Privy Council Appeal No. 24 of 1969

Henry James Sloan – – – – – – – *Appellant*

v.

General Medical Council – – – – – – *Respondent*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH APRIL 1970

Present at the Hearing:
LORD HODSON
LORD GUEST
LORD DONOVAN

[*Delivered by* LORD GUEST]

This appeal is from a determination of the Disciplinary Committee of the General Medical Council made on 25th July 1969 whereby the Committee adjudged the appellant to have been guilty of infamous conduct in a professional respect in relation to the facts proved against him and directed the appellant's name to be erased from the Medical Register.

On 24th and 25th July 1969 the Committee held an inquiry into the following charge against the appellant.

> " That, being registered under the Medical Acts, (1) (*a*) During the month of June, 1967, when Miss Isabel Patricia Hamilton, then of 38 Tower Road, Newquay, Cornwall, consulted you with a view to the termination of her pregnancy, on two occasions you prescribed tablets at a fee of 10s. 6d. on each occasion, and on five or six further occasions you administered injections at a fee of 10s. 6d. on each occasion, and you represented to her that the purpose of the tablets and injections was to procure a miscarriage;
>
> (*b*) On a date about the middle of August, 1967, you accepted from Miss Hamilton the sum of £50 in consideration of your performing, or arranging for some other person to perform, an operation for the termination of pregnancy; and you subsequently administered a general anaesthetic to Miss Hamilton, and on her recovering you represented to her that such an operation had been performed;
>
> (2) (*a*) During the month of June or July, 1967, when Miss Hilary Lorraine Sargent (now Mrs. Smith) then of Zelzah Cottage, First Tower, St. Helier, Jersey, consulted you with a view to the termination of her pregnancy, on one occasion you prescribed tablets at a fee of 10s. 6d., on another occasion you advised a course of injections, and charged a fee of 10s. 6d., and on about five occasions you subsequently administered injections, and you represented to her that the purpose of the tablets and injections was to procure a miscarriage.
>
> (*b*) On August 26th, 1967, you accepted from Miss Sargent the sum of £60 in consideration of your performing, or arranging for some other person to perform, an operation for the termination of

pregnancy; and you subsequently administered a general anaesthetic to Miss Sargent and on her recovering you represented to her that such an operation had been performed.

(3) (*a*) During the months of June and July, 1967, when Mrs. Vera Mary Lynch (then known as Vera Fitzpatrick) of 17a Clarendon Road, St. Helier, Jersey, consulted you with a view to the termination of pregnancy, on at least ten occasions you prescribed tablets or administered injections at a fee of 12s. 6d. on each occasion, and you represented to her that the purpose of the tablets and injections was to procure a miscarriage;

(*b*) During the period aforesaid you purported to arrange for a test of the urine of Mrs. Lynch and subsequently informed her that she was definitely pregnant, whereas in fact she was not pregnant; ' And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect '."

At the outset of the inquiry after the charge had been read the appellant's counsel took an objection under Rule 15 (2) of the General Medical Council Disciplinary Committee (Procedure) Rules 1958. These objections were—

" (*a*) That the charges do not set out any offence in law, nor, on the face of them, any deviation from accepted medical practice or etiquette which could come within the ambit of infamous professional conduct;

(*b*) That the details of the charges do not contain the allegation that the Appellant carried out the conduct alleged against him in Jersey and that therefore there was nothing in the charges to establish jurisdiction and the law applicable;

(*c*) That in so far as the law of Jersey was applicable, this would have to be strictly proved in evidence as a foreign law."

After hearing submissions by counsel for the appellant and respondent on these objections the Legal Assessor advised the Committee that the objections should be overruled and that the inquiry should continue.

The respondent's counsel made an opening statement in which he outlined the facts which would be presented in evidence and in the course of his summary he stated that if on the facts proved in relation to Miss Hamilton and Miss Sargent the doctor had intended to procure an abortion and had in fact carried out an operation to that end, then under the law prevailing in Jersey he was guilty of the facts which were charged against him. If, on the other hand, this representation was false and that in fact no operation had been carried out, he would still in his submission have committed the acts alleged against him in the sense that he obtained money from both girls by representing to them that they would receive the treatment which they desired but which they did not in fact obtain; this would in law be a clear case of false pretences. In the course of his opening statement counsel also stated that he intended to produce evidence to show that the law in Jersey at the material date in relation to abortion was the same as the law in England but in any case he relied on the presumption to that effect.

Evidence was led on behalf of the respondent and in view of the grounds of appeal it is necessary briefly to outline this evidence which substantially supported the facts related in the charges.

On Charge 1 in June 1967 Miss Hamilton who was pregnant wished to secure a termination of her pregnancy and with that in mind she consulted Dr. Sloan and told him of the purpose of her visit. Dr. Sloan first prescribed pills for her for this purpose and told her to come back if

the pills had no effect. She was required to pay a fee of 10s. 6d. The pills did not have the desired effect and she came back when the doctor prescribed pills which he said were stronger. She was again told to come back if they were unsuccessful. She paid a further fee of 10s. 6d. Miss Hamilton returned to the doctor when these second pills were unsuccessful. On this occasion she was given an injection. As neither the pills nor the injection had had any effect Miss Hamilton raised the question of an abortion with Dr. Sloan.

She was told by the doctor that a friend of the doctor was coming to Jersey for a holiday and it would be possible during the course of his visit to arrange an operation. After arrangements had been made between the doctor and Miss Hamilton she visited the surgery about the middle of August 1967 when she gave the doctor the sum of £50 which he had previously asked for. The doctor told her that his friend who was going to perform the operation and was called "Carl" was waiting upstairs. The doctor administered an injection in her arm as a result of which she became unconscious. When she woke up after a period of unconsciousness, she found a small blood smear in the area of her vagina but otherwise she found no other indication of an operation having been performed. The doctor returned to the room where she had been waiting and told her that Carl had gone and the operation had been carried out and he told her that two paddings had been placed inside her, one of which would come off of its own accord within a few days and the other of which was to be removed by the doctor at a later stage. The first padding duly did come off and she went back some days later to have the second padding removed.

She visited the doctor on further occasions when she informed him that she still felt pregnant. The doctor told her that she could not be pregnant, that the foetus was in a bag upstairs and that she must be suffering from a phantom pregnancy. When towards the end of November she told the doctor that she still felt pregnant, he said that it must be that she was going to have twins and that one of the twins was still left. At this report the girl became very concerned and she eventually discontinued her association with Dr. Sloan as his patient and went to another doctor.

The evidence relating to the second charge given by Mrs. Smith (who was then Miss Sargent) was almost identical with that of Miss Hamilton. In the case of Miss Sargent the pills were followed by the injections, followed by the arrangements for the operation. The girl was told to bring as much money as she could afford and she took some £70 with her but offered in fact £60 which was accepted by the doctor. Miss Sargent became very suspicious of the doctor's conduct and after a visit to England in October when her pregnancy was confirmed she and her future husband made complaints to the doctor when he gave the same excuses as he had to Miss Hamilton in regard to the girl going to have twins. Miss Sargent and her fiance requested the money back but the doctor did not comply with this request.

On Charge 3 (*a*) the evidence relating to Mrs. Lynch is substantially similar up to the stage of the injections though differs however thereafter. She too when the injections did not work asked for an abortion. She too was told that this could be performed by Carl on his visit. As however there were so many false alarms regarding the performance of the operation Mrs. Lynch decided not to pursue the matter further and therefore left and ceased to be a patient of Dr. Sloan.

In regard to Charge 3 (*b*) Mrs. Lynch said that she had become doubtful as to whether she was pregnant and she arranged for the doctor to carry out a urine test for pregnancy. The doctor did so and found that it was positive and told her that she was definitely pregnant. In fact although both of the first two girls had been pregnant and did as a result give birth to babies, Mrs. Lynch was not pregnant and had no baby.

A Detective Inspector of the Jersey Police Force was adduced to prove the law of Jersey at the relevant time. His evidence was disallowed by the Committee upon the advice of the Legal Assessor.

Evidence was also adduced from a representative of the Jersey Police and a statement of the questions and answers given by Dr. Sloan to the police was put in evidence. These answers can be summarised by saying that the doctor substantially admitted the facts alleged in the charges. He admitted giving tablets which were not designed to procure a miscarriage and likewise injections which were not designed to have that effect. The tablets which were recovered from Miss Hamilton and Miss Sargent were analysed and the result of the analyst's report was that none of the tablets were designed or indeed capable of producing the effect which was sought by the girls and which the doctor claimed for them. The doctor also agreed that he told the ladies that " Carl " was coming to Jersey and he gave the name and address of a man who was described as Charles Tshaikowski of Devonshire Place, London. He admitted asking Miss Hamilton to bring £50 to the surgery, he agreed that Carl had not been at the surgery, he agreed that Miss Hamilton was given an injection to make her unconscious, he stated that no operation was in fact performed upon her.

He then explained that in relation to the girls the purpose of his conduct had been to " spoof " them in order to keep them from going to some back street abortionists. According to him it was necessary to use this means of preventing the girl from going to such an abortionist until it was too late to do so and thus preventing dangers that might arise to them. He said that it had been his intention to return the money when the pregnancy was complete. He admitted that no money had in fact been returned.

At the conclusion of the respondent's case counsel for the appellant made a further submission under Rule 18 (*d*) (ii) of the General Medical Council Disciplinary Committee (Procedure) Rules 1958 on the same ground that he had made earlier under Rule 15 (2), namely that the facts alleged in the charge were not such as to constitute infamous conduct in a professional respect. In the course of this submission reference was made to the question of the law of Jersey in regard to abortion. The Legal Assessor would appear to have accepted the contention of respondent's counsel that there was a presumption that the law of Jersey in regard to abortion was the same as the law of England unless the contrary was established. In their Lordships' opinion if this advice was given to the Committee it was not correct.

It is true that in civil cases the burden of proving that foreign law is different from English law rests upon the party making that assertion. This is the more accurate way of expressing the alleged assumption. But in a case such as the present, where charges of infamous conduct were made, the burden of properly proving all relevant facts including the state of foreign law rested upon those making the charges.

In reply to the submission made by appellant's counsel, respondent's counsel Mr. Alexander made the following statement which as it went to the heart of one of the grounds of appeal should be quoted *in extenso*.

> " If you please, sir. If I can just say one word about the charge, my learned friend has based his submission on the allegation of false pretences not having been made, and referred to the fact that in opening, I referred to false pretences. I did, but as your Lordship and the Committee recollect, this case was put in the alternative, that on the basis that the presumption of law applied and he had carried out the operation that would be infamous conduct, but if his own explanation were right it would be equally infamous conduct because of the representation."

The Committee did not uphold the submission for the appellant.

The appellant gave evidence upon oath in which he gave an account of the facts substantially similar to that given by him to the police officer as previously spoken to in evidence. He referred to a general statement made to the inspector in which he detailed his reasons for his conduct. This was to the following effect:

> "As I told you this is the trouble with being insular it is difficult to keep them away, first of all I should think to start with about 60% of them who come in and claim to have missed a period are not pregnant to start with so obviously you have got to run tests on them. The procedure is urine test, tablets, then injections, then you definitely know if the injections fail to start a period within 48 hours they are definitely pregnant. I say you can go to London but it is going to cost you £300, this is where I am spoofing, this is a tremendous social problem, they are very nice girls, Miss Hamilton was a very nice girl, what do you do with them, no one is interested if they go to any other doctor they just couldn't care less. In Miss Hamilton's case she was definitely hysterical, I was convinced she would have committed suicide, but once you get them to a certain part in pregnancy when they realise they are pregnant it seems to snap them out and they always say I am going to have it adopted, when delivered they don't want it adopted they want to keep it. So the idea is to get them as far on in pregnancy as possible in other words lead them up the garden path. There was a quite true story read in Readers Digest about a man who goes into a New York doctor with a bad back. The doctor put him out and told him he had manipulated it and it would be alright but he hadn't. This occurred to me—delaying tactics to take them through until they are delivered. I should say at least on an average 3–4 patients a week leave this island from my surgery to go for termination of pregnancy, this is a fact. I am not the only one, I don't use Tshaikowski normally, I have got another chap, I can show you notes, he hangs out in Harley Street. You have no idea, this is long before it was legalised in England."

In evidence he stated that he was a member of the Greater World Church and that abortion was against the tenets of that religion. He was accordingly anxious to prevent women who came to him asking for a miscarriage going to a professional abortionist whereby an illegal operation might be performed.

At the conclusion of the appellant's cross examination the members of the Committee asked a number of questions from him. As was to be expected from professional members of such a Committee the questions ranged over a wide field relating to medical practice. Their Lordships do not consider that any of the questions was prejudicial to the appellant.

After speeches by counsel for the appellant and for the respondent the President announced that "the facts alleged against him in the charge as amended had been proved to their satisfaction". These amendments were in minor details of no significance to the appeal. After hearing a statement by Mr. McLellan for the appellant the President announced that the Committee judged the appellant to be guilty of infamous conduct in a professional respect in relation to facts proved against him and directed the Registrar to erase his name from the Register.

The grounds of the appeal are that the facts proved against the appellant as narrated in the charge did not amount to infamous conduct in a professional respect. There is a further ground of appeal that in the circumstances the rules of natural justice were not observed in the conduct of the case against the appellant.

Their Lordships are able to deal with both points together. The objection which is taken to the conduct of the case is based initially upon the form of the charges 1 (*a*) and (*b*), 2 (*a*) and (*b*) and 3 (*a*). These charges in effect allege that the doctor represented to the girls that the purpose of the pills and injections was to procure a miscarriage and also represented that an operation for the termination of pregnancy had been performed and took money from them to that end. It is apparent from the statement of Mr. Alexander for the respondent at the inquiry that the purpose of preferring a charge in this form was so that whether it turned out in evidence that the representation was true or false the appellant would equally be guilty of the facts stated in the charge which were capable of amounting to infamous conduct in a professional respect. This impression gained from the transcript was confirmed by Mr. Alexander at the hearing before the Board when he quite frankly stated that the charge was deliberately framed in this way. He submitted that whether the representation was true or false the facts relating to the charge would in either event amount to infamous conduct in a professional respect, thus reiterating his submissions to the Committee.

Their Lordships cannot too strongly deprecate the preferment of charges in this form. If it is desired to prefer alternative charges then they should be preferred in the alternative in the recognised form leaving the Committee to decide on the evidence which alternative has been established. In their Lordships' view it is embarrassing to the doctor to prefer a charge which on the face of it is ambiguous and presents two alternatives for the Committee's consideration. This in fact was a " trap charge " so that whichever explanation was given by the doctor he could not fail on the view of the respondent to be convicted. Upon the facts as known to the respondent before the charge was preferred it was reasonably plain upon the evidence of the girls and upon the statements made by the doctor to the police that the representations made by him were false, made by him for the designed purpose of preventing the girls going at an earlier stage to a professional abortionist and were made in conformity with his religious beliefs. In these circumstances their Lordships fail to understand why the charge initially was not one of making false representations that the pills and injections were given with the intention of procuring a miscarriage and that an operation to that end had been performed. There was evidence that the pills and injections were not intended to procure a miscarriage. There was no evidence that an illegal operation had been performed. Their Lordships hope that the practice of preferring charges in this way will not be continued.

However the rules of natural justice are not rigid and must depend in each case upon the nature of the inquiry (*Wiseman and Another v. Borneman and Another* [1969] 3 All E.R. 275 Lord Morris of Borth-y-Gest at p. 278). The inquiry in the present case is before a Disciplinary Committee consisting of the members of the appellant's own profession. There are no closed categories of infamous conduct and in every case it must be a question for the Committee to decide first whether the facts alleged in the charge have been proved and second whether the doctor was in relation to those facts guilty of infamous conduct in a professional respect. If their Lordships had thought that the appellant had in any way been prejudiced by the form which the charges took the position might have been very different. But notwithstanding the statements made by respondent's counsel on two occasions during the inquiry that the charges presented the alternatives of abortion or false pretences for the Committee's determination, the question of an illegal operation had completely disappeared from the case by the time the Committee came to consider their determination. As already stated there was no evidence upon which the Committee could possibly hold that an illegal operation had been performed on either of the girls or that the pills or injections had been

designed to procure a miscarriage. The appellant admitted that his representations as to pills, injections and operation were false and stated that no illegal operation had in fact been performed. No cross examination was directed to the appellant by counsel for the respondent to suggest that an illegal operation had been performed and in the speeches of both Mr. Alexander for the respondent and Mr. McLellan for the appellant at the conclusion of the evidence there was no mention of an illegal operation. At the end of the day the Committee were really only left with one question whether upon the evidence as produced to the effect that the doctor had made false representations to these girls this constituted infamous conduct. If the facts had supported an alternative view that an illegal operation had in fact been performed, there would have been great substance in the argument for the appellant that on the charge as framed it could not be known with certainty of what conduct the appellant had been convicted. But the only conclusion which could be made on the evidence was that the representations were false.

Their Lordships would desire to express their concurrence with the observations of Lord Radcliffe in *Fox v. General Medical Council* [1960] 1 W.L.R. 1017 and in particular to those occurring on pages 1020 and 1021. Lord Radcliffe after referring to the peculiar nature of the Medical Tribunal in view of the fact that they gave no reasons for their decision said:

> " Such considerations, which are unavoidable in appeals of this kind, do sometimes require that the Board should take a comprehensive view of the evidence as a whole, and endeavour to form its own conclusion as to whether a proper inquiry was held and a proper finding made upon it, having regard to the rules of evidence under which the Committee's proceedings are regulated.
>
> The validity of any determination by the Committee is, certainly, dependent upon the performance of its statutory duty to hold a 'due inquiry' into the matter, and the Board will need to be satisfied as to this if it is challenged on an appeal."

It follows from what their Lordships have already said that in their view the facts proved to the satisfaction of the Committee were sufficient to justify the determination by the Committee that the appellant had been guilty of infamous conduct in a professional respect. Upon the whole matter their Lordships are not able to say that the Committee did not hold due inquiry into the facts. They will accordingly humbly advise Her Majesty that the appeal should be dismissed. There will be no order as to costs.

310672—2 Dd. 178169 150 5/70

In the Privy Council

HENRY JAMES SLOAN

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD GUEST

Printed by HER MAJESTY'S STATIONERY OFFICE
1970