

Mr. SCARLETT: No; that is for the jury. I submit there is ample evidence to go to the jury of partiality and malice on the part of Sir James Crichton-Browne till it is answered satisfactorily. It is not necessary for me to prove damage in this case. *Ashby v. White* is an authority in my favour. It is said here, and I have many cases which I can quote—

Commissioner KERR: Is there any modern case of a merely Chartered Institution? I do not recollect any.

Mr. SCARLETT: Of course one cannot take cases on all fours as regards facts.

Mr. MUIR MACKENZIE: It must be happening every day with limited companies.

Mr. SCARLETT: I hope not. I have a case of a limited Company where Mr. Justice Chitty very strongly expressed himself, and sent it back for a new meeting, and the company held a new meeting.

Commissioner KERR: He can do that, but I cannot. I can ask the jury.

Mr. SCARLETT: I rely upon the authority of *Ashby v. White* and cases which followed it, which I will quote, if you will allow me, to show that an infringement of right of this sort—if it is a mere ministerial duty—and I am prepared to argue it was a mere ministerial duty as far as this gentleman was concerned—that the mere infringement of rights gives the right of action without proof of special or actual damage. But even if it was not a mere ministerial duty, but, if, as Chairman, he had a quasi-judicial function to exercise, then, if I prove to the satisfaction of the jury that he was partial, and that he did not properly fulfil his duties (in the words of one of the Judges, he is to do the acts necessary for the purposes on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improper), if he has done anything improperly—whether he has done anything improperly or not is for the jury, if there is any evidence whatever; and I have pointed out there is evidence—it is for the jury to draw all the inferences.

Commissioner KERR: I think I shall leave that point to the jury—whether the defendant's conduct in the chair was partial. You will be satisfied with partiality, Mr. Scarlett.

Mr. SCARLETT: I would rather have the two matters of malice and partiality left separately; it may assist us, because I have no doubt my friend will go somewhere else probably.

Mr. MUIR MACKENZIE: Perhaps you will.

Mr. SCARLETT: Malice and partiality separately, and I am quite agreeable to say, if there is a verdict, I will agree with my friend that 40s. shall be the damages.

Commissioner KERR: It would be for your advantage to take them separately. (*To the Jury*): You have heard the whole case.

Mr. SCARLETT: I do not really mind how that is, but I am quite willing to agree that the damages should be nominal, say 40s., something of that sort. We are not coming here for money. That is not our purpose. We are entitled to damages, and the jury might say that we are entitled to a good deal (I do not know), because this lady's right might have been considerably infringed as regards the benevolent objects of the Institution. We only want to assert our position for that purpose. I am quite willing to agree to 40s. if my friend likes, but I submit there is a case to go to the jury, and I must leave it there.

Commissioner KERR: I will leave it to the jury. Mr. Muir Mackenzie, do you intend to call witnesses?

Mr. MUIR MACKENZIE: Yes.

Commissioner KERR: Then you had better call them.

EVIDENCE FOR THE DEFENCE.

Sir JAMES CRICHTON-BROWNE, sworn and examined by Mr. Muir Mackenzie, stated that he resided at 61, Carlisle Mansions, Victoria Street; that he was one of the Vice-Chairmen of the Royal British Nurses' Association, and one of the Lord Chancellor's Visitors in Lunacy; that he had been an active member of the Association since its foundation, and before the Charter was granted; that he had given a good deal of time and attention to its affairs, but that he had taken "a comparatively very small part in conducting and managing the affairs of the Association"; that on the 22nd July he presided at the Annual Meeting of the Association; that he had not intended to be present, but that he came up from Scotland to take the chair in consequence of a request from her Royal Highness the President. He arrived in London about nine o'clock that morning, the meeting commencing about 11 o'clock. Until he entered the Hall he had never heard of this resolution; he had never seen Miss Breay nor heard her name before; he had never seen the advertisement nor the agenda of the meeting, and he was not at the Executive Committee when Miss Breay's resolution was discussed. He first saw the resolution on the agenda paper of the meeting, "on entering St. Bartholomew's Hall," Miss Guiseppi, the then acting Secretary, told him that the resolution had not been received in a registered letter; that the matter had been before the Executive Committee, "and that they had decided it should be submitted to the Chairman." He took the chair at 11 for some preliminary business, and then there was adjournment till 12 o'clock. During the adjournment Mr. Fardon had repeated to him Miss Guiseppi's statement; when the resolution was reached at the meeting, Mr. Fardon rose, announced that the resolution had not been received in a registered letter according to the bye-laws, and submitted to him (the defendant) to decide whether it was in order. The shorthand notes of the case, previously read by Mr. Muir Mackenzie, were "quite correct." He informed the meeting that he had not heard of the resolution till that day. He was simply informed that the letter was not registered. He looked at the bye-law, and seeing that, according to it, the letter must be registered, he said that the resolution was not in order—that it was irregular. Then the letter was handed to him. He identified the envelope handed to him now as that shown to him at the meeting. It lacked the signs by which he always identified the registered letter—the blue cross, the letter "R," the stamps, and the word "Registered." He said "That letter is not registered." Dr. Bedford Fenwick interposed, and Miss Breay handed up the document now identified, "A certificate of posting of a registered postal packet." That was handed to him by Miss Breay, but he saw nothing to connect it with her letter, and he thought he was bound to identify the registered letter as best he could. He saw that there had been some misapprehension or blunder somewhere, but he felt that, under the circumstances, he must adhere to the strict wording of the Charter. He held it up to the meeting

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