Re-examined by Mr. SCARLETT: He resigned the office of Treasurer because he objected to the extravagant expenditure of the Association. There were benevolent objects attached to the Association, and he objected to the way in which the affairs were managed and funds over spent. During the last year the Committee had spent £800 beyond their reliable income; they are some hundreds of pounds in debt, and he objected to that on financial grounds, and therefore criticised the action of the officials. This was by no means the first time that the conduct of Sir James Crichton-Browne at meetings had been impugned.

Objection was raised by Mr. MUIR MACKENZIE to any evidence as to previous occasions, but after Mr. Muir Mackenzie's cross-examination the Judge held that it was admissible.

Dr. FENWICK stated that other members than himself had publicly objected to Sir James Crichton-Browne's conduct in the chair. To give one detail, he prevented the General Council discussing a paragraph of the report of the Executive Committee relating to Miss Barlow's case, on the ground that a resolution was going to be proposed on the subject, and he could not have the matter discussed twice over; that was at the General Council meeting in January, 1896. The meeting agreed with the chairman's ruling, but as soon as the report was adopted without discussion, and the resolution was brought forward, Sir James Crichton-Browne ruled that the resolution could not be discussed at all. And so the whole matter was kept from the General Council, and the meeting broke up in confusion, the chairman being loudly hissed. Sir James Crichton-Browne was not present at the Executive Committee on July 3rd; so when he told the General Meeting that he had heard various things he concluded he must have been told them between July 3rd and the date of the meeting.

SUBMISSION ON LAW.

Mr. MUIR MACKENZIE: If your Honour pleases, I submit in the first instance to your Honour, as a matter of law, that there is no evidence to go to the jury requiring an answer from my client.

Commissioner KERR: There is no evidence whatever of damage.

Mr. MUIR MACKENZIE: There is no evidence of damage, and I submit there is no evidence of any right of the plaintiff which has been infringed, and I submit further, that, even supposing that this was like an action against a returning officer for refusing a vote, the action does not lie without proof of malice by the defendant against the plaintiff. Now I submit first of all, that there is no evidence of malice whatever by Sir James Crichton-Browne against Miss Breay. There are suggestions that a strong line has been taken on different occasions in this Association.

Commissioner KERR: There is no allegation, Mr. Muir Mackenzie, of malice.

Mr. MUIR MACKENZIE: In the second count in the particulars there is an allegation of malice. The first one is, as I submit, quite plainly demurrable under the decisions.

Commissioner KERR: "That the defendant wilfully, maliciously, or from a malicious or partial design, refused to, or neglected to, or omitted." I see that. I did not read that.

Mr. MUIR MACKENZIE: Now I submit, first of all, that malice and damage are necessary to maintain the action, and I submit there is no evidence of malice, and no evidence of any damage or right which the defendant infringed.

Commissioner KERR: It is very much the view that I took of it at the first. I want an authority.

Mr. MUIR MACKENZIE: Now, if you will, just let me give you the authorities: there is the case of Tozer *v.* Child, which was an action against the presiding officer at a vestry in the days when the vestrymen were elected at the actual meeting, and the churchwarden had to preside. The Metropolis Management Act provides that he is to preside and receive the votes; and in Tozer *v.* Child, at the election of vestrymen and auditors, the churchwarden wrongfully refused a vote, and it was held that there was no action, unless malice—malice to the tender of the vote—was proved. "An action does not lie against a churchwarden, presiding (under statute 18 & 19 Victoria, chapter 120) at the election of vestrymen and auditors, for refusing the vote of a party entitled to vote for vestrymen and auditors, or for refusing to allow as a candidate a party entitled to be a candidate, unless malice be alleged and proved.

Commissioner KERR: You say here that there is no evidence of malice?

Mr. MUIR MACKENZIE: I say that there is no evidence of malice.

Commissioner KERR: The only evidence of malice, assuming it to be evidence, is that given by Dr. George Brown and Dr. Bedford Fenwick.

Mr. MUIR MACKENZIE: That only comes to saying that they thought so.

Commissioner KERR: They came to express an opinion upon the facts which occurred at the meeting, and they all ask the jury to say that, notwithstanding the profession of impartiality—rather an unusual thing for a person in a judicial position to assert—notwithstanding that, they say that there was something agreed beforehand which led them to the idea, rightly or wrongly—I express no opinion— that the whole thing was arranged.

Mr. MUIR MACKENZIE: Your Honour will remember the plaintiff does not suggest it at all. The plaintiff said she fully credited Sir James Crichton-Browne with what he said.

Commissioner KERR: In the particulars?

Mr. MUIR MACKENZIE: I mean in the box; I submit that these two witnesses do not give evidence of any malice against Miss Breay, they only say that they think there was some partiality in favour of the medical profession against the Nursing profession, but there is no evidence.

Commissioner KERR: Against an individual?

Mr. MUIR MACKENZIE: No. The mere statement by these witnesses in the box that they were at the meeting, and thought so, is, as I submit, no evidence of malice at all. It is the merest and vaguest conjecture. The case of Tozer *v.* Child is a very strong one, because it was refusing to a man the franchise —refusing a man a vote. The judgment of the Exchequer Chamber said this: "The returning officer is to a certain degree a ministerial one, but he is not so to all intents and purposes; neither is he wholly a judicial officer, his duties are neither entirely ministerial nor wholly judicial, they are of a mixed nature. It cannot be contended that he is to exercise no judgment, no discretion whatsoever, in the admission or rejection of votes; the greatest confusion would prevail

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