JAMES P. BESTMAN, Appellant, *v.* MACDONALD ACOLATSE, Appellee.

APPEAL FROM THE DEBT COURT, MONTSERRADO COUNTY.

Argued March 19 and 20, 1975. Decided May 2, 1975.

1. If an answer to a question on cross-examination can be contradicted by other evidence, the witness is not being interrogated on a subject matter not pertinent to the issue for the mere purpose of contradicting him.
2. Primary evidence means the highest grade of evidence that may be produced to establish some fact.
3. Among the requisites to the formation of a valid contract is that there must have been the mutual consent of all parties competent to contract, founded on a sufficient consideration to perform some legal act or omit to do something, the performance of which is not enjoined by law.
4. The entry of parties into a contractual relationship must be manifested by some intelligible conduct, act or sign, gathered from outward expressions and acts.
5. A receipt is not a release, but is written evidence that an obligation has been discharged.
6. The essential feature of a lawyer and client relationship is the fact of an employment agreement, though payment of a fee or assent to pay compensation are weighty considerations in determining the relationship.
7. In the absence of statutory or constitutional restrictions a court of superior or general jurisdiction has inherent power and authority to punish any lawyer found guilty of conduct in any respect unbecoming the standard of propriety which should be maintained by members of the legal profession.
8. Admission to the bar does not confer upon such person any vested right to continue in the practice of law; he may be suspended or disbarred for violation of the oath taken by him upon admission.

Appellee instituted an action in the Debt Court for unpaid legal fees he alleged were owed him by appellant. Appellant denied that there had been any agreement to pay the appellee any sum other than the initial payment made by him. Appellee prevailed in the lower court and appellant took an appeal from the judgment.

The Supreme Court agreed with appellant and found no basis for a claim of additional money owed and, therefore, *reversed* the judgment for $3,710.00, ordering the lower court to discharge appellant from payment of the

judgment, for appellee was not entitled to more than the retainer paid.

In addition, the Supreme Court found appellee's conduct in the matter "reprehensible," and, therefore, fined him $100.00. Moreover, the Court ordered an investigation by the Ethics and Grievance Committee into alleged improprieties by appellee, involving a judicial officer.

O. Natty B. Davis and *Richard A. Diggs* for appellant. Appellee, *pro se.*

MR. JUSTICE AZANGO delivered the opinion of the Court.

Once again Counsellor MacDonald C. Acolatse has instituted a debt action against his client for failing to compensate him for professional services rendered. Once again his complaint appears to be unethically punctuated. Above all, he appears to have terminated the lawyer and client relationship herein with vulgar language, not befitting men of cultivated taste, who are also members of an exalted profession. We shall speak more of this unfortunate matter later.

According to the record before us, Counsellor Acolatse, now the appellee in these proceedings, on September 7, 1973, instituted an action of debt in the Debt Court for Montserrado County against appellant on the grounds that he was retained by appellant on February 4, 1972, to represent him in a case subsequently entitled *Republic* v. *Bestman,* involving embezzlement. The agreement was for representation up to and including the finalization of the case before the Supreme Court of Liberia, for which a retainer of $1,000 was paid, evidenced by a receipt.

> "Received from James P. Bestman the sum of One Thousand Dollars ($1,000.00) for legal services and representation of James P. Bestman in a criminal case

which is being instituted against him by the Government, the preliminary investigation of which is being presently conducted by the Department of Justice. The representation commences as of today's date and is to continue until the said cases are finalized.

"[Sgd.] MACDONALD C. ACOLATSE

"Witnesses:

Sarah W. Moore"

Appellee has charged a failure to pay him for his services as set forth.

"(b) That he did accept the retainer and represented appellant up to the Supreme Court to the extent of the filing of appellant's brief in the aforesaid case, appellant having then lost the case in the Fifth Judicial Circuit, Grand Cape Mount County, where it was tried;

"(c) That irrespective of the fact that he had rendered complete service, appellant flagrantly failed to compensate him for services thus far rendered. Consequently, he demands the payment of $7,000.00, being balance due him."

Pleadings were rested at the reply. Issues of law were presented and the case was ruled to trial on its merits. After trial, judgment was rendered against appellant who was to pay appellee $3,710.00, with interest at the rate of 6% per annum. Appellant noted exceptions and has appealed to this Court for review, based upon a nine count bill of exceptions.

Count one of the bill of exceptions has been set forth.

"While plaintiff MacDonald was on cross-examination the defendant through his counsel propounded the following question to him: 'You have handed in for identification a certificate over the signature of the Clerk of the Supreme Court to show on its face that you filed a brief for Mr. Bestman in the Supreme Court which you intend to convey by said certificate that your interest in Mr. Bestman continues up to

the 10th day of September, 1973. Did you show the brief to Mr. Bestman and was he in knowledge of your filing same?' To this question plaintiff interposed the following objections: Ground: 'irrelevant and travelling beyond the res gestae.' Which objection Your Honor sustained. To which defendant then and there excepted."

We cannot uphold the ruling of the judge, because we do not feel that the certificate from the office of the Clerk of the Supreme Court was extraneous to the issue at bar. Neither was it an isolated or disconnected fact, nor was the question asked for the mere purpose of creating prejudice, or inviting sympathy for the defendant. When offered as an exception to the general rule of exclusion, it becomes a matter of substance in the trial. And where such testimony is offered for several purposes, it is error to exclude it if it is competent for any one of such purposes. It was not intended to multiply the issues so as to embarrass if not mislead the jury. We hold that inasmuch as an answer to this question could have been contradicted by other evidence, the witness was not being interrogated on a subject matter not pertinent to the issue for the mere purpose of contradicting him. The judge, therefore, erred in sustaining the objections. Count one of the bill of exceptions is, therefore, sustained.

We will now turn to count two of the bill of exceptions.

"While plaintiff Acolatse was still on cross-examination counsel for defendant asked him the following question: 'Since, Mr. Witness, you are saying that you cannot remember receiving these amounts from defendant Bestman, do you remember receiving them from anybody else on his account, if so please say?' To this question plaintiff objected on the ground: 'Asked for the mere purpose of entrapping the witness.' This objection Your Honor sustained on the ground of not the best evidence, even though this was not the ground of the objection made

by the plaintiff. To which defendant then and there excepted."

As to count two of the bill of exceptions, the ground of exception was not based upon the best evidence rule, rather it was on the ground of "asked for the mere purpose of entrapping the witnesses," yet, we cannot accept the fact that the judge ruled as he did.

Whose testimony could have been of the highest grade of evidence obtainable to prove the disputed fact? Since Acolatse could not remember receiving amounts from Bestman, had he or had he not received money from anybody else on Bestman's account? It appears to us that primary evidence means the highest grade of evidence that may be adduced to establish the fact to be proved. It is not synonymous with the best evidence, for the reason that in a particular case, such evidence may not be available or obtainable, in which case secondary evidence becomes the best evidence that can be produced under the circumstances. It is that kind of evidence which assures the greatest certainty of the fact sought to be proved, and which does not, of itself, indicate the existence of other and better proof. In other words,

> "It is an elementary principle of the law of evidence that the best evidence of which the case in its nature is susceptible and which is within the power of the party to produce, or is capable of being produced, must always be adduced in proof of every disputed fact. Secondary evidence is never admissible unless it is made manifest that the primary evidence is unavailable, as where it is shown that it has been lost or destroyed, is beyond the jurisdiction of the court, or is in the hands of the opposite party who, on due notice, fails to produce it. . . . Expressed differently, the rule that the best evidence must be produced which the nature of the case admits, means not that the courts require the strongest or most cogent evi-

dence, but that no proof shall be admitted which from its character presupposes greater or better evidence or better evidence in the possession of such party, without an adequate explanation for such practice." 20 AM. JUR., *Evidence,* § 403 (1939).

The judge, therefore, erred in sustaining the objection on the ground of "not the best evidence."

We now come to consider count three of the bill of exceptions.

"When witness Sarah Williams Moore, witness for the plaintiff, was on cross-examination, counsel for defendant propounded the following question to her: 'Do you recall whether the receipt witnessed by you was handed to the defendant when prepared by the plaintiff?' To this question the plaintiff objected on the ground 'irrelevant and immaterial.' Which objection Your Honor sustained. To which defendant then and there excepted."

It is hard to see how the ground of the objection of irrelevancy and immateriality could be sustained by the trial judge. Judges must acquaint themselves with elementary principles of law and their application to circumstances and issues raised before them. In this count, appellant has contended that the following question "Do you recall whether the receipt witnessed by you was handed to the defendant when prepared by the plaintiff?" was propounded to Sarah Moore, one of the witnesses for plaintiff, so as to clarify the interest, motives, inclinations, and prejudices of the witness, and the means by which she obtained knowledge of the facts to which she bore testimony. *Bryant* v. *Bryant,* 4 LLR 328 (1935).

It is a well-settled principle of law that evidence offered by either party in the trial of a case, to be admissible against the objections of the other party, must be relevant to the issues of the case and tend to establish or disprove them; matters which are wholly irrelevant and which are

incapable of affording any legitimate presumption or inference regarding the fact or facts in issue must be excluded.

However, all facts and circumstances which afford reasonable inferences or throw light upon the matter or matters contested, are admissible in evidence, unless the exclusion of any such fact or circumstance is required by some established principle of evidence, rule, or the rule that parol evidence may not be given to vary or contradict written instruments.

Further, although some authorities hold that the determination or the relevancy of proof offered at the trial is a matter resting within the sound discretion of the trial court and is not ordinarily reviewable upon appeal, we deem it extremely necessary for our judges to know, when ruling on issues concerning objections involving irrelevancy, that, generally, it may be said that any legally competent evidence which, when taken alone or in connection with other evidence, affords reasonable inferences upon the matter in issues, which tends to prove or disprove a material or controlling issue or to defeat the rights asserted by one or the other of the parties, and sheds any light upon or touches the issues in such a way as to enable the jury to draw a logical inference with respect to the principle fact in issue, is relevant and admissible.

Putting it simply, when a claim of any sort is asserted in court, all those circumstances which go to defeat the claim and to show that the person asserting it has not a right to recover may and ought to be considered.

We wonder by what standard of legal reasoning the trial judge intended to have appellee prove his debt action. Throughout the trial and even during the hearing at this bar, appellee contended that he rendered services in behalf of appellant up to and including the filing of a brief before the Supreme Court, for which he obtained

a certificate from the Clerk of Court. Why was this question considered irrelevant? To have sustained these objections, we hold, the judge must have declared that there was nothing in the issues presented to warrant the proof desired by law, and, therefore, excluded questions. It is our view that considerable latitude should have been allowed by the court in admission of all relevant proofs. Count three of the bill of exceptions is, therefore, sustained.

In counts 4, 5, 6, 7, and 8 of the bill of exceptions, appellant raised numerous contentions, including that the judgment was against the weight of evidence and that the trial court had improperly excluded evidence. Further that the computation of the amount awarded plaintiff was incorrect.

It will be recalled from the record in these proceedings that the foundation upon which this case rests is a receipt allegedly issued on February 4, 1972, as specifically set out in the complaint earlier referred to in this opinion.

It will also be recalled that in the pleadings and at the trial, besides the specific denial, appellant submitted a statement of account paid by him to appellee for his legal services rendered from February 4, 1971, to December 1972, totalling $7,145.00. It will also be recalled during the trial, both on direct and cross-examinations, appellant testified as follows:

(a) That he never had agreed to pay any of his lawyers including experienced ones, more than $3,000.00, much less agreeing to pay appellee $8,000.00.

(b) That he admitted that during an investigation at the Ministry of Justice into an anticipatory embezzlement case which was being laid against him, appellee having learned of this, and because of their relationship, voluntarily came to his aid on January 29, 1972, during the preparation of documents

in connection with his defense, at the said Ministry, and promised that if the case went to court, appellee would come to appellant's defense.

(c) That at a meeting in his house during which several persons were present, including Mrs. Maria Williams, Sara Williams Moore, Nettie Roberts Williams, Mrs. James P. Bestman and a nephew, they requested appellee to represent appellant, considering that appellee was a member of their family. To which he agreed.

(d) That appellee assured the gathering he could independently handle the case and bring a victory to the family, relying upon his experience in similar sensational cases, including that of D. Y. Thompson.

(e) That appellant remembered appellee stating, notwithstanding, I am your friend, but if I carry the case and get a victory, I would like for you to pay me $8,000.00. This was immediately rejected, it was preposterous.

(f) That upon the immediate rejection of this proposal, appellant came out of his room and said, "Mac, I have $1,000.00, and this is all I have; if you want it, I can give it to you, since you have already agreed to assist me and have been assisting me." He placed same before appellee. He accepted it with some drink and food.

(g) To substantiate the fact that appellant and appellee did not enter into any agreement for the payment of $8,000.00, appellant testified: "I gave him several checks before; he admitted receiving some of these checks before this court." Further, he obtained a statement of account from the Chase Manhattan Bank to whom most of the checks were issued, which tallied with his check stubs, showing that additionally on February 16th and 29th, 1972, appellee received $500.00 and $1,500, respectively,

the latter of which is shown on a check dated February 29, 1972, with appellee's endorsement thereon. On one occasion appellant was obliged to make part payment of appellee's light bill, in the amount of $945.17 at PUA, having received a pathetic and distressful letter from appellee in this connection.

(h) That on April 27, 1972, appellant transmitted in a sealed envelope to appellee the sum of $1,000.00, based upon receipt of a letter from the said appellee.

That appellant further testified:

"I also gave numerous sums in cash, some of which were attached to our answer; and I shall bring witnesses to prove or corroborate my statement.

"Now if at all he was ignorant of the law, common sense tells us that before employing a lawyer, after discussion with him, you must write him and he in return will reply to show client and lawyer relationship as we did to all the lawyers that he, the plaintiff, recommended to assist me; I also hold in my hand the contract between General Chesson and myself in which he charged me $300.00, and I replied, accepting his proposal, and we agreed upon it, as well as Counsellors Findley, J. Dossen Richards, and others. If I had the common sense to do this, why then the plaintiff in support of his claim, did not produce a letter that I wrote to him or a copy of the agreement between plaintiff and defendant to show client and lawyer relationship, instead, he produced a piece of paper called a receipt or contract, prepared by himself, signed by himself without my consent.

"More than that, to my surprise, while in Grand Cape Mount County during the trial, besides finding lodging for all the lawyers that I carried, and especially for him, the plaintiff, the distance he was living, I had to charter a bus; the only bus that was

running in the County to transport him as he said in his own words, for the miles and hills he had to climb.

"When judgment was brought against us, and we were in the process of preparing our bill of exceptions, as we had already announced an appeal, in the midst of this, plaintiff walked off and left me in Cape Mount and said that he was finished with me and came to Monrovia. Notwithstanding, friends, well-wishers, tried to persuade him to consider that moment of my life as we had limited time. He came to Monrovia. Few days after I was compelled to leave Cape Mount and come to Monrovia to prepare the bill of exceptions to see that it was prepared in time or I would have been in jail even up to now. At the end of the bill of exceptions, shame got him and he came in again. The other lawyers got mad. However, I persuaded and pacified them and told them that Mac was a young man. They should be patient with us. The bill of exceptions was prepared, signed and he joined me . . . in giving it to the judge to have it approved. After that a month elapsed and I went to him, asked him about the brief. He said, well, you give me $5,000.00; and I will go to Ghana to prepare the brief; typewritten and everything, but when I appear before the Justices in the Supreme Court they will tremble. I told him that I could not see my way clear to do that. We got on this until December and yet there was no brief, because I refused to give him the $5,000.00, and also to carry along with him his fiance, then, now his wife. I further told him that cases bigger than mine had been conducted in Monrovia, Liberia, and I do not think any lawyer went anywhere to prepare the brief. Further, he knows what expenses I had been through especially with him, the plaintiff, because during the trial in Cape Mount it was his request that every

morning or every evening, I must give a bottle of brandy, pack of cigarettes and a box of matches; and I believe the trial was over 42 days and each day I had to produce this brandy, matches and cigarettes. In Monrovia he came to me with his fiance and said that they were to get married and I should give him some money and that the wedding was going to take place within the next two days at Counsellor C. Maxwell's residence and . . . he wanted some household furnitures and some clothing for his expected wife, including morning dresses. I then told him that the time was too short for me to find any money. However, I would see what I could do and that I was going to Bassa to my brother. Upon return, I sent $75.00 enclosed in an envelope to him. Upon the receipt of that amount he was mad and went to my house and used abusive language before my wife and children and other relatives. Fortunately for me I was not there. Thereafter, he went home and wrote me this letter, March 13, 1972, which I need not read because the entire letter is attached to our answer, relinquishing our relationship as client and lawyer. It is therefore surprising to me to know what I am here for. And submit."

Corroborating aspects of this testimony of appellant in the court below, was a witness he produced, Watchine. She testified that in 1972, while at the home of appellant, he received a letter from appellee requesting some money. Appellant produced a sum of money, which he did not disclose to her, and handed it to her with instructions that she take it to Counsellor Acolatse. Which she did. Upon receiving the envelope from her, appellee opened it, ascertained the amount to be $1,000.00, and said, "Tell Mr. Bestman that I got it"; that is to say, the $1,000.00. She testified also that appellee did not give her a receipt for the amount received because of the relationship which existed between her and appellant.

Another witness who testified for appellant was Lissie Sisusie. When asked as to whether or not she remembered at any time during 1972, being given any money by appellant to take to Acolatse, and if so, what the amount was. She replied that it was on April 20, 1972, when she saw appellant give Sarah Moore the sum of $300.00 for appellee, which he received. That is all she knew of the matter.

Another witness for appellant was Attorney A. Dono Ware. While testifying, he stated he was aware of appellant retaining appellee to represent him in a case of embezzlement, but knew nothing about the fee arrangement between plaintiff and defendant. According to Attorney Ware, plaintiff did render services. By which he meant that plaintiff represented defendant in the Fifth Judicial Circuit Court, Grand Cape Mount County, where judgment was rendered against defendant, from which an appeal was announced to the Supreme Court of Liberia. That to the best of his certain knowledge he was present at the Supreme Court one morning when the case entitled *Republic of Liberia,* plaintiff, v. *James P. Bestman,* defendant, involving the crime of embezzlement, was called for hearing; thereupon, counsel for appellant approached the bench and informed the court that contact was being made with the Executive branch of Government, with a view to compromising the matter, and, therefore, requested a postponement of the case. When asked whether he remembered seeing Counsellor Acolatse among counsel who made the submission to the Supreme Court referred to in his testimony, he stated that he knew the counsellors for Bestman to have been Joseph J. F. Chesson, O. Natty B. Davis, and MacDonald Acolatse; but he could not say with certainty whether Counsellor Acolatse was with the others that day.

Earlier during the trial, appellee insisted that he was entitled to recover in these proceedings, and wishing to

obtain corroboration of evidence presented, introduced witness Sarah Williams Moore to testify in his behalf. She testified that she was present with many others when appellee stated his fee to appellant, saying it would be $10,000.00. Upon being importuned by the others present, Counsellor Acolatse reduced the amount to $8,000.00. Thereafter, she saw appellee issue a receipt to appellant. The foregoing is all she remembered relevant to the case.

At the conclusion of the trial, a letter dated December 3, 1972, from appellee to appellant, which severed the relationship of the parties client and lawyer, was identified and marked by the court D/5. We also summarize below other documentary evidence received by the trial court: (1) a letter of April 27, 1972, from Acolatse to Bestman making an appeal for $1,000.00, to meet certain incidental expenses; (2) a series of cancelled checks marked D/7 by the court, allegedly money paid to Counsellor Acolatse by defendant; (3) PUA light bill alleged to have been paid by defendant for plaintiff, identified by a witness and marked by the Court D/2.

Observing that appellee consistently referred to the receipt as a contract upon which he based his suit, it becomes necessary that we examine it. It is provided by statute in the Revenue and Finance Law that each document or instrument listed in the section shall have affixed to it a revenue stamp for which a stamp tax shall have been paid in the amount prescribed therein. If the revenue stamp is purchased by a private person to be affixed to an instrument or document which requires a stamp under the provisions of the section, he shall deface and cancel the stamp by means of a perforation or by writing across it with permanent or indelible ink or pencil, so that the stamp cannot be used. 1956 Code 35:570,571. We have found the receipt lacking this statutory requirement.

It is a settled principle of law that among the requisites

to the formation of a contract is that there must have been the mutual assent of two or more persons competent to contract, founded on a sufficient and legal consideration to perform some legal act or to omit to do something, the performance of which is not enjoined by law. Examining the receipt referred to we find it does not express the undertaking of an act on one side and consideration therefor on the other. If the promisor has received a sufficient consideration, his promise is binding and may be aptly termed an obligation, even though the consideration is not a promise and the promisee is not obligated. Accordingly, where one makes a promise conditioned upon the doing of an act by another, and the latter does the act, the contract is not void for want of mutuality, and the promisor is liable though the promisee did not at the time of the promise engage to do the act upon the performance of the condition by the promisee; the contract becomes clothed with a valid consideration which renders the promise obligatory. Assuming that the testimony of Sarah Williams Moore had bearing on the fact that Bestman did promise and agree to pay appellee $8,000.00 for legal services to be rendered, and does carry some weight, it is a well-settled principle of law that no oral testimony can explain a written document. In the instant case, appellee has not relied upon an oral promise to pay. The suit has grown out of a receipt, which appellee terms a contract.

Further scrutinizing the receipt leads to our expressing our disagreement with its characterization as a contract because it lacks one of the elements necessary to the formation of a contract, which is assent. It is settled that the entry of parties into a contractual relationship must be manifested by some intelligible conduct, act, or sign. The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered from their outward expressions and acts, and not from an unexpressed intention. It is said that the meeting of minds, which is

essential to the formation of a contract, is not determined by the secret intentions of the parties, but by their expressed intentions, which may be wholly at variance with the former. The question whether a contract has been made must be determined from a consideration of the expressed intention of the parties, that is, from a consideration of their words and acts.

Appellant has claimed that he knew nothing about the preparation of the receipt. He has alleged that after plaintiff had received $1,000.00 from defendant at one stage of the matter, appellee contrived and prepared the receipt himself in order to show that there was a balance of $7,000.00 due him from appellant. This averment has remained unchallenged and uncontroverted. It appears to us that some effort should have been made to dispel the impression obtained from the foregoing. Looking at the receipt further, it is not difficult for one to see that it only expresses reasons for the receipt of the $1,000.00. This transaction is what was witnessed by Sarah Williams Moore. It is not signed by both parties, nor was it read by both parties, and conclusively agreed upon with the terms and conditions expressed therein.

Moreover, we have been unable to find in the pleadings or in the record of the trial an offer and acceptance of the proposal to pay $8,000.00 as a legal fee.

Appellant claims that when appellee spoke of charging him $8,000.00 to represent him in the case, the entire family present exclaimed, "Mac, what are you talking about?" It was at this stage that appellant offered him $1,000.00, which he accepted along with some drinks and food. In other words, by the acceptance of $1,000.00 by appellee there was no further obligation on appellant's part until a contract to pay additional sums of money had been negotiated by the parties.

The importance of the receipt cannot be exaggerated. A receipt is written evidence that an obligation has been discharged. No receipt can have the effect of destroying

per se any subsisting right; it is only evidence of a fact. It is not a release. It seems only reasonable that when Bestman paid the $1,000.00, the receipt should thereafter have been in his possession rather than being retained by the appellee.

From these observations, it is not hard to conclude that the receipt is not a contract and, therefore, is invalid as such. Irrespective of the invalidity of the receipt to constitute a contract as basis for this suit, as pointed out in this opinion, it should not have been treated as a contract at the trial.

Appellant contends that appellee failed to represent him until the case was finalized.

We have set forth the first paragraph of the letter terminating the lawyer and client relationship. "Dear Mr. Bestman: Our relationship must terminate at this point, and hence, I must put it in writing; for the reason being extremely tangible and exceedingly important."

During argument before us appellee contended that this letter could not be considered, nor did he regard it, as terminating his professional relationship with appellant. It was continuous and, hence, he was entitled to recover. This contention is unacceptable to us, for according to definition and construction of words and phrases, *"must"* is defined as expressing necessity; obliged or required to; have to; it often expresses an insistent demand or a firm resolve on the part of the speaker; it is often times elliptically used. "Termination" is defined as to end; put an end to; come to cease; to end an action, condition; to come at the end of; from the conclusion of; to put a limit or limits to and to restrict or confine; to finish or complete; to come to an end so as to extend no further; bringing it to a close; inflexional or derivative end. We take the view that paragraph one of the letter which specifically provides that "our relationship must terminate at this point, and hence, I must put it in writ-

ing, for the reason being extremely tangible and exceedingly important," can in no wise reasonably be interpreted as expressing the future of service. It definitively and conclusively severed the relationship of lawyer and client.

Counsellor Acolatse should have known:

1. That the relation of attorney and client is not dependent upon the payment of a fee, although this is the usual and most weighty item of evidence to establish the relation. The essential feature of the relation is the fact of an employment agreement, express or implied, for compensation, but whether payment is made in part or in whole by retainer in advance is not material; nor is it even indispensable that the compensation should be assumed by the client;

2. That before an attorney undertakes the business of a client, he may contract with reference to compensation for his services; no confidential relation then exists and the parties deal with each other at arm's length. Such contracts are not within the rule of presumption against the attorney which pertains to contracts with reference to compensation for his services; no confidential relation then exists and the parties deal with each other at arm's length. A contract made under such circumstances is as valid and unobjectionable as if made between other persons not occupying fiduciary relations, and who are, in all respects, competent to contract with each other, and it will be upheld and enforced if it is fair and reasonable, is not champterous, or does not for other reasons contravene public policy. If, however, it appears that the contract was induced by fraud or misrepresentation, or that in view of the nature of the claim the compensation is so excessive as to evince a purpose on the part of the attorney to obtain an improper or undue advantage over the client, the contract will not be enforced;

3. That a doubtful or ambiguous contract, such as a

receipt for professional services and for the compensation of an attorney who drew it, should be construed in favor of the client;

4. That all courts agree that if the contract is suspicious, oppressive, or fraudulent, exacts an unreasonable or exorbitant fee, or was made without a fair and full disclosure of the facts on which it is predicated, it cannot be enforced against the client;

5. That the attorney cannot exact an increased compensation from his client through the use of information gained in the performance of his duties or, except for the best of reasons, under a threat to withdraw from the case. Moreover, the attorney does not have the legal option to require of the client, as a condition of his further services in a matter for which he was retained without a contract as to compensation, the making of an express contract;

6. That according to the weight of authority, an attorney who, without justifiable cause and without his client's consent, voluntarily abandons or withdraws from a case upon which he has entered before its termination and before he has fully performed the services required of him with respect thereto, loses all rights to compensation for services rendered.

What prevented Counsellor Acolatse from contracting with appellant for the payment of the $8,000.00 legal fee, is left to wonder. Nevertheless, during the hearing at this bar, when appellee was required to show by convincing evidence any contract or agreement concluded between him and appellant for the payment of $8,000.00, he relied only on a receipt signed by himself.

The record shows also that during cross-examination appellee was asked whether he recalled receiving on April 20, 1972, $300.00 cash; on April 27, 1972, $1,000.00; on July 11, 1972, another $1,000.00; in August, 1972, $30.00; and in August, 1972, $200.00; including cash paid for the Supreme Court's fine of $40.00, as well as $150.00 on August 31, 1972. In answer to the ques-

tion he stated that he did not recall receiving any money paid to him at those times. However, he recalled appellant making payment for the $40.00 fine in the Supreme Court.

Having answered as he did, he was thereafter asked other questions: "Since, Mr. Witness, you are saying that you cannot remember receiving these amounts from appellant, do you remember receiving them from anybody else on his account, if so, please say?" The question was objected to on the ground of not being the best evidence, which was sustained by the trial judge. We must express our disagreement with the judge's ruling, especially since witness Lessie Sisusi testified that she was present when $300.00 was given to Sarah Moore to be given to appellee.

At the trial, Sarah Williams Moore testified for appellee that she signed several papers, some of which were intended to get appellant out of jail, including tax papers.

When confronted with the purported receipt alleged to have been signed by appellee in her presence, she identified both signatures, appellee's and hers.

Peculiarly, though appellee did not attach to his complaint the contract entered into and concluded between appellant and himself and though Sarah Moore failed to positively state the amount of the fee agreed upon and accepted by appellant, a portion of which was paid as earlier observed, yet, appellee insists upon additional payment of $7,000.00.

What is more significant is the fact that appellant's categorical denial of any amount owed to appellee, has gone unchallenged.

Over the years, this Court has consistently reaffirmed the doctrine that "every person alleging the existence of a fact is bound to prove it." That is, when a party charges another with a culpable omission or breach of duty, he shall be bound to prove it; and further that the allegations of a party, however logically stated in a court

of law, cannot be taken as evidence. Proof to a judge in the trial of a case is what a compass is to a mariner on the ocean. While it is true that we have held that where a contract has been fully performed and executed on the plaintiff's part an action of debt is the proper form of action to enforce payment due from defendant on a contract, *Witherspoon* v. *Grigsby*, 7 LLR 6 (1939), yet there is no evidence showing that a contract was ever entered into between appellant and appellee which appellee has fully performed. We have held that where there is a special agreement and the plaintiff has performed on his part, the law raises a duty on the part of the defendant to pay the price agreed upon, and the plaintiff may count either on the implied assumption or on the express agreement. *Witherspoon* v. *Grigsby, supra.*

Counts 4, 5, 6, 7, and 8 of the bill of exceptions are sustained. We shall now turn to phase two of the letter which terminated the lawyer and client relationship, and that is consonant with count 6 of the bill of exceptions.

Under ordinary circumstances, this Court could have overlooked the nature of this letter and regarded it as unfortunate; but because of the high importance this Court places on the dignity of the legal profession in Liberia and the professional conduct of those who compose it, we have thought it befitting to express our disapprobation and to deprecate the unethical conduct of Counsellor MacDonald C. Acolatse's language used to his client therein.

In our rules regulating the moral and professional ethics of lawyers, it is declared in the introduction thereto that "the legal profession, as queen of all others, must insist upon behavior on the part of its members, which should mark them out as citizens of a rank highest in the category of decent and respectable people. So dangerous are the consequences of deterioration in the conscientious, ethical and honorable behavior of lawyers, both to the profession as well as to the Nation, that we dare not

ignore the dire necessity for moral rules, without adversely affecting our future. And not only should these Rules be adopted, but the most stringent enforcement of them is a serious moment."

The code of moral and professional ethics requires that each lawyer upon admission to this bar (a) always demean himself as a gentleman and a good able citizen of the Republic of Liberia; (b) abstain from all offensive personal traits; (c) be admonished that in fixing fees he avoid charges which overestimate his advice and services. A client's ability to pay should not justify a charge in excess of the value of the services.

It is well established that in the absence of constitutional or statutory restrictions, a court of superior or general jurisdiction has inherent power and authority to suspend a lawyer from practice or to disbar or strike from the rolls a lawyer found guilty of conduct in any respect unbecoming the standard of propriety which should be maintained by members of the legal profession. Further, the fact that one has been admitted to the bar and licensed to practice the profession of law, does not confer upon him any vested right to continue in the practice of such profession. He may be suspended for any violation of the oath taken by him under the rules of conduct prescribed by the courts.

These being well known to the Counsellor, and forgetting the professional position which he holds in the community in which he practices, he undertakes not only to terminate his relationship with his client, but uses the most indecorous, vulgar, indecent, uncultivated, and unrefined expressions, reflected in the letter transmitted to his client, and which are all strange to men of good taste and or fastidiousness.

We hold that the conduct of Counsellor Acolatse in the vulgar use of language employed in the letter sent by him to terminate his relations with his client was unbecoming the standard of propriety which should be maintained by

members of the legal profession. With the exhibition of such impropriety in his letter to his client, we wonder if it is safe to allow him to continue enjoying the privilege of legal practice and to manage the business of others in the capacity of a lawyer, especially since he has conducted himself similarly in the immediate past.

We feel that if his charge for rendering legal services on behalf of appellant was contingent upon the fact that appellant is alleged to have "money," this is in violation of the Rules of Court referred to, *supra*. His acts are, therefore, unwarranted and declared by us to be highly reprehensible. Therefore, he is fined in the sum of $100.00 to be paid on or before Monday, May 12, 1975. Failing such payment he shall be suspended until the fine is paid. He is further strongly warned that any repetition of similar behavior shall leave us with no alternative but to have him forever disbarred from the practice of law within the Republic of Liberia.

Count 8 of the bill of exceptions details certain payments to appellee.

> "That the said appellant in enumerating the several payments made by him to plaintiff/appellee, named a sum of One Thousand Five Hundred Dollars ($1,500.00), for which a check was issued by him in appellee's favor and which check, although endorsed and encashed by appellee, appellee contended that the said amount was not paid to him as a portion of his charges but was paid to him for him to give to Counsellor Desaline T. Harris to bribe Judge Tilman Dunbar with, in order that Judge Dunbar might send the case to Bassa for trial; and the said judge in summing up the payments made to plaintiff, did not include this amount, nor was it, like other amounts paid by appellant, deducted from the seven thousand dollars ($7,000.00) sued for by appellee."

Because we have decided to refer that portion of count eight, which relates to a devious transaction and the

alleged unprofessional conduct on the part of Judge Dunbar and Counsellor Acolatse, to the Ethics and Grievance Committee for an investigation, we have, therefore, withheld our comments thereon until such time as it is concluded and findings submitted to us for approval or disapproval.

Count 9 of the bill of exceptions recites the insufficiency of evidence to support the judgment rendered.

From a careful scrutiny of the record in this case, we must express our complete agreement with the views stated in this count of the bill of exceptions, inasmuch as there is no showing that a binding contract was entered into between appellant and appellee for the performance of certain duties and violations thereof. Therefore, a valid judgment could not be rendered compelling payment of an amount not agreed upon. Count nine of the bill is, therefore, sustained.

In view of the foregoing and because Counsellor Acolatse, without justifiable cause and without the consent of his client, withdrew from the case before he had fully performed the services required of him, he therefore loses all rights to further compensation for his services rendered. We find the judgment of the lower court requiring appellant to pay to appellee the sum of $3,710.00, together with six percent per annum with costs, to be erroneous. It is, therefore, reversed.

The Clerk of this Court is hereby ordered to send a mandate to the judge of the Debt Court for Montserrado County, with instruction that he resume jurisdiction over the cause of action and proceed to discharge appellant from payment of the sum stated in the judgment, with costs.

The Clerk is also ordered to send a mandate to the Ethics and Grievance Committee of Montserrado County, with instructions that its members immediately convene and inquire into the allegations contained in count 8 of the bill of exceptions as far as relates to a transfer of