3

9. In paragraph 7 of the Statement of Case it was alleged that the client being advised to do so, subsequently paid to a relative of the Appellant and on behalf of the Appellant the sum of \$700 and on the 28th February 1964 he received from the Appellant a receipt for this sum being in respect of fees for his services in attending the inquest of the deceased.

p. 3

10. Paragraph 8 of the Statement of Case as amended formulated the complaints alleged to arise out of the above recited facts. These are set out hereunder.

p. 4-6

- (i) 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 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);

- (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 censured if a barrister or solicitor in England within the meaning of Section 25(2)(i) of the Advocates and Solicitors Ordinance (Chapter 188); 10
- (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 as 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); 20
- (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 barrister or solicitor in England within the meaning of Section 25(2)(i) of the Advocates and Solicitors Ordinance (Chapter 188). 30

Whereby he the said Lau Liat Meng is liable to be struck off the rolls 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). 40

RELEVANT STATUTORY PROVISIONS

11. The following is an extract from the Advocates and Solicitors Ordinance (Chapter 188):-

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" Part III.

CONTROL OF SOLICITORS AND STRIKING OFF THE ROLL.

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 -

(a)

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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 solicitor; or

(c) to (h)

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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;"

12. The following is a further Statutory extract:-

" No. 1 of 1960

MOTOR VEHICLES (THIRD-PARTY RISKS AND COMPENSATION).

An Ordinance to provide against third-party risks arising out of the use of motor vehicles and for the payment of compensation in respect of death or bodily injury arising out of the use of motor vehicles and for matters incidental thereto

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5. - (1) Where any payment exceeding five hundreddollars other than a liquidated sum specified in a policy of insurance is made by way of compensation by an approved insurer or the owner of a motor vehicle in respect of the death or bodily injury to any person arising out of the use of a motor vehicle on a road, such payment shall be made to the Public Trustee as trustee for the persons entitled to the benefit thereof. 20

" (2) The Public Trustee may where he considers that any payment made to him under the provisions of subsection (1) of this section is manifestly inadequate require the parties to obtain the approval of the Court before accepting such payment.

(3) The moneys received by the Public Trustee under the provisions of subsection (1) of this section shall be distributed by him after payment of all costs and fees directly to the persons entitled thereto in accordance with the law for the time being in force and with any rules made under this Ordinance. 30

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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 subsection (2) of this section 40

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".

13. THE STATEMENT OF DEFENCE

- A Statement of Defence was delivered by the Appellant on the 13th November 1964 and in paragraph 1 thereof he admitted paragraph 1 of the Statement of Case. p. 5
- 10 14. In paragraph 2 of the Statement of Defence, the Appellant alleged that he was first consulted by the wife of the client and that this consultation was on the 11th September 1964. p. 5
15. In paragraph 3 of the Statement of Defence, the Appellant denied in toto the making of a special agreement as to his professional fees as set out in paragraph 3 of the Statement of Case. The Appellant did admit that he saw the client and members of his family subsequent to the first 20 consultation with the client's wife. p. 5
16. In paragraph 4 of the Statement of Defence, the Appellant admitted paragraph 4 of the Statement of Case, being the terms on which the proceedings were settled. p. 6
17. In paragraph 5 of the Statement of Defence, the Appellant claimed that his taxed Bill was \$686.50 (and not \$705.50). p. 6
18. In paragraphs 6 - 10 of the Statement of Defence, the Appellant answered the allegations 30 in paragraphs 6 and 7 of the Statement of Case. The Appellant alleged that prior to the 22nd February 1964 he had been instructed to act on behalf of the client (1) by attending the inquest of the deceased which took place prior to the 22nd February 1964 and (2) by holding a watching brief at the trial of Loh Teck Poh for causing the death of the deceased in the accident, which trial had not taken place before the 22nd February 1964. The Appellant admitted seeing the 40 client on the 22nd February 1964 and alleged that it was then agreed that the client should pay him \$350 in respect of the service already performed at the inquest and \$350 for the service

due to be performed at the trial; that in pursuance thereof a cheque for \$700 was paid by the client to his relation; that the prosecution of the said Loh took place on the 24th March 1964; that he did not attend; and that accordingly his solicitors on his behalf sent a cheque to the client for \$350 by way of reimbursement. Save as aforesaid the Appellant denied all the allegations in paragraphs 6 and 7 of the Statement of Case.

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19. In paragraph 11 of the Statement of Defence, the Appellant made his answers to the complaints in the following terms:-

p. 7

(i) denied that he received or accepted payment of money from the said Cham Siew Wai namely \$700/-, contrary to the provisions of S17(3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 and further denies that he has committed an offence under S. 17(4) of the said Ordinance.

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(ii) denied that he entered into an agreement to receive or accept monies contrary to S. 17(3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 and further denied that he was guilty of grossly improper conduct in the discharge of his professional duties within the meaning of S. 25(2)(b) of the Advocates and Solicitors Ordinance (Chap. 188).

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(iii) denied that he entered into a champertous agreement to receive and accept remuneration for his professional services by way of percentage on the amount which might be recovered by the said Cham Siew Wai and further denied that he was guilty of grossly improper conduct in the discharge of his professional duties within the meaning of S.25(2)(b) of the Advocates and Solicitors Ordinance (Cap. 188) or alternatively

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within the meaning of S. 25(2)(i) of that Ordinance.

NEW FACTS NOT IN THE STATEMENT OF CASE

20. At the investigation itself evidence which had always been in the knowledge of the Appellant but which only came to the knowledge of the complainant during the course of the investigation would have justified adding a further complaint as follows:-

- 10 "(i) received or accepted payment of money from Messrs. Rodyk and Davidson, namely \$500 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)".
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The facts relating to this complaint are set out in paragraph 28 hereof.

THE INVESTIGATION

21. The investigation opened on the 8th December 1964. Counsel for the complainant called five witnesses. The first witness was the client himself. The second and third witnesses were both sons of the client. The fifth witness was the client's daughter. The fourth witness was
- 30 at the relevant time an officer in the office of the Public Trustee

22. The evidence of the fourth witness, Tay Chow Seng, was that he saw the client in the presence of the Appellant on the 11th February 1964 during the Taxation and told him that he must be interviewed after the Taxation. Next day he told the client that the Public Trustee would deduct \$50 from the amount received and that he need not pay the Appellant any sum other than the
- 40 taxed costs. In cross-examination he said:-

p. 29 l.14
p. 30 l.20

"I was not aware at the date of

taxation whether Mr. Lau had attended a Coroner's Inquiry. I was not aware up to now that he had attended a Coroner's Inquiry. I told the complainant he need not pay anything more than the taxed costs in respect of the compensation. If the Solicitors acting for the complainant attended other proceedings this was no concern of ours.

I was in the department for 10 months as a whole. I have never seen a separate bill for attendances before the Coroner or the Magistrate. I have seen costs of these items included in a bill for taxation, but they inform the Registrar that these items have been paid separately. 10

If a Solicitor told me that he had attended a Coroner's Inquiry, I would tell him he was entitled to separate costs for this for which he should look to his client. In fact, I have never come across such a case. 20

The complainant never told me that Lau had attended a Coroner's Inquiry. He did not tell me that Lau was to attend Criminal proceedings in the future.

If items were included in a bill for taxation relating to other proceedings we would object to these items".

23. All the facts relating to the complaints were proved and admitted, subject to the following two vital exceptions which were in issue:- 30

- (1) What special agreement, if any, was made between the client and the Appellant in relation to fees?
- (2) What took place at any interview between the client and the Appellant on the 22nd February 1964 which resulted in the payment on the 26th February of \$700 by means of a cheque handed to the uncle of the Appellant? 40

24. On these two issues the evidence for the complainant is accurately summarized in the Report of the Disciplinary Committee in the following passage:-

"The agreement to instruct Lau Liat Meng was concluded on the evening of the 11th of September 1963.

10 Cham Siew Why alleged that Lau Liat Meng's fees were agreed to at 25% of the compensation or damages recovered. Some bargaining over the figure of the percentage if the claim exceeded \$3,000 or below that figure also took place. Other than the criminal and such proceedings as were required to recover the compensation in a Court, Cham Siew Why had little if any idea the extent of legal work the fee was to include. The evidence of Cham Seck Hong and Cham Wye Pun on this point was
20 substantially the same.

p. 58 l. 32
p. 59 l. 33

It is also alleged by Cham Seck Hong that during discussions at Lau Liat Meng's office preliminary to the above a fee based on a percentage of the claim recovered was also discussed between Lau Liat Meng himself and his mother Leong Yoke Sin.

30 The next serious issue in dispute was the conversation that took place at Lau Liat Meng's office on the 22nd of February 1964 between Cham Siew Why and his son Cham Seck Hong and Lau Liat Meng. Cham Siew Why had "just before calling at the office received compensation of \$3,244.50 from the Public Trustee. Both witnesses alleged that Lau Liat Meng demanded a further \$750 although Cham Siew Why pointed out that 25% of the total claim (of \$4,000) only amounted to a balance of about \$300 due to him as Lau Liat Meng had been paid \$700 odd
40 by the Public Trustee.

Lau Liat Meng, these witnesses said, claimed that he had put in a lot of work and that 25% was on the net amount received from the Public Trustee.

On being questioned as to why he had not attended the police proceedings Lau Liat Meng said it was a "police matter" and that it was a waste of time to attend. However he had promised he would do so.

Cham Siew Why at first refused to pay \$750 and eventually this sum demanded was reduced to \$700 with a warning that if payment was not forthcoming Lau Liat Meng would commence proceedings against him for its recovery".

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25. The Disciplinary Committee then called a 6th witness, Quek Cheng Hong, but his evidence does not feature in the report and no comment, therefore, is made thereon.

26. The Appellant then gave evidence in his own favour and called as an independent witness his uncle Koh Siang Teck, who was not present when the agreement as to fees was made or at the interview of the 22nd February 1964.

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27. The evidence of the Appellant on the disputed matter was accurately summarized in the report of the Disciplinary Committee in the following passage:-

"On the other hand Lau Liat Meng himself maintained that throughout he never agreed to a fee based on a percentage of the amount recovered. However Leong Yoke Sin had in the preliminary discussion offered 25% in the form of fees. He told her that his costs in civil matters would be taxed by the Court and that his fees for the Coroner's Inquiry would be \$350/- and for the police proceedings another \$350.

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p. 59 l. 33
p. 60 l. 19

At the meeting at his residence Cham Siew Why also offered him 25% to do all the work in connection with his son's death. This included, according to Lau Liat Meng, the claim for compensation, Letters of Administration and attending the Coroner's Inquiry and any subsequent criminal proceedings. Lau Liat Meng refused to agree to this repeating what he had earlier told

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Leong Yoke Sin.

10 On the second issue in dispute Lau Liat Meng's versions is that between 22nd and 26th February 1964 Cham Siew Why and Cham Seck Hong called at his office - but not at his request. After much bargaining over his fees for attendance at the Coroner's Inquiry and at the police proceedings they agreed to pay \$700. He however did not attend the latter proceedings because he had not been informed of the dates fixed for hearing".

28. At the conclusion of the evidence, Counsel for the complainant then cross-examined on instructions which he had received during the course of the proceedings. As a result the following further facts emerged:-

p.53 l.10.-12

XN

20 "Q. Do you wish to adhere to your statement that you received only \$705.50 for the civil proceedings. (Question repeated several times).

p.44 l.30 -

30 A. No. \$500/- 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 the 14th April 1964. On the 11th January when the letter at PW2(8) was signed, the client did not know that I was to receive \$500/- as party and party costs.

p.45 l. 12

P.W. 7 put in by consent - bundle of correspondence between Rodyk & Davidson & Lau relating to terms of settlement.

PW8 put in - taxed party and party bill.

40 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. I did not institute proceedings. I called

the \$500/- party and party costs, and I believe that Rodyk did too in correspondence not included in PW7. Rodyk agreed my party and party bill for taxation".

XN - Grimberg

p.47 l. 21 -
p.48 l. 3

"I am not sure whether I told my Clients I received costs \$500/- from Rodyk & Davidson.

"On the day after they received the money and came to my office I don't think I gave them any indication that I would be getting \$500/- party and party costs. 10

Q. To whom do party and party costs belong.

Q. At any subsequent time were they told of the \$500/- costs.

A. I'm not very sure.

Q. What do you think they would have said if they had been told of the \$500/-.

A. I thought it is the practice of all running down cases that the Solicitor does not inform the Client of the Party and Party Bill". 20

29. Prior to making their Report, the Disciplinary Committee did not formally amend the Statement of Case so as to include the fact of and the effect of the receipt of \$500 by the Appellant from Rodyk and Davidson. It is contended that this was not necessary; for the purpose of the document is to give notice to a Respondent of the facts on which a complainant proposes to call evidence to substantiate a complaint. The complainant called no evidence on this complaint. All relevant evidence was elicited from the Appellant alone and it is contended that the Disciplinary Committee were right in considering it their duty to report both on the fact and effect of the payment. 30

THE REPORT OF THE DISCIPLINARY COMMITTEE

30. The findings of the Disciplinary Committee

appear on pages 60 - 62 of the Record and the opinion of the said Committee appears on page 63 of the Record. It is respectfully submitted that it would be an unnecessary duplication to set out such findings in this Case. In Effect the Committee accepted in full the evidence given on behalf of the complainant and the admission made by the Appellant at the end of his cross-examination, and expressed the opinion that he
 10 was guilty of one substantive offence in accepting the sum of \$500 from Rodyk and Davidson and a second substantive offence in entering into an agreement with the lay client to accept as his professional fees, a percentage of the sum recovered arising out of the claim being made in respect of the death of the deceased

PROCEEDINGS ON THE ORIGINATING SUMMONS

31. After the Report of the Disciplinary
 20 Committee and in accordance with Section 30 of the Advocates and Solicitors Ordinance (Chapter 188), Emanuel Albuquerque, the Secretary of the Bar Council, on the 1st July 1965, applied ex parte by Originating Summons for an Order calling on the Appellant to show cause why he should not be dealt with under the provisions of Section 25 of the Advocates and Solicitors Ordinance in such manner as to the Court shall seem fit and on the 5th July the Order requiring
 30 him to show cause was made absolute.

p. 63 1.35
 p. 64 1.45

32. The Originating Summons came on for hearing on the 7th February 1966 before WœChong Jin, C.J., Tan Ah Tah, F.J. and Buttrose, J.

p. 65

33. Counsel for the Respondent referred to the relevant part of the Record. Then Counsel for the Appellant addressed the Court admitting the receipt of the \$500 by the Appellant from Rodyk and Davidson and contended that he was entitled to retain this sum in addition to his taxed Solicitor and Client costs. He further contended that the
 40 Disciplinary Committee were wrong in holding upon the conflict of evidence, that the Appellant had agreed to accept a percentage of the sum recovered.

p.65

34. On the 28th February 1966, the Court made the Order referred to in paragraph 1 hereof, ordering

p. 69-76

the Appellant to be struck off the roll of Solicitors. The reasons of the Court are contained in the judgment of Buttrose, J. with which the other two judges concurred. Excerpts from the judgment are not contained in this Case, because the Respondent contends that the judgment should be read in full to justify the reasons given in the following paragraph.

35. The Respondent, therefore, respectfully submits that this appeal should be dismissed with costs and that the judgment of the High Court of Singapore should be affirmed, for the following, among other 10

R E A S O N S

1. BECAUSE the proceedings before the Disciplinary Committee were properly conducted.
2. BECAUSE the High Court were right in holding that the Appellant had received from Rodyk and Davidson the sum of \$500 and that such receipt is contrary to the provisions of Section 17(3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 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). 20
3. BECAUSE the High Court were right in holding that the Appellant had made an agreement with the client whereby he was to receive as his professional fees a percentage of the sum recovered in respect of a claim for damages for the death of a person arising out of the use of a motor vehicle. 30
4. BECAUSE the High Court were right in holding that the agreement referred to in 3 (above) was champertous and that the Appellant is guilty of grossly improper conduct in the discharge of his professional duties within the meaning of Section 25(2)(b) of the 40

17.

Advocates and Solicitors Ordinance (Chapter 188).

5. BECAUSE the sentence of the High Court was just.

IAN BAILLIEU.

IN THE PRIVY COUNCIL No. 28 of 1966

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- and -

DISCIPLINARY COMMITTEE Respondent

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CASE FOR THE RESPONDENTS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.