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ALLAN CHARLES COULAM

v.

THE FIJI LAW SOCIETY

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[COURT OF APPEAL, 1972 (Gould V.P., Marsack J.A., Spring J.A.), 20th October, 3rd November]

Criminal Jurisdiction

C *Law practitioners—admission to practise as barrister and solicitor—power to admit or refuse admission vested in Chief Justice personally—exercise of power does not result in decision of court—no right of appeal to Court of Appeal—Legal Practitioners Ordinance (Cap. 228) ss.3, 9(1), 9(2), 10, 11, 13(3), 15(3), 18, 21, 23, 25, 26, 31, 31(2), 33(r), 58, 65, 73(1), 74—Barristers and Solicitors (Admission) Rules (Cap. 228) r.8(2)—Legal Practitioners Ordinance 1965—Court of Appeal Ordinance (Cap. 8) ss.2(1), 12, 12(2) (c)—Supreme Court (Admission of Barristers and Solicitors) Rules, r.7—Supreme Court Ordinance (Cap. 4—1955) s.7—Summary Jurisdiction Act 1879 (42 & 43 Vict., c.49) (Imp.) s.50—Summary Jurisdiction Act 1884 (47 & 48 Vict., c.43) (Imp:)*

D *s.7—Solicitors Act 1843 (6 & 7 Vict., c.73) (Imp.) s.37—Solicitors Act 1877 (40 & 41 Vict., c.25) (Imp.)—Solicitors Act 1888 (51 & 52) Vict., c.65) (Imp.) s.10—Solicitors Act 1932 (22 & 23 Geo. 5, c.37) (Imp.) ss.64-7—Solicitors Act 1957 (5 & 6 Eliz. 2, c.27) (Imp.) s.6—Lands Clauses Consolidation Act 1845 (8 & 9 Vict., c.18) (Imp.)*

Appeal—admission to practise as barrister and solicitor—power of admission or refusal vested in Chief Justice personally—no right of appeal from his decision—Legal Practitioners Ordinance (Cap. 228) ss.3, 9(1) (2), 10, 11, 13(3), 15(3), 18, 21, 23, 25, 26, 31, 31(2), 33(r), 58, 65, 73(1), 74.

E The powers conferred upon the Chief Justice by sections 3 and 9 of the Legal Practitioners Ordinance to admit to practise any person duly qualified or to refuse to admit any such person are conferred upon him personally; their exercise does not give rise to a decision of the Supreme Court and therefore no appeal lies to the Court of Appeal from any such admission or refusal.

F Cases referred to:

Boulter v. Kent Justices [1897] A.C. 556; 77 L.T. 288.

Huish v. Liverpool Justices [1914] 1 K.B. 109; 110 L.T. 38.

Shell Company of Australia Ltd. v. Federal Commissioner of Taxation
G [1931] A.C. 275; 144 L.T. 121.

Owen v. London & North Western Railway Co. (1867) L.R. 3 Q.B. 54; 17 L.T. 210.

Ex parte Lenehan (1949) 17 C.L.R. 403.

H *Jones v. Trinder, Capron & Co.* [1918] 2 Ch. 7; 119 L.T. 100.

In re Pollard [1888] 20 Q.B.D. 656: 59 L.T. 96.

In re Chaffers; ex parte The Incorporated Law Society (1884) 15 Q.B.D. 467.

Appeal from a refusal by the Chief Justice of an application for admission to practise as a barrister and solicitor.

R. G. Kermode for the appellant.

K. C. Ramrakha for the respondent.

The facts of the case were not embarked upon, the judgment of the court being limited to the question of jurisdiction.

3rd November 1972

Judgment of the court (read by Gould V.P.) :

The appellant filed a petition to the Chief Justice under the provisions of the Legal Practitioners Ordnance (Cap. 228) seeking admission as a barrister and solicitor in Fiji. The petition was heard in court and the Fiji Law Society (hereinafter called "the Society") was represented by counsel who appeared in support of a number of objections which the Society wished to urge. On the 9th June, 1972, the Chief Justice gave his decision refusing the application.

The appellant lodged an appeal to the court making the Society the respondent. We do not think that the Society should in fact be regarded as a party to the proceedings; so far as the Ordinance and the Barristers and Solicitors (Admission) Rules are concerned the part envisaged for the Society appears to be the making of a confidential report under section 9(1) which, by rule 8(2) should contain any objection which it desires to make. We have no doubt, however, that the Chief Justice, who is the rule making authority, has a wide discretion in the matter and could accept the assistance of the Society at the hearing.

We do not need to pursue this question, and mention it only because counsel for the Society appeared and made submissions at the hearing of the appeal. Thus we thought it proper to raise a preliminary matter with both counsel. The qualification relied upon by the appellant as the basis of his petition was that he was a barrister and solicitor of the Supreme Court of New Zealand, practising at Auckland. He can be assumed therefore to be a member of the Law Society for the District of Auckland. Two members of this court, as at present constituted, are also members of that society and we considered it our duty to apprise counsel of that fact. Both counsel, however, indicated that there was no objection to the court as constituted, hearing the appeal.

The court also raised the further question whether an appeal lay to this court from the decision of the Chief Justice and asked counsel for their submissions after an appropriate adjournment. We reserved our judgment on that point and heard argument on the merits of the matter, for convenience, *de bene esse*. We now approach the difficult question of whether or not this court has jurisdiction to entertain the appeal: it is a question which this court was obliged to raise, and for that reason is entitled to particularly anxious consideration. The submission of counsel for the appellant was that there was jurisdiction, which counsel for the Society argued the contrary.

Section 3 of the Legal Practitioners Ordinance gives to the Chief Justice power to admit to practise any person duly qualified with power also to refuse the application upon cause shown. Section 9(1) provides that every application shall be by petition to the Chief Justice, a copy of which is to be delivered by the Registrar to the Council of the Society. The Council has the right to interview the applicant and is required after making the inquiries it deems necessary, to forward to the Chief Justice a confidential report regarding the suitability or otherwise of the applicant. If the report is adverse the substance must be communicated to the applicant.

By section 9(2) the Chief Justice, upon proof of all necessary matters and unless cause to the contrary be shown — "shall . . . . by writing under his hand and in such manner and form as he may from time to time think fit, admit the applicant to be a barrister and solicitor."

Appeals to this court in civil matters are authorised and regulated by section 12 of the Court of Appeal Ordinance (Cap. 8). The relevant portion of the section reads —

> "12(1) Subject to the provisions of the next succeeding subsection, an appeal shall lie under this Part of this Ordinance in any cause or matter, not being a criminal proceeding, to the Court of Appeal —
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> (a) from any decision of the Supreme Court sitting in first instance, including any decision of a judge in chambers;
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> (d) on any ground of appeal which involves a question of law only, from any decision of the Supreme Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal.
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> (2) No appeal shall lie —
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> (c) from the decision of the Supreme Court or of any judge thereof where it is provided by any enactment that such decision is to be final;"

Counsel for the appellant pointed to section 12(2) (c) and to the absence of any provision rendering the decision of the Chief Justice final. This negative argument does not of course do away with the necessity of ascertaining whether the affirmative subsection (1) applies so as to give a right of appeal. We think it must be conceded that a refusal to admit a person as a barrister and solicitor is a "devision", which term, by section 2(1) of the Court of Appeal Ordinance, is described as including an order judgment or decree. The refusal may be an order, but in any event we think it is a decision in the wider sense.

The single question, as we see it, is whether the decision of the Chief Justice was a decision of the Supreme Court sitting in first instance. The fact that an appeal lies from a decision of a judge in chambers takes the matter no further, for we take that to mean a judge of the Supreme Court acting in that capacity. We would add that this was not a chambers application.

With this in view we look first at the scheme of the Legal Practitioners Ordinance. The provisions as to admission to which we have referred place that matter in the hands of the Chief Justice personally. We have found no provisions either in the Constitution or any other law whereby the function so entrusted can be performed by any other judge. Sections 3 and 9 are in Part 2 of the Ordinance as also is section 10 which provides that every person admitted shall cause his name to be enrolled in a book to be kept in the office of the Registrar called the Roll of the Court.

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Part 3 of the Ordinance is headed "Rights and Liabilities of Barristers and Solicitors". The only reference to the Chief Justice is in section 13(3) which restricts the right of practise immediately after admission to practise in partnership unless the person concerned has had a specified period of legal experience except "with the leave of the Chief Justice". Further, the experience must be "of a nature considered by the Chief Justice to be adequate." This appears as a complete and personal discretion. By contrasts, section 15(3) in the same Part, relating to agreements as to costs, provides that they may be reviewed by the Supreme Court or a judge thereof, to ascertain whether in the opinion of the court or judge the agreement is unreasonable. Section 18 confers upon the Court (meaning the Supreme Court) power to order delivery of a bill of costs.

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Part 4 of the Ordinance deals with practising certificates. By section 21, if a practising certificate is not renewed for five years the Registrar may not issue a certificate except on the order of the Chief Justice, who may direct the issue of the certificate on such terms and conditions as he may think fit.

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In Part 5, section 23 empowers the Chief Justice to appoint any person whom he shall consider a fit and proper person to be a notary public. A notary is entitled to a certificate of enrolment under the seal of the court. (s.25). By section 26 a notary is deemed an officer of the court and if guilty of misconduct shall forthwith be discharged by the Chief Justice from the duties of his office.

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In Part 6, by section 31 the Chief Justice may appoint "under his signature and the seal of the Supreme Court" persons to be Commissioners for Oaths. Under subsection (2) any act of a Commissioner in excess of his powers may be set aside on application to the court.

The Fiji Law Society is established and incorporated under the provisions of Part 7 of the Ordinance. There is no provision relevant to the present question, except that one of the objects, set out in section 35(r) is to tender advice to the Chief Justice "as respects any of his powers and duties under the provisions of this Ordinance". This appears to envisage some at least of those powers and duties being personal.

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We come to Part 8 which is headed "Discipline". Under section 58 the Chief Justice is empowered to appoint a Disciplinary Committee, its Chairman and Secretary. The Disciplinary Committee has power to hear complaints and to make various orders including striking off the Roll, suspension and the like. Section 65 reads as follows :—

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"(1) The Chief Justice may, on the petition of the barrister and solicitor, and after hearing the Attorney-General, in his absolute discretion by order restore the name of such barrister and solicitor to the Roll or terminate any suspension either unconditionally or subject to such terms and conditions as he may think fit; whereupon, subject to such order, the striking off or suspension shall be cancelled or cease, and the barrister and solicitor shall be entitled to the return or renewal of his practising certificate, as the case may be.

"(2) The Chief Justice may make rules or give directions as to the manner in which petititons made under the last preceding subsection shall be heard and may by rule limit the frequency with which such petitions may be made."

It will be observed that the discretion given by the section is absolute; it is not by way of appeal from the order of the Disciplinary Committee (which is dealt with later) but appears as a complete and overriding jurisdiction given to the Chief Justice personally.

Part 8 also contains the only provisions in the Ordinance touching the question of appeal. Section 73(1) reads —

"73.(1) Where by any order of a Disciplinary Committee it is ordered that the name of any practitioner be struck off or removed from or restored to the Roll, or that any practitioner be suspended from practice, the order shall be filed in the Court and, subject to the next succeeding subsection, shall thereupon take effect as if it were an order of the Supreme Court to the like effect made within the jurisdiction of that Court."

We will set out section 74 in full —

"74.(1) An appeal against any order or decision of a Disciplinary Committee made under this Part of this Ordinance shall lie to the Chief Justice at the instance of the practitioner or person to whom the order or decision refers, and, in any case where the proceedings before a Disciplinary Committee have been taken on the application of any person other than the barrister and solicitor or person concerned, shall also lie at the instance of the applicant:

Provided that the Chief Justice may, if he thinks fit, authorise another judge or acting judge to perform all or any of the powers exercisable by him under the provisions of this section.

(2) Every such appeal shall be by way of rehearing on the record and statement of findings of the Disciplinary Committee and shall be made within such time and in such form and shall be heard in such manner as may be prescribed by rules of court.

(3) An appeal shall lie at the instance of the practitioner to the Court of Appeal from any order of the Chief Justice or other judge or acting judge made in accordance with the provisions of subsection (1) of this section and shall be made within such time and in such form and shall be heard in such manner as may be prescribed by rules of court made under the provisions of the Court of Appeal Ordinance."

The right of the Chief Justice to delegate this power to hear an appeal to another judge does not appear in relation to any other power conferred upon him by the Ordinance. It is a personal delegation of powers otherwise exercisable only by the Chief Justice. It appears to us significant that in this one case the legislature enacted (in subsection (3)) that there should be a right of appeal to this court. If the decision on the appeal from the Disciplinary committee was a decision of the Court as such, it would be subject to appeal in any event by virtue of section 12(1) (d) of the Court of Appeal Ordinance. Counsel for the appellant suggested that as the right of appeal under that subsection was limited to questions of law, section 74(3) was inserted to widen the scope of the appeal. That is possible, and it is also to be observed that it limits the right to the practitioner involved, though the original complainant may be a party to the first appeal. It was, however, deemed necessary to provide that the appeal should be heard in such manner as may be prescribed by rules of court under the Court of Appeal Ordinance, which indicates that the legislature regarded this as not in the ordinary run of appeals, but something requiring a code of its own.

Looking at the Ordinance as a whole, with the question in mind whether the power to admit barristers and solicitors is given to the Chief Justice as *persona designata* or in his capacity as a judge of the Supreme Court we observe that it contains not only that particular power but power to appoint notaries public and commissioners for oaths. It could hardly be suggested that in exercising these functions, the Chief Justice was making a decision of the Supreme Court, subject to a right of appeal. It is obvious that he is given these powers in his personal capacity, as a parallel to English practice, where Commissioners for Oaths are appointed by the Lord Chancellor and notaries public by the Master of the Faculties. We do not attach much weight to this for these matters may well have been assembled in the Legal Practitioners Ordinance for convenience, but they serve at least as examples of personal powers conferred by the Ordinance. They appear to be administrative acts whereas under section 9 there are requirements which indicate that a judicial or at least quasi-judicial inquiry is to precede the admission or refusal. We think probably the latter, when it is considered that the Chief Justice may act upon unsworn evidence in the shape of a confidential report from the Society.

The fact, however, that a person is called upon to proceed on judicial principles does not determine the question whether he acts as a court or as *persona designata* for the particular purpose. The case of *Boulter v. Kent Justices* [1897] A.C. 556 in which it was held that justices at a licensing meeeing were not a court of summary jurisdiction — the definition of such a court in section 50 of the Summary Jurisdiction Act, 1879, was — "Any justice or justices of the peace, or other magistrate by whatever name called to whom jurisdiction is given by or who is or are authorised to act under the Summary Jurisdiction Acts or any of such Acts". This, however, was widened by a declaration in section 7 of the Summary Jurisdiction Act, 1884, to include any such justices "whether acting under the Summary Jurisdiction Act or any of them, or any other Act, or by virtue of his or her Commission, or by the Common Law." Even so, as we have said, the House of Lords held the justices did not constitute a court when sitting on a licensing matter. A passage from the judgment of Lord Hershell, at p.569, shows an element of similarity between that case and the present one :

> "The question is not one *inter partes* at all. The justices have an absolute discretion to determine, in the interest of the public, whether a licence ought to be granted, and every member of the public may object to the grant on public grounds apart from any individual right or interest of his own. The applicant seeks a privilege. A member of the public who objects merely informs the mind of the Court to enable it rightly to exercise its discretion whether to grant that privilege or not. A decision that a licence should not be granted is a decision that it would not be for the public benefit to grant it. It is not a decision that the objector has a right to have it refused. It is not, properly speaking a determination in his favour. It is, I think, a fallacy to treat the refusal as necessarily induced by a particular objector. Every member of the local community might object. Would they all then become "the other party?" There is, in truth, no lis, no controversy *inter partes*, and no decision in favour of one of them and against the other, unless, indeed the entire public are regarded as the other party, for if a licence be refused on the ground that it was not needed to supply the legitimate wants of the neighbourhood, the decision is really in favour of the public at large."

That passage was in relation to a requirement of the Summary Jurisdiction Acts that notice be given to "the other party" — the rules of this court require notice to be given to all parties directly affected, which might pose a similar problem. But we think the passage quoted adds point to a short sentence of Ridley J. in a similar case *Huish v. Liverpool Justices* [1914] 1 K.B. 105 at 114 —

> "In other words, it (i.e. whether justices were sitting as a court) depends on the character of the jurisdiction they are exercising; not on the source from which it has been derived."

In this case also Ridley J. described the language used in the judgments in *Boulter v. Kent Justices* (supra) as being of general application. We would add from another context the following general observation by the Privy Council (with reference to a Board of Review) in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] A.C. 275 at 298 —

> "An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of Judicial power."

An illustration of the "*persona designata*" principle is to be found in *Owen v. London and North Western Railway Co.* (1867) L.R. 3 Q.B. 54. The question was whether the Court had jurisdiction to review costs settled by one of its masters under section 52 of the Lands Clauses Consolidation Act 1845. At p.60 Cockburn C.J. said:—

> "Now I think that the only ground on which we can ever exercise jurisdiction in a matter of taxation is this, that the office of taxing costs to the successful party entitled is the business of the Court itself. It would be extremely inconvenient if the time of the Court were to be occupied in a matter of this kind and we are provided with officers who as the delegated officers of the Court for that purpose, assist us by going through these proceedings; and the Court

> has necessarily jurisdiction to control this delegated authority, in the event of there being anything which the Court may think wrong in its exercise. But where the legislature thinks proper to give the power of taxation, and imposes the duty of taxation, not on the Court, but simply on one of the officers of the Court, without in any way rendering it necessary that the Court should interfere, it seems to me a case in which we have not any authority over the master. I agree with what Erle, J. said in the Bail Court, that the office performed by the master has reference to the causes in the court, and is part of the necessary and incidental proceedings of the Court, and that, therefore, the Court had jurisdiction over it. That does not apply to the case now before us, in which the authority is derived, not from the Court itself, but from the act of the legislature in giving the power to the master and imposing the duty on him."

Shee J. (at p.62) referred to the master being selected "as a person probably above all others, competent to take a reasonable view of what the costs should be." Similarly, we would view the selection of the Chief Justice as that of the person eminently suited to the duties laid upon him by the Legal Practitioners Ordinance. Finally, from Owen's case we quote the words of Lush J. at p.63 —

> "If it had been intended that the taxation of the costs should be in the power of the Court, I should have expected to find these sections giving it to the Court, or there would have been some words giving the Court a controlling power over the exercise of that jurisdiction.
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> There is nothing of the kind."

We do not need to enlarge upon that.

A case relied upon by counsel for the appellant is *Ex Parte Lenehan* (1949) 77 C.L.R. 403, in which the High Court of Australia entertained an appeal from the Supreme Court of New South Wales against a refusal to admit a solicitor. There, however, it is quite clear that the power to admit fit and proper persons to appear as barristers, advocates, proctors, attorneys and solicitors, is vested by the Charter of Justice in the Supreme Court itself (per Starke J., at p.427). A candidaate had first to apply to "the judges for permission to present himself for admission." In *Lenehan's* case the judges referred the matter to a sub-committee of two, who were satisfied that he was a fit and proper person to so present himself. But (p.414) "the jurisdiction to admit a solicitor is vested, not in the judges, but in the Supreme Court." In Fiji, that is not so — it is in the Chief alone, and therefore, *Lenehan's* case is of no assistance.

It is quite clear, from a perusal of the English Solicitors Act, 1957, that the Fiji Ordinance has been very largely drawn from that source. The part played by the Law Society is more prominent in England, as it is entrusted with the conduct of legal education and examinations. Before a candidate may be admiitted as a solicitor he must obtain a certificate from the Law Society that he has satisfied their requirements. In Fiji, as has been noted, the Society may interview a candidate and present a confidential report to the Chief Justice.

A In England it is the Master of the Rolls who is required to admit, unless cause to the contrary be shown, "by writing under his hand, and in such manner and form as the Master of the Rolls may from time to time think fit." The only difference in this respect is that the Master of the Rolls may appoint any judge of the High Court by writing under his hand to act for the time being on his behalf. That provision, which is merely a permitted personal delegation, is not present in Fiji.

B Many of the provisions of the English Act and the Fiji Ordinance are similar but we would refer particularly to those relating to disciplinary proceedings. In England it is the Master of the Rolls who appoints the committee from among members of the council; in Fiji, the Chief Justice. The powers of the committee, as in Fiji, include striking a solicitor off the roll, or suspending him. Section 48 deals with appeals. An appeal lies to C the High Court against an order of the committee at the instance of the applicant or complainant or the practitioner. It is implicit that the usual right of appeal lies from the High Court to the Court of Appeal, as in certain particular instances there is special provision that the decision of the High Court shall be final, and in some other cases that the appeal shall lie to the Master of the Rolls whose decision shall also be final.

D The scheme is similar to that of the Fiji Ordinance in that matters of admission are for the Master of the Rolls (in Fiji, the Chief Justice) but appeals in disciplinary matters are to the courts. This connection of the Masters of the Rolls with the profession and particularly matters of admission is an historical one and is apparent from earlier cases. In *Jones v. Trinder, Capron & Co.* [1918] 2 Ch. 7 Swinfen Eady L.J. quoted section 10 of the Solicitors Act, 1888, as enacting that a person who has E passed the final examination and obtained a certificate "may apply to the Master of the Rolls to be admitted as a solicitor" and interpolated "that is, to the Master of the Rolls personally as such."

In *In re Pollard* [1888] 20 Q.B.D. 656 Lord Esher, who was then the Master of the Rolls, said at p.659 —

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> "In order to understand the meaning of the Solicitors Act, 1843, s.37, it is necessary to consider the position of the Lord Chancellor and of the Master of the Rolls at the time that Act was passed. I am of opinion that the Master of the Rolls had to perform duties in two capacities; first, duties as a judge of the Court of Chancery, and secondly, independent duties arising from his office as Master of G the Rolls. He had separate chambers, which formed no part of the offices of the Court of Chancery. As Master of the Rolls he had the custody of the rolls of solicitors and attorneys, and great and independent powers and duties were vested in him with respect to their admission, and in other respects. He exercised that part of his jurisdiction as a wholly independent jurisdiction, without being subject to control of any kind, and without being subject to an appeal H to any other Court. He might modify the position of a solicitor who had not taken out his certificate, and allow or forbid him to take it out, and his action in that respect was wholly independent of the jurisdiction of the Court of Chancery or the Lord Chancellor, and was not subject to an appeal to any other Court. He had, therefore,

an independent jurisdiction with respect to attorneys, and solicitors, and at the present time he continues to exercise a great part of that jurisdiction without being subject to any appeal." A

This authoritative statement shows the special position of the Master of the Rolls. In Pollard's case his view that section 37 of the Solicitors Act, 1843, relating (inter alia) to taxation of bills of costs in non-contentious business, was related to his "independent" duties, was not shared by the majority of the Court of Appeal, but their view hinged on the particular wording of the section. It is to be noted that at least by the time of the Solicitor's Act, 1932, section 37 of the 1843 Act was replaced by provisions clearly referring questions of taxation to the High Court (See section 64-67 of the 1932 Act and the notes on those sections in *24 Halsbury's Statutes of England* (2nd Edition) pp.58 and 64). Section 18 of the Fiji Ordinance has the same effect. B C

We think it significant that whereas the difficulty dealt with in *In re Pollard* (supra) has been dealt with by subsequent legislation the provision that it is the Master of the Rolls who admits solicitor, which has been in the English legislation for very many years, has remained unaltered except in immaterial details. It is the traditional position of that high officer in that regard which in our opinion has been transferred to the Chief Justice by the provision of the Legal Practitioners Ordinance. There is one further reference which tends to confirm this parallel. It is the case of *In re Chaffers; exparte The Incorporated Law Society* (1884) 15 Q.B.D. 467. It was held that the Master of the Rolls only, had power to order the registrar to grant a practising certificate after neglect by a solicitor to renew it for the specified period. The court of appeal held that it had no jurisdiction to interfere. This was based upon a section of the Solicitors Act 1877 which is almost word for word the same as section 21 of the Legal Practitioners Ordinance (to which we have already referred) except that the Chief Justice is substituted for the Master of the Rolls. D E

It is necessary next to deal with an argument which might be based on former provisions of the Supreme Court Ordinance. From the very early days of the territory until the Legal Practitioners Ordinance 1965, the Chief Justice exercised jurisdiction to admit barristers and solicitors to practise, as well as to suspend or strike off the roll, under certain sections of the Supreme Court Ordinance for the time being in force. It is not necessary for us to consider whether an appeal lay to the Court of Appeal, or before that court was established, direct to the Privy Council, from his decisions under those sections. In the earlier days the Supreme Court consisted only of the Chief Justice. Later the section was introduced which appears in the present Supreme Court Ordinance as Section 7. It reads — F G

"(1) All the judges of the Court shall have in all respects save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Ordinance. H

(2) Any judge of the Court may, subject to this Ordinance and any rules of Court, exercise all or any part of the jurisdiction vested in the Court, and for such purpose shall be and form a court."

A Subsection (1) is important in the context of the present argument. All the judges were to have equal power, authority and jurisdiction under the ordinance, "save as is herein otherwise expressly provided." It would appear that the authority given to the Chief Justice only, in the matter of barristers and solicitors is an express reservation of the kind contemplated; it could be argued that it was implied that it was a power of the court though given only to one member of it, and it was the court and not the Chief Justice as *persona designata* which made the orders or B decisions. This is not necessarily a valid argument, as the other special jurisdictions reserved to the Chief Justice, under the Ordinance appear to be an administrative power to direct the business of the court (section 39), a rule-making power (section 38) and the power to appoint commissioners for oaths (section 43), none of which, in our view, were executed by the Chief Justice sitting as a court.

C Even if the argument would have been given weight in the past, the legislation has now been changed; and it appears to us, deliberately changed. What might be referred to as a somewhat antiquated Old Colonial system has been replaced by a more modern one, in line so far as practicable with the English system, with substantial functions given to the newly created statutory law society. The system is self contained in its own Ordinance and section 7(1) of the Supreme Court Ordinance D no longer has any application.

Among the arguments used by counsel for the appellant in support of the submission that the Chief Justice was acting as a court, was the fact that the form of petition for admission prescribed by the Barristers and Solicitors (Admission) Rules (made by the Chief Justice) is headed "In the Supreme Court of Fiji." Also we understood him to say that it E was the practice to put the seal of the court upon an admission or refusal. Further, he argued that enrolment was by the Registrar under the seal of the court and was synonymous with admission.

We are unable to attach any great weight to these considerations. Enrolment is not synonymous with admission. After admission the person concerned applies for enrolment "in a book to be kept in the office of the F Registrar" (s.10). Under section 11 the Registrar grants a certificate of enrolment under the seal of the Court. Exactly the same procedure is observed, under section 25, in the case of a person appointed as a notary public. He also is entitled to a certificate of enrolment under the seal of the court. There is no valid inference to be drawn from this, that the admission of a barrister and solicitor or the appointment of a notary is an act of the court and not the personal act of the Chief Justice. In G England under the Solicitor's Act, 1957, (section 6) the roll is kept by the Law Society. Naturally, the courts are closely concerned with the roll of those entitled to practise, particularly as it is also a roll of officers of the court; the public is also concerned, but the matter does not touch the question we are considering.

H As to the practice (if such be the case) of putting the seal on an admission or refusal, it is only the signature of the Chief Justice which is essential. But section 9(2) provides that the Chief Justice may admit, not only by writing under his hand, but also "in such manner and form as he may from time to time think fit". If the seal is used it could be as a complement to his signature. The practice may be a survival from the

old Supreme Court (Admission of Barristers and Solicitors) Rules, which applied during the currency of the sections of the Supreme Court Ordinance to which we have earlier referred. Rule 7 provided that a person admitted was entitled to receive a Certificate signed by the Chief Justice and bearing the seal of the court. That rule no longer appears. As to the heading of the prescribed form of petition for admission, we are unable to give that question such weight as to detract from the conclusion we are about to express.

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We have called attention to the fact that where an appeal has been considered necessary, as in the disciplinary part of the Ordinance, it has been provided. There is, we think a strong implication that, had an appeal against the decision of the Chief Justice under sections 3 and 9 been thought fitting or necessary, specific provision would have been made for it. We are strengthened in that view by the opinion that the legislature would then have had the opportunity to resolve, and would almost certainly have done so, the difficulties we have mentioned in passing; that is, the question of who could properly be joined as parties to such an appeal, and the fact that the report of the Society is confidential to the Chief Justice. We take note also of the contrast between the clear selection of the Chief Justice for certain functions for which he is, by position, particularly suited and the equally clear references to the court where it is intended that the court shall have jurisdiction. Finally and particularly, we have had regard to the obvious parallel between the position of the Master of the Rolls and the functions of the Chief Justice in matters of admission. Our conclusion is that the poewrs given to the Chief Justice, under sections 3 and 9 of the Ordinance are given to him personally; their exercise does not give rise to a decision of the Supreme Court, and it follows that no appeal lies to this court from the refusal of the Chief Justice to admit the applicant.

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The appeal is accordingly struck out for want of jurisdiction. There will be no order for costs.

Appeal struck out.