Privy Council Appeal No. 136 *of* 1923.

George Stanley Thompson - - - - - - - *Appellant*

v.

The New South Wales Branch of the British Medical Association - *Respondents.*

FROM

THE SUPREME COURT OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH MARCH, 1924.

Present at the Hearing:

LORD BUCKMASTER.
LORD ATKINSON.
LORD WRENBURY.
LORD DARLING.

[*Delivered by* LORD ATKINSON.]

This is an appeal from a judgment of the Full Court of the Supreme Court of New South Wales, dated the 7th of May, 1923, by which a verdict of a jury in favour of the appellant for the sum of £2,000 damages and the judgment entered up thereon dated 15th December, 1922, were set aside and judgment entered for the respondents.

One of the difficulties in the case is to ascertain clearly and distinctly in respect of what cause or causes of action this large sum was awarded. It is in the 52nd paragraph of the appellant's case stated that there were five counts in the plaintiff's statement of claim, that in respect of the first the jury awarded £250, in respect of the second £750, in respect of the third £300, in respect of the fourth £350, and of the fifth £350, making £2,000 in all, but when one turns to the statement of claim which does not bear the signature of any professional man, it covers four closely printed pages of the record, and is involved, confused, inflated, and only made intelligible by a close perusal. It will, in their Lordships'

view, conduce to clearness, and to a distinct appreciation of the appellant's alleged causes of action if the facts out of which these causes of action are said to have arisen be first stated with reasonable brevity.

The appellant is a medical man duly qualified. He took his diploma in 1906, became a fellow of the English College of Surgeons in 1911, subsequently went to South Africa and practised there till 1915, when he went to Australia, practised for a short time in Victoria and then in Sydney. He was a member of the British Medical Association in Great Britain, and its branches in South Africa and Victoria. On arriving in Sydney, New South Wales, he became automatically a member of the local branch of the Medical Association. He has made that Association defendants and presses against it his alleged right to receive from it £2,000 damages. On his becoming a member of this branch he received a copy of its rules.

One would naturally expect that having previously been a member of the parent Association—the British Medical Association, and also of the two branches in South Africa and Victoria—he would, presumably, be well acquainted with their respective rules, and especially with the rules of the branch which he has made defendant, and would have objected to anything in them of which he disapproved. Until this action commenced he apparently found no fault with these rules. He, it would seem, then discovered that they contained agreements in restraint of trade and many oppressive if not illegal provisions.

It is thus essential at the initial stage of this appeal to refer to the Memorandum and Articles of Association in order to see what were the purposes the Association was designed to subserve, what objects to effect, what interest to foster and promote, what honourable practices in the medical profession it desired to encourage, what malpractices to suppress, and lastly what were the methods and machinery by which it has sought to effect these desirable ends. The third section of the Memorandum of Association sets forth in the following words the general objects for which the Association was established :—

"(1) The promotion, either in conjunction with the British Medical Association or other similar body or bodies or otherwise, of Medical and the Allied Sciences and the maintenance of honour and interest of the medical profession by the aid of all or any of the following" :—

Under five subheads are then enumerated and described the methods by which the above-mentioned objects might be effected. They are : "(*a*) Periodical meetings of the members of the Association and of the medical profession generally in different parts of this Colony (*i.e.*, the Colony of New South Wales).

"(*b*) The publication of such information as may be thought desirable in the form of a periodical journal which shall be the journal of the Association.

"(*c*) The occasional publication of transactions and other matters.

"(*d*) The grant of money out of the funds of the Association for the promotion of the medical and allied sciences in such manner as may from time to time be determined on.

"(*e*) And such other lawful things as are incidental or conducive to the attainment of the above objects."

In the succeeding 15 subsections of this section other methods are mentioned. It will be only necessary to refer to a few of them. Subsection 2, which runs: "To form a bond of union among the members of the profession and a medium through which their opinions can be easily ascertained or expressed. (4) To collect and circulate statistics and other information relating to the medical or allied sciences or the medical profession. (5) To advance the general and social interests of the profession. (6) To promote fair and honourable practice, to suppress malpractice, to settle disputed points of practice, and to decide all questions of professional usage and courtesy." These are all legal, worthy, and, indeed, humane objects. They are to be furthered by the Association, since they aimed at raising the *moral* of the profession, the keeping of it abreast of the medical knowledge derived from scientific medical research, as well as the promoting of peace, courtesy and goodwill amongst the members of the Association. It would be a great mistake to suppose that if the Association succeeded in their efforts members or the medical profession alone would reap the entire benefit. The community which supply the sick, injured and ailing ones whom their members, of the profession, prescribe for and treat are also benefited.

It is obvious that it is essential, if the standard of knowledge and conduct which the Association aim at establishing was to be kept up, that means should be provided of getting rid of a member who violated their rules, or whose conduct offended against the honour or interests or repute of the profession. Accordingly it is provided in Rule 34 of the Articles of Association that any member may be expelled from the Association by a resolution of Council if carried by three-fourths of the members present, subject to confirmation by a general meeting, and that he shall thereupon cease to be a member. Twenty-eight days' notice of the intention to propose such a resolution must be given to any member affected.

The 35th Article provides that: "any member of the Association who shall have been convicted in a court of justice of any criminal offence, or whose name shall have been erased from the Medical Register aforesaid on account of infamous conduct in any professional respect, shall *ipso facto* cease to be a member of the Association, but any such member shall be eligible for re-election in the event of his name being restored to the Medical Register." The Association made, as they were entitled to do, regulations providing for the mode and manner in which the powers conferred upon them by the Memorandum of Association and Articles of Association shall be exercised.

At page 28, under the heading of Intra-Professional Restrictions, Rules Nos. 1 and 2 are to be found, which run thus; "(1) Where any member shall have been expelled he shall not

be met in consultation or accorded professional recognition in any other form by any member until it shall have been otherwise decided by the Council."

Rule No. 2 runs as follows : " Where any medical practitioner shall have been declared by the Council (*a*) To have been guilty of conduct detrimental to the honour and interests of the profession and calculated to bring the profession into disrepute, or (*b*) to have grossly contravened the custom of the medical profession, or (*c*) to have acted detrimentally to the interests of the Association or omitted to comply with any of its rules or resolutions ; no member shall consult with or extend professional recognition in any other form to such practitioner until it shall have been otherwise decided by the Council." During the argument it was persistently urged that this regulation operated in general restraint of trade and was therefore void. That involves a misuse of language. Even if it did so operate it would not be void at common law but merely unenforceable at law, while under Sections 3 and 4 of the Trades Union Act of 1871 it would be valid at law but not directly enforceable, *Joseph Evans and Co.* v. *Heathcote*, [1918] 1 K.B. 418. But the more important consideration is this, that this Regulation was framed long before the appellant became a member. It was not specially directed at him. The respondents have not attempted to enforce it in any way whatever. It is not designed to coerce. It can only coerce —if coerce at all—members of the Association. People who never were members, or, like Dr. Thompson, were members, but have ceased to be so, may snap their fingers at the Association, and as far as that body is concerned meet in consultation with anyone they please. The object of the rule is, in their Lordships' view, not to penalise or impoverish or injure Dr. Thompson, or any former member, but solely to keep up the discipline of and *moral* of the members of the Association to protect and promote its interests, though indirectly and as an entirely undesigned result some injury may incidentally be sustained by an expelled member in the practice of his profession. The difference between two such intentions is well established in trade competition. A trader may deliberately with the object of securing and developing his trade, by advertisement, lowering of prices or such like means, do something which may result in injuring the trade of a rival trader, but if that be not the designed and intended results of the first trader's action but only an undesigned incidental consequence of it, the first trader is blameless. The well-known case of *The Mogul Steamship Company*, [1892] A.C. 25, establishes this distinctly.

Lord Parker, in delivering judgment in the case of *The Attorney-General of the Commonwealth of Australia* v. *Adelaide Steamship Company* [1913] A.C. 781, laid down the law on this point with his usual clearness and precision. As to trading contracts in alleged restraint of trade, at p. 797 of the report, he said :—

> " Further, it must be remembered that the question whether a restraint of trade is reasonable either in the interest of the parties or in the interest

of the public is a question for the Court to be determined after construing the contract and considering the circumstances existing when it was made. It is really a question of public policy and not a question of fact upon which evidence of the actual or probable consequences if the contract be carried into effect is admissible."

In the present case the contract, if made at all between Dr. Thompson and the Association, must have been made when he was admitted a member of it.

Lord Parker proceeds—

"It is only necessary to add that no contract was ever an offence at common law merely because it was in restraint of trade. The parties to such a contract, even if unenforceable, were always at liberty to act on it in the manner agreed. Similarly combinations, not amounting to contracts in restraint of trade, were never unlawful at common law. To make any such contract or combination unlawful it must amount to a criminal conspiracy, and the essence of a criminal conspiracy is a contract or combination to do something unlawful or something lawful by unlawful means. The right of the individual to carry on his trade or business in the manner he considers best in his own interests involves the right of combining with others in a common course of action, provided such common course of action is undertaken with a single view to the interests of the combining parties and not with a view to injure others." (*The Mogul Steamship* Case, [1892] A.C. 25.)

Their Lordships can see no reason why the principle of this last case should not apply as between an organized Medical Association, such as the defendant Association, with its aims, objects and duties, and a former member who has been expelled from its ranks and whose practice may be injured by reason of that expulsion.

The contract between the appellant and the Association was entered into when he became a member of it. By that act he must be held to have agreed to be bound by its rules and regulations and to observe the provisions of the Memorandum of Association, and the Articles of Association and Regulations.

It is not quite clear whether his counsel contended that the special provisions of the regulations entitled "Intra-Professional Restrictions" amounted by themselves to a contract in restraint of trade, and were severable from the remainder of the contract, or whether they by their presence in the contract vitiated it entirely and made it, taken as a whole, a contract in restraint of trade. Both the constructions contended for are, in their Lordships' view, erroneous. Their Lordships think the contract entered into by the appellant and the Association is, having regard to the authorities, valid and binding.

Turning now to the lengthy, involved and almost incomprehensible pleadings, it would almost appear to their Lordships that whoever drew them must have endeavoured to introduce into them all the averments necessary to bring the case within the authorities, in utter disregard of the fact that no evidence was available to sustain these averments.

The learned Chief Justice has condensed each of the five counts in the statement of claim and they are still further

condensed in the appellant's case, paragraph 45. The two condensations practically agree.

In the first count of the declaration the plaintiff alleges that the defendant Association maliciously and unjustifiably conspired and combined with certain of its members whose names were unknown to him to do certain things. These things were (1) to pass a resolution for his expulsion, (2) to expel him, (3) to induce, persuade and procure medical practitioners members of the Association to refuse to meet him in consultation or to accord him professional recognition in any other form, (4) to intimidate, coerce and unduly influence such practitioners into refusing to meet him in consultation or to accord him professional recognition in any other form, and (5) to seriously prejudice the plaintiff and injure his practice. The count goes on to allege that each of these objects was carried out in pursuance of this conspiracy and combination, as a consequence of which the plaintiff suffered damage.

The second count avers, as a fact, that the plaintiff was expelled from the Association, but does not set forth any unlawfulness or wrongdoing in the manner whereby this was brought about, and then proceeds to allege that the defendants "with undue influence wrongfully, maliciously and unjustifiably induced and procured large numbers of medical practitioners practising in this State members of the Association (including certain names specially mentioned) to refuse to meet the plaintiff in consultation or to accord him professional recognition in any other form" whereby he suffered damage.

The plaintiff was compelled to deliver particulars of the causes of action set forth in each of these counts as follows :—

With regard to the intimidation, coercion and undue influence alleged to have been practised by the defendant Association particulars were delivered to the defendants. Under the first count these were (1) that the defendants "procured and induced certain other doctors practising in New South Wales to refuse to meet the plaintiff in consultation or to accord him professional recognition in any shape by the threat contained in the Intra-Professional Restriction Regulations of the defendants, and that if they did so they would subject themselves to the penalties laid down in the said Regulations," (2) "that the defendants threatened all doctors who met the plaintiff in consultation or accorded him professional recognition in any other form with expulsion or some other punishment if they acted in breach of the aforesaid regulation."

In the particulars delivered under the second count it is set out that "the unlawful threats, intimidation and coercion and undue influence charged are the threats, intimidation and coercion exercised by the Intra-Professional Restriction Regulations."

No evidence was adduced at the trial of the actual making of any such last-mentioned threats, so that the case under the first count, so far as it claims damages for the alleged intimidation, coercion and undue influence, rests solely upon what is spoken of in No. 1 of the particulars as "the threat contained in the Intra-Professional Restriction Regulations of the defendants."

The appellant's case apparently is and indeed it was so urged before their Lordships that because upon the expulsion of Dr. Thompson the Intra-Professional Regulations may textually apply to him though they were framed before he ever became a member, are not specifically directed to him, and have never in any way been, by the Association, put into operation or enforced against him, their very existence amounts to proof of intimidation, coercion, etc., and to undue influence and unlawful threats exercised and made by the Association, by which they procured medical practitioners whether members of the Association or not to refuse to meet the appellant in consultation, or to accord to him professional recognition. This reasoning, having regard to what has already been pointed out in reference to these regulations, is, in their Lordships' view, thoroughly fallacious. They decline to act upon it.

In the third count the publication of a libel on the appellant is complained of, consisting of the circulation of the resolution of the Committee of the Association recommending the appellant's expulsion.

In the fourth count the publication complained of is the resolution of the general meeting confirming the resolution of the Committee touching the appellant's expulsion.

And the fifth count complains of slander published at the general meeting by the announcement of the result of the vote of expulsion. In addition to the claim of £5,000 damages, the plaintiff claims an injunction to restrain the Association from expelling the plaintiff and depriving him of his right of property as member, and from using unlawful threats and intimidation and other unlawful means to induce the members of the Association not to hold consultation with the plaintiff or give him professional recognition. The defendants on the 11th August, 1922, filed a plea of not guilty. This plea, according to the practice of the Supreme Court, puts in issue all the matters which would have been put in issue under the Common Law Procedure Act by the same plea. The application for an injunction was never ruled upon. It was at the termination of the trial adjourned by Mr. Justice James, the trial judge, to a day to be fixed, which up to the present day has never been fixed.

At the trial it was not suggested, much less proved, that the Council of the Association which investigated the complaint or charge against the appellant was not properly constituted, and therefore not competent legally to deal with the complaint by reason of some of the members of the Council being so interested or prejudiced or so hostile to the appellant as to make it neither just, right nor legal that they should take part in an investigation, which was in itself of a judicial or quasi-judicial character. Similar observations apply to the general meeting which confirmed the resolution of the Council.

The whole case before the Court at the trial was conducted on the assumption that these two bodies had jurisdiction to

investigate, in the manner prescribed by the rules, the charge made against the appellant and to resolve to expel him.

The "intimidation" in the first and second counts of the statement of claim mentioned was sought to be proved by the assumed fact that the expulsion being valid, necessarily subjected the appellant to the operation of the Intra-Professional Restrictions.

Their Lordships cannot possibly hold that the mere existence of these restrictions necessarily amounted to proof of the "intimidation" complained of, and this is, of course, clear that an expulsion held to be invalid could not subject the appellant to the operation of these restrictions, and therefore that there could not, in such a case, be any "intimidation." It was with some hardihood resolutely contended on behalf of the appellant that however gross, shameful or inhuman the conduct of a member of the Association in his practice might be, such, for instance, as if he, while drunk, should attend a woman in the pains of childbirth, he could not be expelled from the Association by reason of the existence of this restriction. Their Lordships do not at all agree that these restrictions would necessarily bring about such a disastrous result as that. In their view it is clear that if the Association in such a case expelled the delinquent solely with the intent, and for the purpose of, in the interest of the Association, relieving it of the disgrace of such a man's membership, it could validly do so.

The argument urged on behalf of the appellant on this point leaves one, however, in a somewhat puzzled state of mind. Its drift and meaning must be that the expulsion of the appellant was invalid at law. If so, it was a nullity, and could be disregarded and an injunction restraining them from expelling him would be his proper remedy, but at the trial many of the grievances of which the appellant complained were based upon the validity of the expulsion. If the Council which passed the resolution expelling the appellant was validly constituted, as it is apparently admitted to have been, it must be admitted that the appellant's acts and conduct furnished ample evidence upon which such a body acting honestly, justly and reasonably might come to the conclusion at which it arrived. The appellant was consulted by a Mrs. Farr, alleged to have been suffering for many years from a malady called "folie circulaire," or recurrent insanity. He thought she was at the time of her interview fully sane, though she was still under control. He only saw her on two occasions, namely, the 6th and 7th October, 1920. He thought that the treatment and control to which she was subjected as an insane person was unjust, illegal and improper. The lady told him that she was under the care of Dr. Davidson, an eminent alienist, who lives in Sydney and is a member of the defendant Association. The appellant communicated with Dr. Davidson by telephone stating something of what Mrs. Farr had told him and asked for a consultation. Dr. Davidson offered to inform him of the facts of Mrs. Farr's case. The appellant

asked for an undertaking from Dr. Davidson that Mrs. Farr should not be taken away to any asylum in the meanwhile. Dr. Davidson refused to give this undertaking, and the lady was in fact removed next day to Saint Margaret's Asylum. The appellant immediately started a public agitation on the subject of this lady's treatment. In that he might have been quite right. What he had not a right to do, but what in fact he did, was to make, by insinuation, the grossest charges against his brother professionals connected with the treatment of lunatics, and the control of lunatic asylums. The learned Chief Justice delivering the unanimous judgment of the Supreme Court *en banc* describes these accusations thus :—

> "Serious imputations had been cast by the plaintiff publicly upon the conduct of members of the medical profession in regard to their treatment of a mental patient founded upon statements of that patient herself, which, if proved, would amply warrant their own expulsion from the Association and their condemnation by any right-thinking man."

Their Lordships quite concur in opinion with the learned Chief Justice as to the nature and effect of these representations. The appellant in the notice of particulars served on his behalf deliberately states that these charges, which he had to admit he made, were frivolous in their nature. Their Lordships think on the contrary they were grossly calumnious charges.

The excuse the appellant gave for his action was that he was irritated by an article published in a paper named the "Medical Gazette," in very condemnatory terms. This paper was no doubt recognised as the official organ of the Association. But there was not a particle of legal evidence to show that it was owned or conducted by the Association, or that the latter body was any party to, or in any way responsible for, the writing or publication of this article. There was direct evidence to the contrary. Its columns were open to the Association or its members, but only for the expression of their views on subjects of interest to the medical profession.

On the 9th August, 1921, the publication in the public press of the charges hereinbefore mentioned made by the appellant was, according to the established practice, brought before, and considered by the Ethics Committee of the Association. A resolution was there passed that a special meeting of the Council should be called on the 16th August, 1921, for the consideration of the appellant's expulsion. This meeting was adjourned till the 27th September, 1921, for which date a special meeting of the Council was called.

The notice convening the meeting ran thus :—

"Notice is hereby given you that a Special Meeting of the Council of the New South Wales Branch of the British Medical Association will be held at the rooms of the Association, Number 30-34, Elizabeth Street, Sydney, on Tuesday, the 27th September, 1921, at 8.15 p.m., when the subjoined resolution will be proposed

for the consideration of the Council in pursuance of Article 34 of the Articles of Association :—

" RESOLUTION.

" That members of the Council of the New South Wales Branch of the British Medical Association here assembled resolve that Dr. G. S. Thompson has been guilty of conduct derogatory to the honour and integrity of the medical profession in this State and calculated to bring the same into public contempt and injurious to the welfare and interests of this Branch and that accordingly he be expelled from this Branch of the Association."

On the 16th August, 1921, a notice was given to the members of the Association that this meeting was about to be held, together with a long and full enumeration and description of the offences and conduct which the appellant would be called upon to explain.

The general meeting of the Association, which had been duly convened, was held on the 18th November, 1921, when the resolution passed by the Council on the 27th September, 1921, was affirmed. It ran : " That Dr. G. S. Thompson has been guilty of conduct derogatory to the honour and integrity of the medical profession of this State, and calculated to bring the same into public contempt and injurious to the welfare and interests of this Branch, and accordingly he be expelled from this Branch of the Association."

The appellant was present at this meeting and was afforded the fullest opportunity of defending himself, and treated with great indulgence and consideration.

On the 25th November, 1921, a circular was sent by the Secretary of the Association to the members containing, *inter alia*, the following passages :—

> " At the Extraordinary Meeting of the Branch, held 18th November, 1921, the following resolution passed by the Council, 27th September, 1921, was confirmed, namely :—
>
> > " ' That Dr. G. S. Thompson has been guilty of conduct derogatory to the honour and integrity of the medical profession of this State, and calculated to bring the same into public contempt and injurious to the welfare and interests of this Branch, and accordingly he be expelled from this Branch of the Association.' "

In their Lordships' view if any body rightly convened and properly composed is burdened with the discharge of some judicial or quasi-judicial duty affecting the rights, liberties, or properties of a subject, makes, as the result of a just and authorized form of procedure, a decision it has jurisdiction to make, that decision if legal evidence be given in the course of the proceeding adequate to sustain it, cannot in the absence of some fundamental error be impeached or set aside, save upon the ground that this body was interested, or biassed by corruption or otherwise, or influenced by malice in deciding as it did decide. This of course does not apply to appeals, or to cases where the finding of a jury is set aside

as against the weight of evidence. In the present case there is not a shred of evidence of any of these things. There is no legal evidence to show that both the Council and the general meeting did not consider and decide the matter of the appellant's expulsion honestly and fairly, uninfluenced by either fear or favour.

Indeed the only evidence adduced at the trial to show that the members of the Association or any of them were in the course they took actuated by interest or bias or hostile feelings towards the appellant was the following. The appellant swore that Dr. Todd, the Secretary of the Association, in a conversation he had with the appellant, told the latter "that the profession had got their knife into him (the appellant) for the action he (the appellant) took in Chidley's case." It is to be observed that it is the entire profession, not merely the Association or any of its members in particular who, according to the appellant, were said to have got the knife into him. Dr. Todd was examined as a witness at the trial. He was asked in cross-examination if he had ever made to the appellant this statement and his answer was that he had no recollection of ever having done so. The jury were, however, at liberty to accept the appellant's evidence and their verdict shows that they did accept it. But it is obvious that the statement, made behind the backs of the members of the Association, was no evidence against them or any of them, no proof of the existence among them or any of them of hostile feelings towards the appellant or of a desire to injure him, because no proof was given that the Secretary was the authorized agent of the Association or any of its members to make a communication such as this on their behalf. It would be little less than childish to suppose that the enmity of an employer against a particular individual can be established simply by proving that the employer's agent or servant stated behind his employer's back that the latter entertained those feelings, without showing that the servant or agent had express or implied authority to speak on this matter on his employer's behalf. There is another matter, however, which their Lordships think they are bound to refer to. Dr. Davidson had some communications with the appellant. The appellant has made some allegations against him and insinuated that his conduct was rather unscrupulous. These matters are set forth in the eighth paragraph of his case. No evidence was given to sustain them. Dr. Davidson fortunately did not form one of the Council which met on the 27th September 1921, and passed the resolution that Dr. Thompson should be expelled. But he did form a member of the Councils which met on the following dates, the 22nd March 1921, 16th August 1921, 8th November 1921, and also the meeting of the Ethical Council held on 11th October 1921. The consideration of the conduct of Dr. Thompson and the propriety of his expulsion and of the procedure to be adopted on the investigation of his alleged misconduct were, at each of these meetings, more or less under consideration and discussion.

The Councils were on each of these occasions acting in this matter of Dr. Thompson's possible expulsion in a judicial or quasi-judicial character. Action of that character should be above

suspicion. A person having such duties to discharge disqualifies himself from performing them, vitiates the composition of the body of which he forms part, and renders their decision illegal and void, if he has a pecuniary interest in the decision he is about to give, or is biassed to such an extent as to render him other than an impartial judge. *Leeson* v. *General Council of Medical Education*, 43 C.D. 366, 384.

No doubt no legal evidence was produced at the trial of this case to show that Dr. Davidson had such a pecuniary interest in any decision he might be called upon to make, or was biassed to such an extent as to make him other than an impartial judge or disqualify him from acting on those Councils he attended; but his relations with Dr. Thompson were such, and the insinuations the latter made against him were so grave, that a suspicion might well arise, though unfounded and unjust, that he was prejudiced against the appellant. It is because of the possibility of the existence of such a suspicion that their Lordships cannot refrain from expressing their great regret that Dr. Davidson did not disconnect himself with every branch of, and step in, theproceedings between the Association and the appellant touching the latter's alleged misconduct or consequent expulsion. It is quite possible that Dr. Davidson acted as he did not from any improper motive or with any improper object, but from mere thoughtlessness. But in their Lordships' view persons called upon to discharge judicial or quasi-judicial duties can never have it too often impressed upon them how undesirable it is that they should attempt to discharge those duties under conditions which throw suspicion, however undeservedly, on their motives and action.

It only remains to consider the two counts framed for libel and one for slander, Nos. 3, 4, and 5. Particulars of these causes of action have been delivered by the appellant.

The libel relied on in the third count is alleged to consist of the circular dated the 5th November, 1921, sent out by the defendant Association, containing the terms of the resolution passed by the Council.

This was the notice convening the general meeting of the Association to consider whether, as required by Article 34, the resolution of the Council should or should not be confirmed. It sets out what that resolution was, and naturally and properly it informs the members that the business to be transacted by the general meeting was to determine whether or not this resolution should be so confirmed. There is nothing in this notice of the nature of an accusation against the appellant, nor is there any averment that the statements touching his conduct mentioned in the resolutions or any one of them are or is true. The fourth count bases appellant's cause of action on a circular alleged to have been sent out by the Association, not only to its own members, but to branches of the Medical Association in all the Australian States. The answer to this last statement is that at the trial no evidence was produced to prove that any

circular or statement as to the fact of expulsion of the appellant was ever communicated to anyone, by the Secretary of the Association or by anyone acting on its behalf, to any person or persons other than its members. To these latter persons a circular was sent by the Secretary, which ran as follows :—

> " At the Extraordinary Meeting of the Branch, held 18th November, 1921, the following resolution passed by the Council, 27th September, 1921, was confirmed namely :—
>
> > " ' That Dr. G. S. Thompson has been guilty of conduct derogatory to the honour and integrity of the medical profession of this State, and calculated to bring the same into public contempt and injurious to the welfare and interests of this Branch ; and accordingly he be expelled from this Branch of the Association.' "

The slander complained of in count No. 5 consists, according to the particulars of the announcement made at the meeting of the Council of the 18th November, 1921, of the carrying of the resolution. In the particulars the appellant states he does not know the officer who made the announcement or the words of the announcement or the names of the members present. The respondents did not give any evidence supporting this count at the trial. It is possible that the result of the poll was announced at this meeting, or the statement made that the resolution proposed was carried. No definite and specific evidence was given to establish the cause of action relied upon. It is quite obvious, however, that the publications relied on in these three counts were made on privileged occasions. The Association had obviously an interest and a moral, if not legal, duty to communicate to its members the information that the resolution to expel the appellant had been carried, and the members had a corresponding interest in receiving the information. The same principle applies to the communications to members mentioned in the fourth count. No evidence was given of any communications having been made to persons other than members.

On the 27th September the appellant appeared at the meeting convened for that day. The President read over to him the notice convening the meeting and the charges preferred against him. He, the appellant, desired to have a personal friend of his, a Mr. Parkinson, with him and also a stenographer. This request was ultimately complied with. The appeal was fully heard. He spoke, he admitted, for about an hour, and ultimately the above-mentioned resolution was passed by a majority of 15 to 1. The general meeting was duly convened by notice under Article 34 for the purpose of considering the resolution passed by the Council. The appellant was again fully heard and the resolution of the Council was confirmed. Everything was done formally and in due course according to the provisions of the Articles of Association and of the rules and orders of the Association. The appellant relies upon the count in slander, as if the allegations in it were proved, which they were not. That being so, in their Lordships' view the presumption of implied malice

is rebutted and no legal evidence was given during the course of the trial sufficient to prove that the respondents were actuated by expressed malice in the publication of any of the matters in these three counts mentioned. Their Lordships are of opinion that the appeal fails on every ground and must be dismissed, and that the appellant must pay the costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

GEORGE STANLEY THOMPSON

v.

THE NEW SOUTH WALES BRANCH OF THE BRITISH MEDICAL ASSOCIATION.

DELIVERED BY LORD ATKINSON.

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