[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU, AND HADJIANASTASSIOU, JJ.]

1969
June 17
Nov. 11, 12.

IN RE C.H.
AN ADVOCATE

IN THE MATTER OF SECTION 17(5) OF THE ADVOCATES LAW, CAP. 2 (AS AMENDED),

and

IN THE MATTER OF C.H. AN ADVOCATE.

(*Nos.* 3/69 *and* 4/69).

Advocates—Unprofessional conduct—Advocate failing to pay promptly to his client all moneys coming into his possession on client's behalf—Rule 26 *of the Advocates (Practice and Etiquette) Rules* 1966—*Matter dealt with by the Supreme Court under section* 17(4) *of the Advocates Law, Cap.* 2 *(as amended)—A clearly regrettable unprofessional conduct of a rather serious nature—Important case for the respondent advocate as well as for the legal profession as a whole—Extenuating circumstances—Fine of* £100 *imposed.*

Advocates—Complaint by the client aggrieved against his advocate (the respondent) supra—*Advocates Disciplinary Board—Withdrawal of such complaint by the client aggrieved as a result of which withdrawal the Disciplinary Board considered the case as closed and sent the papers to the Chief Registrar of the Supreme Court under section* 17(3) *of the said Law, Cap.* 2 (supra)—*Withdrawal of complaint no bar to determination of the matter by the Supreme Court under section* 17(4) *of the said Law—Because the matter is one of public law involving the public interest—Therefore, the machinery which originally was set in motion by the said complaint under section* 17(2)(d) *of the statute, is kept in motion notwithstanding the aforesaid withdrawal of the complaint—And it is the duty of the Supreme Court in its supervisory jurisdiction, of its own motion to proceed either under section* 17(4) *or section* 17(5) *as the case may be—In the instant case the Supreme Court dealt with the matter under said section* 17(4) *and imposed a fine of* £100 *on the respondent advocate.*

Note: *The entire section* 17 *of the Advocates Law, Cap.* 2 *(as amended) is set out post in the judgment of* Josephides, J.

Advocates—Complaint against advocate by aggrieved client—Withdrawal of such complaint—No bar for the matter to be dealt with or reviewed by the Supreme Court—See, also, supra.

Advocates—Disciplinary proceedings and matters related thereto—Jurisdiction—Matters related to the administration of justice are outside the ambit of Article 146 *of the Constitution and the jurisdiction thereunder—But advocates are officers of the Court and disciplinary matters concerning them are considered as being related to the administration of justice—Consequently, such matters are subject to the overriding supervisory jurisdiction of the Supreme Court—Section* 17 *of the Advocates Law, Cap.*2 *(as amended).*

Supreme Court—Advocates—Disciplinary matters concerning them—Outside the ambit of the jurisdiction under Article 146 *of the Constitution—And within the overriding supervisory jurisdiction of the Supreme Court under section* 17 *of Cap.* 2 (supra)—*See further* supra.

Jurisdiction of the Supreme Court—Overriding supervisory jurisdiction in matters concerning disciplinary offences by advocates—See supra.

Officers of the Court—Advocates are officers of the Court—Disciplining—Jurisdiction—Disciplining of advocates a matter related to the administration of justice—A matter exempt, therefore from the jurisdiction under Article 146 *of the Constitution. See, also,* supra.

Article 146 *of the Constitution—Jurisdiction thereunder and provisions thereof—Not comprising disciplinary matters concerning advocates —See, also,* supra.

A complaint was made to the Advocates Disciplinary Board by a client against his advocate, the respondent in this case, the gist of which was that he (the advocate) failed to pay promptly to him moneys he was holding on his (the client's) behalf. The alleged unprofessional conduct of the respondent advocate is covered by rule 26 of the Advocates (Practice and Etiquette) Rules 1966 (see rule 26 in full post in the judgment of Vassiliades, P.). Eventually on February 28, 1969 the client's said complaint came before the Disciplinary Board. After a short statement of his grievance the client said that some time after he lodged his complaint he received the money payable to him; and that in the circumstances he would withdraw his complaint. The Disciplinary Board thereupon considered the case as closed; and sent the papers to the Chief Registrar of the Supreme Court under section 17(3) of the Advocates Law, Cap. 2 (as amended). The Supreme Court taking the

view that in the circumstances the withdrawal of the complaint and the payment of the amount by the respondent could not exculpate him decided to be seized of the matter; and eventually decided to deal with it under section 17(4) of the said statute. Section 17(4) reads as follows:

> "If no copy of the decision of the Disciplinary Board has been received by the Chief Registrar after the expiration of three months from the date on which any complaint or report has been made to the Disciplinary Board, the Supreme Court may make any order in the matter of such complaint or report as the Disciplinary Board might have made under the provisions of sub-section (1)."

Note: The entire section 17 of the Advocates Law, Cap. 2 (as amended), comprising five sub-sections is set out *post* in the judgment of Josephides, J.

One of the preliminary points taken by counsel for the respondent, and later abandoned, was that the proceedings before the Disciplinary Board were of a nature which should be challenged under Article 146 of the Constitution and not as provided in section 17 of the Advocates Law, Cap. 2.

Note: It is convenient to remind here that the vital section in this case *viz.* section 17(1)(2)(3)(4) and (5) of the aforesaid Advocates Law, Cap. 2 (as amended) is set out in full *post* in the judgment of Josephides, J.

Held, (1). (Triantafyllides, J. dissenting). There having been no decision in the proper sense of the word by the Disciplinary Board, the matter should proceed and be dealt with under the provisions of section 17(4) of the Advocates Law, Cap. 2 (as amended).

(2) Considering the age and short period for which the respondent had been in practice; as well as the other extenuating circumstances in the case together with respondent's full apology we have reached the conclusion that we may take a lenient view of the matter which in itself we consider to be clearly regrettable unprofessional conduct of a rather serious nature; and we make an order under section 17(1)(c) of the statute against the respondent to pay by way of fine £100 and £20 costs, plus the expenses of witnesses, all payable within fourteen days.

(3) *Per Josephides, J.:*

(A) The nature of the duty of the disciplinary Board is akin to a judicial one and it is exercised by a highly responsible and specially qualified body. It is for the purpose of disciplining a member of a profession in the integrity of which the public have a vital interest and the Supreme Court has an overriding supervising jurisdiction.

(B) Once a person aggrieved by the conduct of an advocate sets the disciplinary machinery into motion, under the provisions of sections 17(2)(d) of the Law, as in the present case, then it is in the public interest and in accordance with the express provisions of section 17 that the matter, which is one of public law, should be dealt with or reviewed by the Supreme Court in the final resort either under section 17(4) or section 17(5) of the Law as the case may be, regardless of whether the complaint had already been withdrawn or monies payable to the person aggrieved had been already paid.

(C) I am therefore of the view that by the withdrawal of the complaint before the Disciplinary Board in the present case, the matter could not be closed. The machinery which was set in motion under section 17(2)(d) of the Law is kept in motion and it is the duty of this Court in its supervisory jurisdiction of its own motion, to proceed under section 17(4) or section 17(5) as the the case may be. As no copy of the decision of the Disciplinary Board on the merits was received by the Chief Registrar within the prescribed period of three months (or, indeed, until today) under the provisions of section 17(4), the Supreme Court was empowered to make any order in the matter of such complaint as the Disciplinary Board might have made under the provisions of section 17(1) of the same Law; and that is what we have done in the present case, after giving full opportunity to the respondent advocate of being heard.

As to the question whether disciplinary proceedings concerning advocates before the Disciplinary Board should be challenged under Article 146 *of the Constitution and not as provided in section* 17 *of the Advocates Law, Cap.* 2 *a point raised by counsel for the respondent but later abandoned:—*

Held, (4) Per Triantafyllides, J.: On the point whether there is competence in this matter under Article 146 of the Constitution, I agree with my brothers that there is none. It seems to be well settled that matters related to the administration of Justice are outside the ambit of the jurisdiction under Article 146 of the Constitution; advocates are officers of the Court and disciplinary matters concerning them are considered as being related to the administration of justice (See the decisions of the Greek Council of State in cases 1042(51), 1633(51) as reported in Zacharopoulos Digest of the Decisions of the Council of State, 1935–1952, p. 300, paras. 46–47).

Held, (4). Per Josephides, J.: In addition to the authorities quoted in the ruling of my brother Triantafyllides, J. (*supra*), it should also be stated that in France which has the oldest system of 'droit administratif' although the disciplinary organs of the various public professions (such as medical practitioners, architects, dentists, pharmaceutical chemists and all levels of teaching professions) are controlled by the administrative tribunals, significantly, the bodies controlling the legal profession are subordinated to the civil Courts and not to the Conseil d' Etat or any of the other inferior administrative tribunals (Cf. Brown and Garner's French Administrative Law, 1967 p. 26).

Cases referred to:

In re C. D, an advocate (reported in this Vol. at p. 376 *ante*);

In re Shier (1969) "The Times" February 4;

Decisions of the Greek Council of State in cases: No. 1042(51) No. 1633(51) as reported in Zacharopoulos Digest of the Decisions of the Council of State 1935–1952 page 300 paragraphs 46 and 47.

The facts are sufficiently set out in the judgments of Vassiliades, P. and Josephides, J. The vital section 17 of the Advocates Law, Cap. 2 (as amended) is fully set out in the judgment of Josephides, J.

Note: Triantafyllides, J. (dissenting) held that in view of the provisions of section 17(2) of the said Law he was unable to agree that there is a matter of complaint before the Court on which they might make any order in pursuance of their powers under section 17(4) of the statute.

Proceedings under s. 17(4) of the Advocates Law, Cap. 2 (as amended).

Proceedings before the Supreme Court under section 17(4) of the Advocates Law, Cap. 2 (as amended) whereby it dealt with a complaint against the respondent advocate for unprofessional conduct contrary to the provisions of rule 26 of the Advocates (Practice and Etiquette) Rules, 1966.

G. Achilles, appointed by the Court to present the case.

L. Clerides with *C. Adamides*, for the respondent.

G. Ladas, for the Disciplinary Board, as *amicus curiae.*

The following ruling was delivered on June 17, 1969 by:—

VASSILIADES, P.: I need not stress the importance of this case. It is obvious from the face of it. And all those who are in any way connected with the legal profession, can see clearly its importance to the respondent; and its importance to the profession as a whole.

The case had to receive even at this early stage, our full consideration. It presented the difficulties which most cases present in the absence of precedent.

In view of the result reached at this stage, we do not think that we should, in any way refer to the facts or to the merits of the case to-day. Giving to the matter our best consideration, we have come to the conclusion that the safest course will be to deal with the matter under section 17(4) of the Advocates Law, Cap. 2, and proceed to deal with it as it may be necessary to enable the Court to make an order as therein provided. What we propose doing, is to hand over the case to counsel to prepare and present it to the Court in due course; and to afford full opportunity to the respondent and his advocates to prepare their case.

We met with considerable difficulty in finding a suitable date for the hearing of the case. On the one hand we thought that we should give it the earliest date; and on the other hand, an early date would mean upsetting heavy lists of this and of other courts at the end of the term. Between the two, we thought that it would be preferable to hear it the earliest

possible after the vacations. The hearing of the case will continue on the 30th September, 1969, at 10.00 a.m.

Order in terms.

The following rulings were delivered on November 11, 1969 by:—

VASSILIADES, P.: Mr. Clerides raised two preliminary points on behalf of his client. The first was whether this proceeding under section 17(4) should be proceeded with or it was a matter which should proceed under section 17(5). The second point was that the proceedings before the disciplinary board were of a nature which should be challenged under Article 146 of the Constitution.

After discussion and particular reference to proceedings of a similar nature in other jurisdictions, Mr. Clerides very rightly, in our opinion, abandoned the point taken under Article 146.

Called upon to decide whether this proceeding under section 17(4) can be proceeded with on the material on record, the majority of the Court took the view that there having been no decision in the proper sense of the word by the Disciplinary Board, the matter should proceed under section 17(4). We shall give further reasons, if necessary, for this decision at a later stage. Mr. Justice Triantafyllides will give his reasons for taking a different view.

TRIANTAFYLLIDES, J.: Though I do agree that there is no decision of the Disciplinary Board before us which we could review under sub-section (5) of section 17 of the Advocates Law (Cap. 2), I have not been able to agree that there is a matter of complaint before us on which we might make any order in pursuance of our powers under sub-section (4) of section 17.

I am taking this view because of the provisions of sub-section (2) of section 17 which reads as follows:—

"(2). Proceedings to enforce any of the penalties provided by sub-section (1) may be commenced –

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary Board, of any person aggrieved by the conduct of the advocate."

There is no doubt that in this case a complaint by the person aggrieved went before the Disciplinary Board. Then, while the matter was being dealt with by the Board, the complainant withdrew his complaint and none of the organs which could have pursued the matter of such complaint under sub-section (2) chose so to do. Thus, there is now no pending complaint in relation to which this Court can make an order under sub-section (4).

On the other point, *viz.* whether there is competence under Article 146, I fully agree with the majority that there is none.

It seems to be well settled that matters related to the administration of justice are outside the ambit of a jurisdiction such as that under Article 146; advocates are officers of the Court and disciplinary matters concerning them are considered as being related to the administration of justice (see the decisions of the Greek Council of State in cases 1042(51), 1633(51) as reported in Zacharopoulos Digest of the Decisions of the Council of State, 1935–1952, p. 300 paras. 46–47).

The following judgments were delivered on November 12, 1969 by:–

VASSILIADES, P.: The advocate whose conduct is the subject matter of this proceeding, is a practitioner of about five years standing. He signed the roll of Cyprus Advocates on September 3, 1964. We shall refer to him hereafter as the 'respondent'.

Some time in the autumn of 1965, the respondent was retained by a labourer of the C.M.C. (Cyprus Mines Corporation) in connection with a claim for personal injuries; and on October 15, 1965, the respondent filed action No. 3237/65 in the District Court Nicosia, on behalf of his client – to whom we shall hereafter refer as the 'client' – upon a generally endorsed writ, for special and general damages exceeding £2,000.

The claim was disputed; and after the closing of the pleadings, the action went to trial in May the following year, 1966. After several adjournments with a view to settlement, the claim was finally settled on February 27, 1967, under a judgment by consent for £1,000 (one thousand pounds), subject to a stay of execution until May 1, 1967, and to the condition that on payment of £160 against the judgment by May 1, the stay would continue until the end of the year; and on payment of a further instalment of £160 by January 1, 1968, there would be a further stay for one more year; and eventually on payment of instalments as agreed, amounting to a total of £680 by January 1, 1970, the whole judgment would be treated as fully satisfied, the plaintiff abandoning all further claims for the balance. Obviously the judgment debtor had every reason to be regular with the payment of the instalments in due time.

Nothing was said about costs in the judgment; each party, apparently, undertaking to bear their own costs. We moreover, have it from the respondent before us, that he did not discuss at all his costs with his client at the time of the settlement; nor did he inform his client of the approximate amount of his bill.

No step whatsoever was taken by the respondent in connection with his bill of costs during the period between judgment and the date on which the first instalment of £160 was due. The instalment was duly paid by the judgment debtor to the respondent and was collected by him for his client. The payment was obviously made under the settlement; and it was made to the respondent for his client, the judgment creditor, to whom it belonged. It was the duty of the advocate to inform his client accordingly, forthwith.

Apart of other relevant fundamental considerations, Rule 26 of the Advocates (Practice and Etiquette) Rules, 1966, reads:

> "26. All moneys of a client or other property in trust coming into the possession of an advocate should be promptly paid to the client.
>
> In this connection an advocate should keep such records as will enable him to inform his client promptly of any amount standing to his credit."

The respondent admittedly failed to comply with this Rule.

When the client called upon the respondent after the payment, early in May, 1967, to collect his money, the respondent declined to pay it on the ground that he (the respondent) was entitled to keep it against his costs. We do not wish to enter into the evidence of the complainant or that of the respondent in this connection. Even on his own evidence, we consider respondent's conduct, in the circumstances, professionally unacceptable.

It was submitted on his behalf that there was no moral turpitude in his conduct as he merely intended to keep out of the client's money, the amount which the respondent honestly believed that he was entitled to for his services. Subsequent events, however, show that apart from the legal position, professionally the respondent was gravely at fault.

Again we do not wish to enter into detail on the facts, as we find it unnecessary to do so. It is sufficient for us to mention that the respondent did not supply his client with a bill for his costs until he took steps for their taxation more than a year later, in June 1968, in the circumstances which shall be stated hereafter. The client kept pressing for his money; the respondent insisted that he was entitled to retain a large part of it in payment of his costs, for which he had not yet supplied his client with a detailed bill.

After collecting the second instalment of £160 under his client's judgment, early in January, 1968, the respondent offered to pay to his client £210 (out of the £320 which he collected in addition to the £5 which the respondent received from his client for the filing of the action), and to keep the balance amounting to £115 in settlement of his costs, which, as already said, the respondent had neither taxed nor stated in the form of a bill to his client. The latter declined this offer; and asked the advocate to have his costs taxed. Still, no steps were taken in that direction.

On March 16, 1968, the respondent wrote out a cheque for £210, payable to his client which he offered in settlement of the dispute between them, and against a full discharge. The client again declined the offer, insisting that the respondent was not entitled to the whole amount claimed for his services.

On March 20, 1968, the client complained to the Supreme Court against the respondent's conduct. Copy of the complaint was sent to the respondent by the Chief Registrar on March

23, 1968. The respondent replied on April 10, 1968, to the effect that the complaint against him was false and entirely unjustified. "The complainant is shamefully lying", he said. The fact, he added, is that he refuses to receive the money to which he is entitled.

There was further correspondence in the matter, into which we need not enter. Eventually on June 7, 1968, the client complained to the Attorney-General as President of the Bar Council, who forwarded a copy of the complaint to the respondent the following day.

About a week later, on June 14, 1968, the respondent filed for taxation a bill amounting to £192.475 mils; and on June 17, he wrote to the Attorney-General, as President of the Disciplinary Board of the Bar Council, that his client's complaint against him was false and unjustified and that his (the advocate's) bill was in the course of taxation.

On July 2, 1968, the Taxing Master, taking the bill item by item, found respondent's costs at a total of £91.225 mils, and taxed the bill accordingly. After taxation the respondent paid to his client the balance of his money amounting to over £230.

Eventually, on February 28, 1969, the client's complaint came before the Disciplinary Board. After a short statement of his complaint the client said that after taxation he received the money payable to him by the respondent; and that in the circumstances he would withdraw his complaint. The Disciplinary Board thereupon considered the case as closed; and sent the matter to the Chief Registrar accordingly, under the provisions of section 17(3) of the Advocates Law, Cap. 2.

The Supreme Court taking the view that in the circumstances, the payment of the amount to his client by the respondent, could not exculpate him, decided to be seized of the matter; and, eventually, decided to deal with it under section 17(4) of the Advocates Law. The case was then placed by the Chief Registrar in the hands of a senior member of the Bar with the request to prepare and present the case to the Supreme Court, after giving due notice to the respondent of the case he had to meet; as well as notice to all concerned, including the Disciplinary Board.

On behalf of the respondent, Mr. Clerides to-day, handling

the case with his usual ability, did not attempt to justify respondent's conduct. He stressed the extenuating circumstances in his favour, such as the fact that the client's money was not put into any use by the respondent; but it was placed in the Bank where the respondent had ample cash of his own; that owing to his young age and lack of experience in the ways of the profession, the respondent failed to assess correctly the position; that the client did not seem to appreciate the value of respondent's services of which he had already reaped the benefit, and instead of gratitude for the willing and effective help received from the respondent, he was voicing discontent far and wide; and that the respondent was all the time under the honest, albeit erroneous, belief that he was entitled to retain the money as security for his fees which had been outstanding for so long. He assured the Court that the respondent now fully realising his professional obligations deeply regretted his mistake; and offered his sincere apologies with an assurance that he would always uphold the high standards of the profession.

Considering the age and short period for which the respondent had been in practice at the material time; as well as the other extenuating circumstances in the case, and taking them together with respondent's full apology, we have reached the conclusion that we may take a lenient view of the matter which, in itself, we consider to be clearly regrettable unprofessional conduct of a rather serious nature. At this early stage of respondent's professional life we think that the case may be met with a fine; and we make order under section 17(1)(c) against the respondent to pay by way of fine £100, and £20 costs, plus the expenses of witnesses for attending the proceedings, all payable within fourteen days.

TRIANTAFYLLIDES, J.: Subject to my dissent regarding the competence of this Court to deal with this matter, I might state that I would agree with the punishment imposed.

JOSEPHIDES, J.: I am in full agreement with the judgment of the learned President of this Court. The duty cast on the advocate under rule 26 of the Advocates (Practice and Etiquette) Rules, 1966 is to pay "ταχέως" (promptly) to his client all moneys coming into his (the advocate's) possession on the client's behalf. The word "ταχέως" means what it says and we need not put any gloss on it. This is a question of fact depending on the circumstances of each case; but, nor-

mally, payment should be effected to the client within a matter of days, not weeks or months, as in the present case. The respondent's conduct in this case is decidedly unprofessional conduct of a serious nature.

One of the preliminary points taken by respondent's counsel, and later abandoned, was that the proceedings before the Disciplinary Board were of a nature which should be challenged under Article 146 of the Constitution and not as provided in section 17 of the Advocates Law, Cap. 2 (as amended). In addition to the authority quoted in the ruling of my brother Triantafyllides, J. earlier, it should, I think, also be stated that in France, which has the oldest system of droit administratif, although the disciplinary organs of the various public professions (such as medical practitioners, architects, dentists, pharmaceutical chemists and all levels of the teaching profession) are controlled by the administrative tribunals, significantly, the bodies controlling the legal profession are subordinated to the civil courts and not to the Conseil d'Etat or any of the other inferior administrative tribunals (cf. Brown and Garner's French Administrative Law (1967), page 26).

Finally, the other point taken by learned counsel for the respondent was whether this proceeding under section 17(4) of the Advocates Law, Cap. 2 (as amended), could be proceeded with or it was a matter which should proceed under section 17(5). In giving the ruling of the majority of this Court on the 11th November, 1969, to the effect that there having been no decision in the proper sense of the word by the Disciplinary Board, the matter should proceed under section 17(4), the learned President said that "we shall give further reasons, if necessary, for this decision at a later stage."

Now, the relevant provisions of the Advocates Law, Cap. 2 (as amended), read as follows:-

"17. (1) 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 –

(a) order the name of the advocate to be struck off the Roll of Advocates;

(b) suspend the advocate from practising for such period as the Disciplinary Board may think fit;

(c) order the advocate to pay, by way of fine, any sum not exceeding five hundred pounds;

(d) warn or reprimand the advocate;

(e) make such order as to the payment of the costs of the proceedings before the Disciplinary Board as the Disciplinary Board may think fit.

(2) Proceedings to enforce any of the penalties provided by sub-section (1) may be commenced –

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary Board, of any person aggrieved by the conduct of the advocate.

(3) The Disciplinary Board shall forthwith send to the Chief Registrar –

(a) copy of any complaint or report made against an advocate under sub-section (2);

(b) copy of its decision in the enquiry, and the Chief Registrar shall, subject to any order of the Supreme Court under sub-section (4) or (5), make the necessary entries in the Roll of Advocates.

(4) If no copy of the decision of the Disciplinary Board has been received by the Chief Registrar after the expiration of three months from the date on which any complaint or report has been made to the Disciplinary Board, the Supreme Court may make any order in the matter of such complaint or report as the Disciplinary Board might have made under the provisions of sub-section (1).

(5) The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole

case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit."

In dealing with this matter it should be borne in mind that this complaint against the respondent advocate came before us originally (under No. 3/1969) as a proceeding of review of the Disciplinary Board's decision under the provisions of section 17(5) of the Law, on the 17th June, 1969, when the present Bench, after hearing argument on all sides, including counsel on behalf of the Disciplinary Board, unanimously decided to deal with the matter under section 17(4) of the Law. The learned President of this Court in delivering the judgment of the Court said:

"Giving to the matter our best consideration, we have come to the conclusion that the safest course will be to deal with the matter under section 17(4) of the Advocates Law, Cap. 2, and proceed to deal with it as it may be necessary to enable the Court to make an order as therein provided. What we propose doing, is to hand over the case to counsel to prepare and present it to the Court in due course; and to afford full opportunity to the respondent and his advocates to prepare their case."

In construing the provisions of section 17 of the Advocates Law, may I reiterate what was recently stated by the President of this Court in In re C.D., an Advocate (reported in this Vol. at p. 376 *ante*).

"Since 1955 it has been considered desirable that the discipline of advocates should be placed in the first instance, in the Disciplinary Board of the profession. But the ultimate responsibility was, wisely and properly, left where it must necessarily rest. Every advocate is expressly deemed by the statute (The Advocates Law – as now amended – section 15) 'to be an officer of the Supreme Court'; and in fact he is a most important officer, on whom the Court must be able to rely absolutely; and whom the general public must be able to trust and respect. An officer on whose integrity, ability and work, the administration of justice partly depends. Who else is better qualified to have the ultimate responsibility for the good discipline of its officers, than the Supreme Court itself? The Court entrusted with the exercise and control of the judicial power

in the State; and with the responsibility of maintaining at all times and in all circumstances, the independence of its justice.".

The nature of the duty of the Disciplinary Board is akin to a judicial one, and it is exercised by a highly responsible and specially qualified body. It is for the purpose of disciplining a member of a profession in the integrity of which the public have a vital interest, and the Supreme Court has an overriding supervisory jurisdiction. The exercise of the duty may mean professional life or death for the individual (cf. *In re Shiel* (1969) "The Times", February 14).

I am of the view that once a person aggrieved by the conduct of an advocate sets the disciplinary machinery into motion, under the provisions of section 17(2)(d) of the Law, as in the present case, then it is in the public interest and in accordance with the express provisions of section 17 that the matter should be dealt with or reviewed by the Supreme Court in the final resort either under section 17(4) or section 17(5) of the Law. The position is analogous to a complaint for a criminal offence. As is well settled, whenever a criminal offence is committed then irrespective of whether it also involves a civil injury (say, as in the case of an assault), the offender becomes liable to punishment by the State, not for the purpose of affording compensation or restitution to anyone who may have been injured, but as a penalty for the offence and in order to deter the commission of similar offences. Here the matter is one of *public law*. The mere fact that compensation has been paid to a person injured by the offence does not exempt the offender from punishment.

I am, therefore, of the view that by the withdrawal of the complaint before the Disciplinary Board in the present case, the matter could not be closed. The machinery which was set in motion under section 17(2)(d) is kept in motion and it is the duty of this Court in its supervisory jurisdiction, of its own motion, to proceed either under the provisions of section 17(4) or section 17(5), as the case may be. As no copy of the decision of the Disciplinary Board on the merits was received by the Chief Registrar within the prescribed period of three months (or, indeed, until to day), under the provisions of section 17(4), the Supreme Court was empowered to make any order in the matter of such complaint as the Disciplinary Board

might have made under the provisions of section 17(1) of the Law; and that is what we have done in the present case, after giving full opportunity to the respondent advocate of being heard.

Order accordingly.