Privy Council Appeal No. 1 of 1968

Samuel McKee Lawther – – – – – – – *Appellant*

v.

The Council of the Royal College of Veterinary Surgeons – *Respondent*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH MAY 1968

Present at the Hearing:

LORD HODSON

LORD PEARCE

LORD PEARSON

[*Delivered by* LORD PEARCE]

The appellant was a member of the Royal College of Veterinary Surgeons. He was charged before the Disciplinary Committee of the Council with improperly attempting on or about 12th May 1967 to obtain from Mrs. Theresa Elvin payment of a fee of 20 guineas by falsely claiming that he had carried out an oesophagotomy upon a dog belonging to her and thereby being guilty of disgraceful conduct in a professional respect. The Committee decided that he was guilty of the charge and directed the Registrar to remove the appellant's name from the Register.

On the evening of 12th May, Mrs. Elvin's alsatian pup swallowed a rubber ball which lodged in the gullet. She tried unsuccessfully to get the services of her regular veterinary surgeon. She then took the dog to the appellant's surgery at Shepherd's Bush. She had a conversation with the appellant and signed a form consenting to a general anaesthetic if necessary and the removal of the ball from the gullet and absolving the appellant from liability for any loss, illness or damage to the animal. After she left, the appellant made unsuccessful attempts to remove the ball with forceps. He then gave the dog a general anaesthetic. When the dog was already under the anaesthetic Mrs. Elvin's son came into the surgery and said that his regular veterinary surgeon was now available to do the operation. The appellant said "Do you want me to do the operation or don't you?" And the son seeing that the dog was already under the general anaesthetic agreed to the appellant continuing.

The appellant having made further unsuccessful attempts to remove the ball under the general anaesthetic decided to cut through into the oesophagus so that he might get inside the throat below the ball and thus push out the ball through the mouth. To this end he clipped the hair on the throat and made an incision in the skin four or five inches long. Thus he cut the first of the three layers which it would be necessary to penetrate in order to enter the oesophagus. When he had made the incision in the skin the throat muscles appeared to relax somewhat (probably as a result of the anaesthetic) and he was able to remove the ball through the mouth without making any further incisions. He dressed and sewed up the throat and bandaged it. He telephoned to Mrs. Elvin, or her son (about two hours after the dog had first been left) and said that the dog was ready and would be cleaned up in 10 minutes and that the fee would be twenty guineas cash. He asked that it should be brought round in cash.

Up to this point in the story there is no important dispute on the facts. Mr. Bayliss, the solicitor who presented the complaint very fairly before the Committee, made it quite clear that he was not attacking the competence of the appellant in what he did or the amount of the fee which he charged. The matter of complaint is confined to the second stage of the story when Mrs. Elvin and her son came round to collect the dog who was then just recovering from the anaesthetic. It is clear that the Disciplinary Committee accepted Mrs. Elvin's account of that interview in preference to that of the appellant. Their Lordships have considered the evidence carefully and find no reason to differ from that view.

When Mrs. Elvin and her son came round a heated scene developed. The appellant was angry that Mrs. Elvin had not brought round the cash and Mrs. Elvin and her son were angry that they should be expected to carry that amount of cash on them. The appellant refused to let the dog go without the cash and the son then went out and fetched two policemen. The interview started with Mrs. Elvin being upset at seeing the bandage and the stitches at each end of it since she had expected that the operation would be extraction through the mouth. She asked whether 'he had to lance it'. The appellant said "Yes, it was a very serious matter. We have carried out a major operation. It was necessary for me to carry out a major operation, and it has caused my partner and me a considerable amount of trouble". During the argument about the payment of cash the son insisted on having a written account. The appellant thereupon wrote out an account as follows:

> "To giving general anaesthetic and oesophagotomy for emergency operation and recovering obstructing ball from oesophagus and suturing and antibiotic injection £21 0s. 0d.".

A few days later Mrs. Elvin's regular veterinary surgeon found it necessary to re-open and clean up the stitches because the wound was suppurating. He was surprised to find that the underlying tissues had not been cut.

The appellant has throughout maintained that he never told Mrs. Elvin that he carried out a major operation nor suggested that he carried out the full operation. He says that when he wrote the account for oesophagotomy he had in mind that he had started that operation. He was upset at the police being brought in and tired at the end of a long day and he suspected that he might not get paid. But his answers in cross-examination were not impressive.

This appeal is a rehearing in the same sense that an appeal to the Court of Appeal from a Judge alone is a rehearing. Where it appears from the transcript of evidence or other admissible matter that the wrong decision on fact has been reached it can be reversed, but only with due regard to the disadvantage which an Appellate Court suffers from not seeing and hearing the witnesses. In the present case, however, the finding of the Disciplinary Committee appears reasonable from the evidence as shown on the transcript and there is nothing to suggest that it was not justified.

It was forcefully argued by Sir Dingle Foot that the legal Assessor was at fault in that, having said that the charges are "in effect of something much more serious, of attempted false pretences", he did not go on to tell the Disciplinary Committee that they must be fully satisfied of an intent to defraud. Since, it is argued, the appellant was entitled to the payment for his services, the fact that he misrepresented them does not establish any intent to defraud and therefore the charge should have been dismissed. It may be, however, that the use of untruthful means to extract money, which is in fact owing, may constitute, or be a ground for inference of, an intent to defraud (see *R. v. Hopley* 11 Cr. App. R. 248 and Archbold para. 717 p. 1961). For it may deprive a debtor of grounds on which he might wish to contest the charges or argue as to the reasonableness of the amount. But in their Lordships' view that argument of the appellant is founded on too technical a view of the present case. This was not in fact a criminal allegation of false pretences. It was an allegation

of professional misconduct in improperly attempting to obtain payment of a fee by falsely claiming that an oesophagotomy had been carried out. It was the appellant's counsel who quite reasonably drew in the criminal analogy in order to urge that the Disciplinary Committee must be satisfied beyond any reasonable doubt of the truth of the charge before they accepted it as proved. The legal Assessor, again quite reasonably, accepted this view and advised the Disciplinary Committee that since the charge was 'in effect' of a criminal nature, they must be satisfied beyond reasonable doubt. That was an advantage to the appellant. He cannot go on to claim that he is thereby entitled to a full direction from the Assessor as if the appellant were in fact being tried on a criminal offence. It is not the function of the legal Assessor to sum up as a judge does to a jury. In the present case he made some judicial observations at the end of the hearing which were relevant and helpful. He said nothing which was erroneous or unfair to the appellant. It was for the Disciplinary Committee to decide whether the charge was made out. There is no ground for interfering with their decision.

Their Lordships have felt some concern as to whether removal from the Register (as opposed to suspension) might not be too severe a penalty for a man of good character who had been in practice for 16 years. It was a serious misbehaviour to mislead an owner, who was showing some emotional upset at the fact that any incision had been made at all, into the erroneous belief that a deep and serious operation had been carried out by cutting right into the passage of the oesophagus, when in fact there had merely been an incision into the skin. It was serious both for immediate emotional reasons and for possible reasons of subsequent treatment. Against that one may weigh the fact that in the earlier stage no accusation of incompetence or overcharge was made, that the appellant was cross and tired, and that he and the Elvins had from an early stage "got at odds with one another". One does not know whether that was the fault of one side or the other or both. He may also have been worried that he would be taken to task for having started the operation at all since in the event it had been shown to be unnecessary. Their Lordships, however, are mindful of two things. First, professional misconduct is a matter in which the Disciplinary Committee are the judges and the Appellate Court should not intervene unless it is satisfied that the Disciplinary Committee have made a mistaken assessment. Secondly it is open to the Council to re-admit the appellant if they are satisfied that an example has been made and a lesson learned; and substantial suspension might in fact delay his penitent return to the profession.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

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In the Privy Council

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THE COUNCIL OF THE ROYAL COLLEGE OF VETERINARY SURGEONS

DELIVERED BY

LORD PEARCE

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