

## Breay v. Browne.

IN THE CITY OF LONDON COURT.  
BEFORE MR. COMMISSIONER KERR AND  
A JURY.

OCTOBER 5th, 1896.

MR. SCARLETT: May it please your Honour, Gentlemen of the Jury, I appear for the plaintiff, Miss Breay, in this action, and my learned friend, Mr. Muir Mackenzie, appears for the defendant, Sir James Crichton-Browne, and this is an action brought by Miss Breay, who is a member of the Royal British Nurses' Association, against Sir James Crichton-Browne, who is a Vice-President of that Association, and Vice-Chairman of the governing body, the General Council, and it is an action which in its nature is of a somewhat unusual character, and such an action as it is not, I am happy to say, ordinarily necessary to bring into the Courts. According to the statement of particulars delivered in the action, the claim of Miss Breay, as a member of this Association, against the defendant is that he, in his conduct as Chairman of the governing body of this Association, has behaved in a partial manner to such a degree, as I shall detail to you in opening the case, as to deprive her of her rights, and ultimately, so far as the particular instance in this case is concerned, to withhold from consideration at the general meeting of the members of the Association, a resolution which she had put forward, and which she had a perfect right to discuss and to have discussed—that he, acting partially as I say, withheld that resolution so that it never was considered, and therefore she is asking at your hands damages. She is obliged to bring her action in the form of damages, though she does not want to put money into her pocket in this action. She is here on her own behalf, and on behalf of a great many other Matrons, ladies of position in this Association, to have it declared what her rights are. She brings her action in the form of an action for damages according to well-established principles of law, as I shall submit if it becomes necessary in the course of the case. She puts her claim on two grounds—first, partiality; next, she says that Sir James Crichton-Browne was merely a ministerial officer at this meeting, and therefore it was his duty, and he had no right to consider the matter and discuss it at all; he had no judicial power to consider the matter whether he would put the resolution or not; that he was merely a ministerial officer, and it was his duty there and then to put the matter before the meeting. Now, gentlemen, I say as Counsel personally (and I am saying, too, what I think is in my client's mind) that it is an exceedingly painful and unprecedented thing to have to come forward and open up matters of this description in the internal government of an association so important as the Association in question. I have, indeed, in my responsibility as Counsel, already taken upon myself to suggest to my learned friend who is against me whether there is not some course even yet open to the parties to refer their differences to some independent person, because it does appear to me, by my instructions, that my client has considerable ground of complaint, and I ask whether it is possible even now,

before I open the facts of this case, to refer these matters to some independent person, so that you shall be spared the time of going into the inquiry, and everybody connected with the matter will be spared the pain of having these matters discussed in open Court. I should be glad if that course were even now possible, but it seems that there is no response from the other side.

MR. MUIR MACKENZIE: I am not appearing for the Association. I appear for Sir James Crichton-Browne.

COMMISSIONER KERR: I have read the particulars, and I want to know what cause of action there is?

MR. MUIR MACKENZIE: That is exactly what I am going to ask your Honour presently—what possible cause of action there can be. It was the case of a Chairman ruling on a point of order.

MR. SCARLETT: That is not the point. That we shall have to discuss presently. I shall submit to your Honour that will be a question of law, and I shall submit, according to a long-decided authority, which has been the law of the land for 200 years, that where a Chairman acts, as is alleged here—and I suppose I must use the word (I have avoided it so far)—maliciously and partially against a person so as to deprive him of his rights, a right of action accrues to the person who has that right denied to him. It would be very hard if it was not so.

COMMISSIONER KERR: Is there any case in point? I never heard of any.

MR. SCARLETT: The first case in point is *Ashby v. White*, one of the leading cases on the point, and from *Ashby v. White* downwards I think the cases are pretty consistent.

MR. MUIR MACKENZIE: There is the case of *Tozer v. Child*, which your Honour knows, where the chairman of a vestry meeting refused a vote, and it was held that there was no cause of action.

MR. SCARLETT: There has since been the case of a relieving officer, and in course of time, if necessary, we will discuss the cases.

COMMISSIONER KERR: In the good old time of pleading, when there was some law in the country, there was such a thing as a demurrer, and this might have been tried on demurrer.

MR. SCARLETT: If tried on demurrer, I am prepared to state, in the face of the cases, that where the allegation is that a Chairman has deprived a member of an association of a right by acting maliciously and partially an action would lie.

MR. MUIR MACKENZIE: A right?

MR. SCARLETT: Yes, a right.

MR. MUIR MACKENZIE: A right to make a speech?

MR. SCARLETT: No.

COMMISSIONER KERR: I have read the whole of this. I will assume for the sake of argument—(I only assume it)—that Sir James Crichton-Browne acted partially and improperly in the way you suggest, but even then I want to know what right of action there is.

MR. SCARLETT: I put it in this way. This lady is a member of the Association.

COMMISSIONER KERR: A voluntary association.

MR. SCARLETT: No, she pays as a member.

COMMISSIONER KERR: Still voluntary—a member of a club.

MR. SCARLETT: Oh, no; it is an Association which is very important in its nature; it gives professional advantages to the Nurses—they have a certificate

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