Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hamon v. Falle, from the Royal Court of the Island of Jersey; delivered February 8th, 1879.

Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Plaintiff in this case is a master mariner holding a certificate from the Board of Trade. The Defendant was, when the action was brought, the president of the Jersey Mutual Insurance Society for Shipping, and is sued as the representative of that society. The society is, as its name imports, a mutual insurance society for shipping, and is governed by the rules which were put in as part of the evidence before the Court below, and are now before their Lordships. Some of those rules will have to be more particularly considered hereafter, but it is sufficient at present to state that the general course of business of the society seems to be that the different shipowners who become members of it underwrite each other's vessels in a certain proportion, and that the insurances effected are in the nature of time policies for one year.

The action is a peculiar one. The effect of the pleading in the nature of a declaration is as follows:—that the Plaintiff holding the position which has been already mentioned, and having been employed as master of certain specified vessels, and in particular of the "Dora," which then belonged to the late Monsr. Félix Briard, his services were retained by Mons. James Sebire, the proprietor of the ship "Ulysses"; that he

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was getting ready to take the command of that vessel when he found that the insurance society had intimated to Mons. Sebire that if the Plaintiff were to take command of her, the society would refuse to continue to insure her; that he then took certain steps in order to induce the society to reconsider their resolution, or to give him an opportunity of refuting the reasons they might have for it, but in vain; that by reason of this proceeding on the part of the society he had lost his employment, and that this arbitrary and vexatious conduct on the part of the society caused him considerable damage in depriving him of his employment, and consequently of the means of providing for and maintaining his family. And he prayed that the conduct of the society might be declared illegal, arbitrary, and vexatious, and that they might pay the damages claimed to the amount of 500*l*.

In the first instance, the society took the proceeding which is set out at pages 3 to 5 of the Record, which is partly in the nature of a demurrer; but also sets forth the resolutions of the committee under which the telegrams which had passed between them and Mons. Sebire were sent, and which were in fact the cause of the Plaintiff's non-engagement as master of the vessel. The effect of this pleading was to submit that there was no ground of action. The Court, however, considering that the course adopted by the society had caused considerable damage to Mons. Hamon in preventing him from following his profession as a master mariner; that the resolutions of the committee produced by the Defendant contained no *motif* or reason to justify the proceeding which the committee had thought fit to adopt; and that such a proceeding, if adopted—"*sans cause ou raison valable*"—without cause or valid reason, would be an arbitrary and vexatious act, that

would give a right of action to the person who was subject to it; decided that the society ought to suffer the consequences of its act, unless it furnished sufficient grounds or motives to justify its conduct. Leave was given to appeal to the full Court, the Court of greater number, but the Defendants have never availed themselves of that permission. Mr. Benjamin has, in argument, fairly admitted that the declaration must be taken to disclose a *primâ facie* cause of action; and that the only question is whether the plea or *prétention* which the Defendants filed under the last-mentioned order has been proved, and if proved constitutes a valid defence.

That "*prétention*" is to be found at page 6 of the Record. In substance it pleads that the committee of administration only took the course they did in consequence of the information which they had received from sources respectable in themselves and worthy of belief, and which in the opinion of the committee established that Mons. Hamon when in command of the ship "Dora," belonging to Messrs. Felix Briard and Co., had been guilty of and had given way to intemperance, and had conducted himself in such a way as not to deserve the confidence of his owners who had dismissed him from their service; that in those circumstances, the committee not being able to have confidence in Mons. Hamon, and thinking that an insurance was a purely voluntary act on their part, had decided not to expose the society to the risk of becoming responsible for the fate of a ship which would be placed under the command of a man whom they had reason to believe was addicted to a vice criminal in any case, but still more so in the case of a man holding the position of master of a vessel; that having taken that determination, the committee confined themselves to communicating to Mons. Sebire, without

letting him know in terms the information which they had received on the subject of Mons. Hamon, whom, so long as they could protect the interests of the society, they had no desire to injure. It further states that in support of their *prétention* the Defendants produced the letter from Mons. Briard, which is to be found in the evidence, and which they say was brought by Mons. Hamon to the office of the society only a few days before the date of the correspondence between Mons. Sebire and the committee, and they contend that that letter alone justifies fully the conduct of the society against Hamon, and that it was of a kind and of a nature to inspire doubt with reference to him and distrust of him, and that they cannot be bound to furnish legal proof of the conduct of Hamon whilst he had the command of the vessel "Dora," but that it sufficed that they should have reasonable grounds for refusing to place their interest at the risk of the conduct or acts of Hamon.

The effect of the defence thus pleaded is clearly that the Defendants acted in good faith and without any malice towards the Plaintiff, without any desire to injure him, and in the honest belief that the information they had received was sufficient to justify the course which they took. Their Lordships are of opinion that such a defence, if proved, is a sufficient answer to the *primâ facie* cause of action disclosed by the declaration. The finding of the Court that the act of the Defendants would be arbitrary and vexatious, and that the Defendants would be liable for damages unless they could show sufficient motives to justify what they did, points to that conclusion. Their Lordships further think that if the case is to be likened (as in the argument it has been) to an action for defamation it would fall within the rule thus laid down by Mr. Baron

Parke in the case of *Toogood* v. *Spyring* (1st Crompton, Meeson, and Roscoe, p. 93): "In general "an action lies for the malicious publication of "statements which are false in fact, and injurious to the character of another (within the "well-known limits as to verbal slander), and "the law considers such publication as malicious "unless it is fairly made by a person in the "discharge of some public or private duty, "whether legal or moral, or in the conduct of "his own affairs in matters where his interest "is concerned." In the present case their Lordships think that the representation made by the society to Sebire was clearly one made in the conduct of its own affairs and in matters in which their own interest was concerned.

It was argued, however, that the Defendants were not entitled to the benefit of this rule by reason of their non-observance of the rules by which the society is governed. The objection founded on the non-observance of the rules may be taken to be either that those rules created a positive duty on the part of the Defendants towards the Plaintiff, of which the non-observance of the rules was a breach, which in itself constituted a cause of action; or that the non-observance of the rules, and therefore the irregularity of the proceedings adopted by the society, were evidence of actual malice sufficient to deprive the Defendants of any defence which they might have on the ground of privilege.

It will be convenient now to deal with the question which has been thus raised upon the rules in either form. In their Lordships' opinion it is impossible to treat these rules as constituting anything in the nature of a contract between the society and the Plaintiff, or as imposing upon them in the actual circumstances of the case any positive duty towards him. If, therefore, what the Defendants did was not

otherwise actionable, a departure from the rules, even if the case were within them, unless shown to be malicious, would not make it actionable.

They do not, however, think that in this case the non-observance of the rules has been established. Those that are chiefly relied upon are the 53rd and the 37th in the earlier edition of the rules. The 53rd is: "That the owners of vessels "insured in this society are hereby required, "when they appoint masters to the command of "their vessels, to give notice thereof in writing "to the secretary within 48 hours, under a "penalty of 1s. per cent. on the amount "insured on said vessel." It is said that Sebire's notice that he was about to put the Plaintiff in command of his vessel was given under this rule, and that that necessarily implied that the appointment had been actually made, a fact which would bring the master within the operation of the other rule. Their Lordships are not prepared to put that construction upon the 53rd rule. They think that it may very well be taken to mean that when the owners, as in this case, are about to appoint a new master to the command of their vessel, they are to give notice of it to the secretary with a view to any objection being made by the society which it might be competent for them to make; and that even if the rule be taken to apply only to an actual appointment, the evidence fails to show that in this case there had been an actual and complete appointment of the Plaintiff as master of the "Ulysses" which on that construction of the rule would bring him within it. Again, whatever may be the construction to be put upon the 53rd rule, their Lordships do not think that in this case the master can in any way be brought within the operation of the 37th rule so as to make it imperative upon the society to proceed under its provisions. That rule says:—"That masters who

" by habitual intemperance may endanger the " lives or property under their charge, shall also " be considered unfit to command any vessel " insured in this society; and whenever such " cases are reported, and after due inquiry " found correct, they will be submitted " to a full committee who will have power " to dismiss or suspend any master so addicted " for no less a period than six months after " his arrival in a port of discharge in the " United Kingdom; and no master dismissed " shall continue to sail in any vessel insured " in this society during the period of such " suspension in any capacity whatever." No doubt if a master has been actually appointed to a vessel, and the society seeks to subject him to the consequences, either of absolute dismissal or of suspension for a period of not less than six months, so as to make it impossible for him to continue to sail in any vessel insured by the society during the period of suspension in any capacity whatever,—if they proceed against him with the view of affecting him with these penal consequences, the rule may be applicable. But in this case they did not act or profess to act under this rule, and supposing that what they have done in this case be justifiable but for the rule, the non-observance of the rule does not appear to their Lordships in any degree to make it the less justifiable; or to afford any proof, or indeed evidence of actual malice in the transaction.

Their Lordships having stated their view of the issue which went down to the Principal Court to be tried between the parties, have now to consider whether that Court was justified in finding that the plea or *prétention* was substantially proved. In their Lordships' opinion it is in substance proved by the evidence of Mons. Briard alone. It appears clear by the evidence of

that witness, who must be assumed to have been called by the Plaintiff, since his examination in chief is by the Plaintiff, that there had been some reports of intemperance which led to the inquiry to which Mons. Briard deposes as having taken place on the arrival of the vessel at Liverpool. Mons. Briard states that he examined all the crew on that occasion, and that all except one supported the charges of drunkenness, both in Java and on the voyage between Java and the Cape of Good Hope or St. Helena. There seems to have been no suggestion of intemperance after St. Helena. Mons. Briard's evidence seems also to support the allegation that in consequence of that inquiry Mons. Hamon did cease to be master of the vessel; and it appears further by the letter of Mons. Briard set out at page 52, the contents of which seem upon the evidence to have been known to the Plaintiff, that he remained out of employment from that time up to the date of the letter. These circumstances were given in evidence to shew that Mons. Briard had grounds for the statements he made to the society, though the more material question is, whether the company *bonâ fide* believed on reasonable grounds the truth of those statements. Mons. Briard's letter seems to have been written under these circumstances: When Mons. Sebire's letter of the 22nd Sepember came to the society, stating, as they say, that he was about to appoint the Plaintiff to the command of the "Ulysses," they telegraphed to Mons. Sebire the first resolution of the committee objecting to the appointment; but it appears that before that there had been a verbal communication between the secretary of the society and Mons. Briard. That was on Friday the 25th. On the following Monday the Plaintiff applied to Mons. Briard evidently with the intention to get him to say what he could for him, and Mons. Briard then

wrote: "Captain Hamon has just applied to me for "a reference in writing respecting his conduct "whilst in charge of the 'Dora.' I can only "repeat what I stated to Mr. Neel, the secretary, "last Friday, that he had indulged in intoxi- "cating liquors whilst at Java and on the "homeward passage, but that after passing the "Cape he had all liquor thrown overboard. He "has never met with any accident to a vessel "under his command that I am aware of, and "I think the time he has been out of em- "ployment will have been a lesson for him for "the future." Mons. Briard seems to have written with the intention of doing the best he could for the Plaintiff in order to get the committee to reconsider their resolution of the 25th September. It is not very clearly proved when that letter came before the committee, or whether it was before them when they came to the resolution of the same date, Monday the 28th, refusing to alter the former resolution; but that circumstance is not, in their Lordships' view, very material to the issue whether the Defendants have established the broad ground that they did act *bonâ fide* and upon information previously received which they had reason to believe to be true. Certainly the letter, if it had been before them, would not have qualified that belief, because it contains an admission of the supposed intoxication on the voyage home; whilst it puts to the committee that Mons. Hamon having been so long out of employment, might reasonably be supposed to have resolved to conduct himself better for the future.

Their Lordships being of opinion that the evidence of Mons. Briard alone is sufficient to establish the substantial part of the plea, and to support the finding of the Court, are glad to feel themselves relieved from the necessity of expressing any opinion whether the charge of

intoxication, upon which there is conflicting evidence, has been actually and in point of fact brought home to the Plaintiff; nor do they understand that the Court of Jersey has found more than that the Defendants had established that they had sufficient motives and reasons to justify their conduct, such motives and reasons being the information they had received, and a *bonâ fide* belief in the truth of it. Such a finding is obviously far less prejudicial to Mons. Hamon's character than one that the habits of intemperance imputed to him had been completely and conclusively established against him as upon a plea of justification. On the other hand, this consideration is sufficient to dispose of the applications which have been made to their Lordships to grant further inquiry. The question to be tried was, whether the Defendants were justified in what they did, and that question has on sufficient evidence been determined in their favour. Their Lordships would not be justified in re-opening the case upon any of the grounds which have been taken by the Plaintiff, in order to try at the expense of the Defendants a question which is not strictly relevant to the real issue between the parties.

Their Lordships must advise Her Majesty to dismiss the appeal, and to affirm the judgment of the Jersey Court. The Plaintiff having been admitted to appeal *in formâ pauperis*, there will of course be no order as to costs.