

if such a discretion were not to be exercised. On the other hand, the officer could not discharge his duty without great peril and apprehension, if, in consequence of a mistake, he became liable to an action. He could not, indeed, preside at an election without being liable to five hundred actions." So here. The shorthand-writer's notes, as I read them, were substantially admitted, and it was admitted that the point was taken by Mr. Fardon, and it required the decision of Sir James Crichton-Browne—a decision to be given by a layman, on the spur of the moment. I submit for an erroneous decision of that kind no action will lie.

Commissioner KERR: That is the law of the case.

Mr. MUIR MACKENZIE: I submit a point of law.

Commissioner KERR: I do not want this to come down to a jury again. If I were to say there is no evidence it might come down, if the other court thought I was wrong. I cannot help thinking it would be as well to ask the jury whether, in their opinion, the conduct of Sir James Crichton-Browne in the chair was impartial or not. It is only the impartiality which is the substantial question, because there is no evidence of malice to this particular Nurse. You submit that is necessary in point of law?

Mr. MUIR MACKENZIE: I submit it is necessary in point of law.

Commissioner KERR: Can I take the opinion of the jury on the other point? There is not a tittle of evidence of damage.

Mr. MUIR MACKENZIE: I submit also that the plaintiff is not a person aggrieved, taking into account the nature of the Institution. It is a voluntary Institution, in which everybody present gives their services (Sir James Crichton-Browne, and all the other distinguished persons connected with it) voluntarily, for the good of others. All that the plaintiff has been denied is the right of having—

Commissioner KERR: Of airing her grievances.

Mr. MUIR MACKENZIE: Of airing her grievances.

Commissioner KERR: Whether well-founded or not we have nothing to do with here.

Mr. MUIR MACKENZIE: She has not been deprived of anything like a vote, of anything pecuniary. I submit she is not aggrieved, and it is necessary that the person should be aggrieved.

Commissioner KERR: That is my opinion, unless Mr. Scarlett can give me some authority on the point of law. I am very much inclined to take that view. I did so from the very first.

Mr. SCARLETT: I will answer my friend's submission on the law in the order in which he takes the points against me. First, he says there is no evidence of malice to go the jury, and no evidence of partiality on the part of Sir James Crichton-Browne. There is evidence, and there is evidence on one point to put it in a very small compass. Sir James Crichton-Browne was not present at the Executive Committee Meeting on the 3rd of July, therefore he had no knowledge of what took place then, when the Executive Committee resolved that this resolution should go on the agenda paper, and before the General Meeting on the 22nd. Yet on the 22nd he comes to the meeting, and, according to my friend, comes there impartially, not having heard anything of the matter before, and yet he commits himself to the statement that he has heard—

Mr. MUIR MACKENZIE: No, "I hear," not "I heard"; that is, in the room.

Mr. SCARLETT: At any rate we are not discussing the words at this moment.

Commissioner KERR: It is for the jury to draw an inference.

Mr. SCARLETT: Plainly. He says, "I hear that the Executive Committee are anxious that the opinion of the meeting should be taken." The witnesses have said from that, and from the conduct of Sir James Crichton-Browne, they drew the inference that it was a mere farce and an arrangement between Mr. Fardon, who was sitting at the side, and Sir James Crichton-Browne. It is for the jury to express an opinion on that. Therefore, there is evidence. Wherever he goes he must be met with that observation, and there must be evidence on which the verdict of the jury must be taken on that part of the case. Having disposed of that it disposes of everything excepting the question of whether there is damage or not. It is not necessary in an action of this sort, where there is infringement of right, that there should be special damage, or any actual damage proved. Your Honour knows the case of *Ashby v. White*. It is from *Ashby v. White* that all the cases have sprung. It is now reported in the last edition of "Smith's Leading Cases," at page 240. That was a mere action against a returning officer, who declined to let a man, who had a right to vote, vote at an election. The man for whom he would have voted was not elected, and his vote would not have made any difference. *Ashby v. White* went up to the House of Lords, and it was held that he had a right of action, because his right was infringed. There was no damage; the man had not lost his election, and there was no damage whatever.

Commissioner KERR: That was a real commercial right, it had a value; that is not so here.

Mr. SCARLETT: This lady has a most distinct right. She is a member of a Nurses' Institution; she pays an annual subscription. There is, or should be, a fund accumulated to provide for old-age pensions and what not for the benefit of Nurses and Matrons belonging to this Institution. The Institution, according to the evidence, gets under the management of Sir James Crichton-Browne and his friends. It not only cannot pay its way, but it is £800 in debt, and has nothing to answer the benevolent objects. This lady brings forward a resolution to condemn the "government" of this Institution, so to speak, for the purpose of criticising their conduct, and for the purpose of the reformation of this Institution; but when the Chairman is confronted with that, he, being one of the persons attacked, says "No; I will not allow that resolution to be put."

Commissioner KERR: He is only one of those who were attacked; it is the Executive Committee who is attacked.

Mr. MUIR MACKENZIE: Yes.

Mr. SCARLETT: He is one of the Executive Committee. The only person we can attack is the Chairman. When he is the Chairman there he says, in effect, "No; I will not allow the management of this Association to be criticised and discussed publicly. I object on a technicality" (and I say wrongly) "to the resolution put forward." I say undoubtedly in such a case an action lies, and I am astonished that Sir James Crichton-Browne is not anxious to go into the witness box and give a full explanation of all that has been said against him rather than to rely on technicality, as he has done on previous occasions; but it seems to please him to hide behind a technicality wherever he can.

Commissioner KERR: I cannot go into that.

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