this matter (see r.2 of the Schedule) than by the common law of England.

This case has been heard and decided by the Kroo Chief and from his decision, as from that of all the Tribal Rulers of this city, there appears to be no appeal. This being so, no question of title could have been raised in the magistrate's court even if in fact any attempt had been made to do so. For the same reason the appellants are estopped from raising any question of title here. The magistrate's order must therefore stand and the appeal is dismissed with costs.

Appeal dismissed.

MACAULEY v. JUDGES OF THE SUPREME COURT OF SIERRA LEONE and ANOTHER

Privy Council (Lord Hailsham, L.C., Lord Buckmaster and Lord Warrington of Clyffe): May 18th, 1928

[1] **Legal Profession — disciplinary proceedings — conduct amounting to reasonable cause for striking practitioner off roll — obtaining of fees from unsophisticated client on false pretence is reasonable cause:** A barrister who agrees to hold a brief on behalf of another for a specified fee and then, on the pretence that the case has been transferred entirely to him, demands and receives from an ignorant and unsophisticated client a further fee out of all proportion to the importance of the case, and who, on the same pretence, persuades the client to pay him an additional fee, supposedly for conducting an appeal when in fact he has no work to do in respect of the appeal since he is not acting in it, by his conduct gives the Chief Justice reasonable cause to exercise the power conferred upon him the Supreme Court Ordinance (*cap.* 205), s.57 to order the barrister's name to be struck off the roll of the court (page 144, line 34—page 145, line 14; page 145, lines 21—24).

The respondents brought proceedings against the appellant so that he might show cause why his name should not be disciplined under the Supreme Court Ordinance (*cap.* 205), s.57.

The appellant was a barrister and solicitor of the Supreme Court. He agreed to hold a brief in the Protectorate on behalf of a senior practitioner (Mr. C.E. Wright) for a fee of 20 guineas. The case in which he was to appear was uncomplicated but, on the pretence that the case had been transferred entirely to him and that it involved a considerable amount of work, the appellant

induced the client, who was illiterate and unsophisticated, to pay him a total of £135 in respect of his appearance.

The appellant later visited the client in order to demand a further fee of £200 for conducting an appeal which he said had been commenced. The client paid only £50 despite the appellant's further demand coupled with the statement that he had a great deal to do in the matter. In fact he was not involved in the appeal and had done no work in connection with it before he was informed that Mr. Wright intended to conduct the appeal himself.

The respondents brought the present proceedings against the appellant so that he might show cause why he should not be disciplined.

Contrary to the appellant's allegations the Supreme Court (Purcell, C.J.) found that he had been fully aware of the fact that Mr. Wright had not transferred the case entirely to him, and found also that his client had paid large sums of money to him not voluntarily but as a result of his demands. The Chief Justice made an order under the Supreme Court Ordinance (*cap.* 205), s.57 that the name of the appellant should be struck off the roll of the court.

On appeal the appellant again alleged that the case had been transferred entirely to him, that it was complicated and that the payments were made voluntarily. He also contended that his conduct did not justify the removal of his name from the roll of the court.

The Board accepted the Chief Justice's findings and advised that the appeal should be dismissed.

Legislation construed:

Supreme Court Ordinance (Laws of Sierra Leone, 1925, *cap.* 205), s.57:
The relevant terms of this section are set out at page 141, lines 8—12.

LORD WARRINGTON OF CLYFFE, delivering the judgment of the Board:

This is an appeal from an order dated April 20th, 1927, of the Chief Justice of the Colony of Sierra Leone, whereby it was ordered that the name of the appellant should be removed from the roll of barristers and solicitors of the Supreme Court of the Colony.

By an Order of His Majesty in Council made on December 20th, 1927, on the petition of the appellant, it was ordered that the

appellant should be granted special leave to appeal *in formâ pauperis.*

The appellant is a native of the Colony. He was called to the English Bar by the Honourable Society of Lincoln's Inn on January 26th, 1923. He then returned to the Colony and was duly enrolled as a barrister and solicitor of the Supreme Court. In the Colony the two branches of the profession are united.

By the Supreme Court Ordinance (*cap.* 205), it was by s.57 provided that the Chief Justice should have power for reasonable cause to suspend any barrister or solicitor from practising within the jurisdiction during any specified period or order his name to be struck off the roll of the court. The order appealed from was made under this provision.

On February 4th, 1927, the appellant was, at the instance of the Acting Attorney-General of the Colony, served with a notice of motion and certain affidavits in support thereof, calling upon him to show cause why the Chief Justice should not in the exercise of the power aforesaid, order his name to be struck off the roll of the court or suspend him from practising within the jurisdiction of the said court upon the grounds:

(*a*) that after having accepted and agreed to hold a brief on behalf of the Hon. Claude Emile Wright, Barrister-at-Law, to represent the defendant in the case of *Macarthy* v. *Pa Kaini* then pending in the Circuit Court at a fee of 20 guineas, the appellant did on or about June 10th, 1926, without any just reason and cause receive and obtain from the said Pa Kaini a certain large sum of money, to wit, the sum of £135 for or in respect of his appearance on behalf of the Hon. Claude Emile Wright in the said proceedings, contrary to good conscience and honest dealing and without the authority of the said the Hon. Claude Emile Wright;

(*b*) that being briefed as aforesaid to defend Pa Kaini in the Circuit Court, the appellant did on or about July 1st, 1926, demand from the said Pa Kaini a further sum of £200 for his services in connection with the appeal to the Full Court then pending and did by the said demand induce the said Pa Kaini to deliver to him an additional sum of £50 without the knowledge and authority of the said the Hon. Claude Emile Wright and without being authorised by the said the Hon. Claude Emile Wright to appear on his behalf in any appeal from the judgment of the Circuit Court.

The motion was heard by the Chief Justice on April 4th, 5th and 7th, 1927, on evidence, both oral and by affidavit, and on April 20th, 1927, he delivered his judgment and made the order now under appeal.

Certain technical objections to the order were raised, both before the learned Chief Justice and before the Full Court on an application for leave to appeal. These objections were overruled and leave to appeal was refused. These objections were not pressed before this Board and the learned counsel for the appellant, who conducted the case with admirable tact and discretion, and said all that could be said on his client's behalf, confined himself to an attack upon the order on the merits.

The following facts were either admitted or proved to the satisfaction of the Chief Justice. Prior to June 8th, 1926, Claude Emile Wright, a leading barrister and solicitor at Freetown, and a member of the Legislative Council of the Colony, had been instructed by the defendant to act for him in the action above-mentioned and had agreed to accept a fee of 30 guineas for so doing. Mr. Wright had received no instructions from Pa Kaini, his client, except the writ and particulars of damage.

On June 8th, 1926, Mr. Wright, finding that the case was to come on for trial in the Circuit Court at Moyamba in a day or two, and that he would be unable to undertake the defence himself as he had to attend a meeting of the Legislative Council, sent for the appellant, whom he knew as a son of his chief clerk, and asked him to hold the brief for him at a fee of 20 guineas. These terms were accepted by the appellant and he went to Moyamba accordingly.

Mr. Wright, at the same time sent a telegram to his client in these terms: "Macauley representing me proceeds to Moyamba, your case. Please pay him retainer, 30 Guineas." The appellant at the hearing admitted having seen this telegram, but stated that he did not remember its contents.

The appellant contended before the Chief Justice, and repeated this contention before this Board, that Mr. Wright had transferred the case to him, that it was then exclusively his own case and that the relation of solicitor and client existed between himself and Pa Kaini, Mr. Wright being no longer concerned in the matter at all.

As to this point the learned Chief Justice on the evidence before him arrived at the following conclusions of fact:

"I am unable to take the view that Mr. Wright ever handed over this case to Mr. Macauley in the sense that he entirely went out of the case and Mr. Macauley came into it. . . It is to my mind clear beyond all possible doubt that Mr. Macauley with full knowledge of his exact position entered on this transaction on one footing only and that was that he went to Moyamba to hold Mr. Wright's brief for him in the Circuit Court in the action of *Macarthy* v. *Pa Kaini* and agreed to accept 20 guineas for so doing."

There was ample evidence to support these findings and no sufficient reason was alleged for rejecting them, but their lordships feel it right to add that, having read the evidence, they concur in the findings. The second of the two findings that Mr. Macauley entered on the transaction with full knowledge of his exact position, disposes of his contention before this Board that he honestly believed that the case was his own, whether it were so in fact or not.

Before stating what happened at Moyamba, it is right to say something of the nature of the action because the appellant has sought to justify his subsequent conduct by the suggestion that the case was one of great importance and difficulty, involving a heavy claim — upwards of £4,000 — against the defendant and that the fee of 30 guineas was altogether insufficient.

The judgment of the Circuit Judge was delivered on June 12th, the case having been opened on June 11th. From this it appears that the plaintiff was a small trader in the defendant's village and sued for damages on the allegation that the defendant as Paramount Chief had wrongfully interfered with his trade by picketing the plaintiff's shop and forbidding his people to trade with him. The defence was that the defendant's conduct was justified by the failure of the plaintiff to pay the settler's fees. The Circuit Judge after stating that the facts of the case were simple and largely not disputed, found that the defence was established and gave judgment for the defendant. The judge added a comment on the exaggeration of the claim for loss of profit — at the rate of £12 a day, exclusive of Sundays — nearly £4,000 per annum in respect of a small general store in a village of 15 to 20 houses containing at least two other traders.

The appellant has given several accounts of what happened at Moyamba. The main difference between them being on the question whether he, the appellant, asked for a further fee or

whether this was voluntarily offered by the Chief. On this point the learned Chief Justice said:

> "I entertain no doubt that Mr. Macauley sought the interview at Moyamba and demanded 300 guineas. I entirely reject his assertion that the offer of a further fee came from Pa Kaini and that so to speak this money was almost forced upon him, the evidence to my mind absolutely refutes any such version of the matter."

Their lordships accept this finding also, but whatever may be the precise circumstances, there is no doubt that the appellant required a further fee of 300 guineas which, at the request of the Chief and his followers, he reduced to £250, of which they paid him £105 with a further sum of £30 for expenses, making together £135, leaving £145 still owing in respect of the fee. The Chief was a native, entirely illiterate and unfamiliar with such matters as those with which he was dealing. The appellant has sought to justify his request for the large further fee by the amount of work he says he had to do. It only amounts to this that, inasmuch as neither Mr. Wright nor himself had received any preliminary instructions, he had to ascertain the facts of the case on the spot. As appears from the judgment of the Circuit Judge, the facts were simple and largely admitted. Their lordships are not impressed by this excuse on the part of the appellant.

On his return to Freetown, the appellant went to see Mr. Wright and reported the result of the case. Mr. Wright then asked whether he wanted the balance of his fees as Pa Kaini had sent him (Mr. Wright) £20. The reply was to the effect that he did not want the balance as they had made him a very handsome present. The appellant said nothing to Mr. Wright as to the case having been made over to him or as to his transactions with the Chief in reference to the fee, and in fact Mr. Wright knew nothing of what had taken place until he heard of the facts through the District Commissioner in August.

In their lordships' opinion, the first of the two charges was fully established, and it is clear that the appellant made use of his pretended position as solicitor in the case to the exclusion of Mr. Wright to obtain from an ignorant and unsophisticated native the promise of a fee out of all proportion to the importance of the case and the work done by him, and payment on account of £105 with the further sum of £30 for his expenses at the rate of £5 a day for six days.

As to the second charge, the facts are that, on July 5th, the appellant went to Mafengre where Pa Kaini lived and saw him and his nephew, Kapr Massim, and demanded a further fee of £200 for conducting an appeal which he said had been commenced. This demand was made on the same pretence that the case had been transferred to him. On this occasion, the Chief paid him the further sum of £50 mentioned in the second charge.

On July 19th, the appellant wrote a letter to Pa Kaini in which he demanded a further sum of at least £50 on account of the promised fee of £200 in respect of the appeal. In the course of the letter he said: ". . .[Y]ou must realise that I have a great deal to do in the matter and I wish to be refreshed now and again." As a matter of fact, he had had no work whatever to do in connection with the appeal. The further £50 was not paid.

At some time — but whether before or after the date of this letter is not quite clear — he was distinctly informed by Mr. Wright that he (Mr. Wright) was acting in the appeal. It is apparently still pending and in it Pa Kaini is represented by Mr. Wright. Since July 19th, as well as before that date, the appellant has had no work to do in connection with the appeal.

Their lordships are of opinion that the second charge also was fully established and that the learned Chief Justice had "reasonable cause" for the exercise of the power conferred upon him by s.57 of the Ordinance.

A strong appeal was made by counsel for a change of the sentence from one of removal from the roll to one of suspension only.

No doubt the sentence is a severe one as it deprives the appellant of the means of livelihood to which he has devoted much study and expense. But the learned Chief Justice is necessarily more familiar with the position of affairs in the Colony than are their lordships.

In the course of his judgment he makes use of the following expressions:

> "It is a startling proposition and one which I cannot for a moment assent to that people holding the peculiar views which Mr. Macauley apparently does hold with regard to the relation or otherwise of solicitor and client should be allowed to run loose especially in such 'an Alsatia' as the Sierra Leone Protectorate without being answerable to any authority for their professional conduct."

Their lordships appreciate the necessity in a country so described

of inducing the inhabitants to resort to the courts for the settlement of their disputes rather than to the possibly more familiar means of personal violence. For this purpose it is essential that the people should be brought to feel the greatest respect not only for the impartiality and independence of the tribunals, but for the honesty and fairness of those who practise before them. To use the Chief Justice's words, the circumstances disclose "a disgraceful combination of rapacity and dishonesty" and their lordships feel that if they were to recommend a mitigation of the sentence in this case, they would be dealing a serious blow at the authority of the judge entrusted by law with the discipline of the profession in the Colony.

Their lordships, however, cannot part with the case without commenting on one part of the judgment of the learned Chief Justice. He expressed the view that it ought to be inferred that the appellant and Kapr Massim were co-operating in obtaining the money in question from Pa Kaini. From the evidence before their lordships they do not think such an inference should be drawn; enough, however, was proved without it to justify the order.

For the above reasons their lordships will humbly advise His Majesty that the appeal ought to be dismissed, but, as the appellant appeals *in formâ pauperis*, without costs.

Appeal dismissed.