

1961
May 22
IN RE A.B.
AN ADVOCATE

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]
IN THE MATTER OF SECTION 13(5) OF THE ADVOCATES
LAW, CAP.2,
and
IN THE MATTER OF A.B., AN ADVOCATE
(No. 1/61).

Advocate—Disciplinary Board—The Advocates Law, Cap.2, section 13—Decision of the Disciplinary Board—Review of, by the High Court on its own motion—Section 13(5).

The facts sufficiently appear in the judgment of the High Court delivered by:-

VASSILIADES, J.: This is a proceeding under section 13(5) of the Advocates Law, Cap.2, where the High Court of its own motion considered it necessary to review the case of an advocate who has been dealt with by the Disciplinary Board of the Bar Association of Cyprus, after a conviction for forgery by the Assize Court of Nicosia.

The person concerned was admitted to practice as an advocate in Cyprus on the 29th August, 1958, under section 3 of the Advocates Law, as a person entitled to practise as a Barrister-at-Law in England; and his name was enrolled accordingly on the Roll of Advocates under section 5.

Every advocate so enrolled is deemed to be an officer of the High Court and is liable to disciplinary proceedings as provided in Part IV of the Law (Section 11 et seq.). The statute, enacted in 1955, speaks, naturally, of the Supreme Court then in existence under the colonial Courts of Justice Law, in force at the time. That Law has, however, been repealed or rather ceased to exist four months after the establishment of the Republic of Cyprus; and as from the 17th December, 1960, the matter is governed by the Courts of Justice Law, 1960. Section 70 of that statute provides that all jurisdiction vested by any Law in the Supreme Court. . . . shall be vested in, and exercised by the High Court. . . . as now established.

Section 13(1) of the Advocates Law, Cap.2, provides that:

“If any advocate is convicted by any Court of any offence which, in the opinion of the Disciplinary Board, involves

moral turpitude or if such advocate is, in the opinion of the Disciplinary Board, guilty of disgraceful, fraudulent or unprofessional conduct, the Disciplinary Board may" take certain action by way of punishment, including suspension of the advocate's right to practise for such period as the Disciplinary Board may think fit. (Section 13(1)(b)).

And subsection (3) of the same section 13, provides that the Board shall forthwith send to the Chief Registrar the complaint or report upon which disciplinary action was taken, and copy of its decision in the enquiry. Obviously this is to enable this Court to exercise the necessary disciplinary supervision over its officers, (section 11) and to discharge its responsibilities under section 13(5) referred to above.

In this case the advocate concerned was charged before the Assize Court of Nicosia upon an information filed on behalf of the Attorney-General for forging a cheque of £120.- and for stealing the cheque in question.

The advocate pleaded guilty to the forgery charge whereupon the counts for stealing the cheque were dismissed, for reasons not stated on the record, and very difficult to understand in the light of the facts opened by counsel for the prosecution.

Be that as it may, however, the Court after hearing a plea in mitigation, put forward by able counsel on behalf of the accused, passed a sentence of £100 fine on the forgery charge.

This conviction and sentence were in due course put before the Disciplinary Board of the Bar Association as provided in section 13, already referred to.

The Board dealt with the matter and on the 22nd April, 1960, made the following decision, communicated to the Chief Registrar in due course, as required by sub-section (3);

"The Board took in consideration everything which was said in favour of the Respondent. After carefully weighing everything in his favour as against the seriousness of the offence he has committed, the Board is of opinion that suspension of the advocate from practising for one month would meet the circumstances under section 13 (1) (c). The suspension will commence as from to-day. No costs".

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The Board's decision was accompanied by a statement signed by the learned Attorney-General as Chairman of the Board, where it is said that:

“.....In arriving at their decision (the Board) took into consideration what was said on behalf of the said advocate, after he pleaded guilty to the charge, by his counsel Mr. Ali Dana, and particularly the following circumstances:-

(a) That the person concerned being an inexperienced advocate had done this not realising the seriousness of the consequences.

(b) Having endorsed the cheque himself in addition to forging the signature of the complainant on it, he could not have meant to conceal the fact that he had cashed it himself, which supports the submission of his counsel that the intention of the advocate was to safe-guard his costs for which a retainer of £100 was signed.

(c) The fact that there were no other convictions recorded against him.

(d) The serious effect that his conviction by the Assize Court will have upon him and his career”.

At the hearing of the present proceeding before the High Court, Mr. St. Pavlides, Chairman of the Bar Council, appeared at the request of the Attorney-General, the ex officio President of the Council and Chairman of the Disciplinary Board, in pursuance of a notice issued by the Chief Registrar. The advocate concerned, as well as his former client, the owner of the cheque, also appeared. And Mr. Dana, was present to handle the case of the suspended advocate.

Mr. Pavlides first took the point that the notice issued by the Chief Registrar hardly gave the particulars required to inform the parties notified, of the origin and object of the proceeding before the High Court.

On perusal of the notice, it appeared that the submission was quite justified ; and this Court only agreed to proceed with the case, upon the assurance of all parties concerned, that the inadequacy of the notice did not put them into any difficulty or embarrassment.

Mr. Pavlides's next submission was that, considering the constitution of the Board, this Court should be very slow in

disturbing their decision. He conceded, however, that neither the decision itself, nor the statement which accompanied it to the Chief Registrar, gave any indication whether the Board made their decision on the opinion - (to use the wording of section 13) - that the offence of which the advocate was convicted by the Assize Court, "involved moral turpitude," or, on the opinion that it amounted to "disgraceful" or "fraudulent" conduct; or that it did not exceed mere "unprofessional conduct".

Mr. Pavlides ventured at first the suggestion that the decision appeared to have been made on the view that the advocate was being punished for "unprofessional conduct;" but this, in our opinion, though it may be a very kindly view, in the circumstances of this case, it cannot be the correct view.

An advocate belongs to an honourable profession ; and all his actions, particularly those connected with his professional activity, must be governed by a full sense of his great responsibilities towards the good name of his venerable profession. If he cannot keep its very high standards of honesty and integrity, he has no place in its ranks.

To forge his client's signature on a cheque for £120, in order to deposit the money in his own Bank account, even if he thought that he had a claim to the full amount, is for an advocate something much more than mere "unprofessional conduct". Apparently this was the view which the Attorney-General must have taken when he authorised the information upon which this advocate was tried before the assizes.

Mr. Dana for the advocate in question, explained that the amount involved, has not yet been fully returned to the payee of the cheque, because he is a man of straw, he said; and there is still a dispute of some £60 between the owner of the cheque and the advocate, open to litigation. It is remarkable that until the hearing of the proceeding before this Court, it escaped the attention of the advocate concerned and of his advisers, that holding the client's money against his consent, was the very purpose for which the offence was committed.

Counsel offered to deposit the amount with the Chief Registrar forthwith ; and we are glad to hear that this has been done in the meantime. Counsel, moreover, declared

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on behalf of the advocate, that in case of litigation between the parties concerned regarding this deposit, the onus is on the advocate to prove that he had paid this amount to his client, as he alleged.

Taking all this into consideration, and with great deference to the view taken by the Disciplinary Board regarding the professional gravity of the advocate's offence, we still find ourselves unable to confirm the Board's decision and allow it to remain as a precedent on the appropriate records. Slow as indeed we wish to be, in disturbing a decision of the Board, we find, with regret, ourselves compelled to do so ; and discharging our responsibilities under section 13(5) of the Advocates Law, Cap.2, we make Order for the suspension of this advocate for a period of five months from the date of the Board's decision.

*Period of advocate's
suspension increased
from one month to
five months.*