

*is not the slightest ground upon which the suggestion that Sir James Crichton-Browne acted with malice towards Miss Breay can be properly founded. Now, gentlemen, that is really substantially the only issue for you.* You are going to be asked, I presume, by the learned judge, whether in your opinion on the evidence before you, Sir James Crichton-Browne acted with partiality. I submit to you that the only evidence that you have is of impartiality.

Commissioner KERR: The plaintiff's counsel wishes the question of malice to be put.

Mr. MUIR MACKENZIE: I am coming to that. The only evidence you have is overwhelming evidence by Sir James Crichton-Browne, and the witnesses who have been called—a distinguished man like Mr. Langton, and by Miss Guiseppi, by Dr. Bezley Thorne, and I submit, by the record of what took place, that he decided the thing in the same way as any other Chairman has to decide questions submitted to him—because there no evidence the other way. There is only, as I said, the tittle-tattle and suggestions made by those two gentlemen, Dr. Bedford Fenwick and Dr. George Brown, of what they imagined. Now the other question is: Had Sir James Crichton-Browne any malice against Miss Breay. He tells you that he had never heard of Miss Breay's resolution; that so far as he knew, he had no acquaintance with Miss Breay, and knew nothing whatever about her, and could not bear her any malice. The only suggestion here again of malice is this: It is suggested that the medical composition of this governing body differ on points, and points of principle, from the Nursing part, and it is because the medical element and the Nursing element have some difference of opinion, that, therefore, Sir James Crichton-Browne bore malice against Miss Breay. Malice, gentlemen, is a serious thing; it is a serious imputation upon character, and I ask you, gentlemen, to deal with it as such, and finding it supported by nothing in the world except epithets and invective—by no sort of evidence—I ask you to repel it. One last word. Your verdict is, to some extent, a serious one, and I ask you to regard it so. Every day gentlemen of position, both in the commercial world, and especially in the large and increasing world of philanthropy, are called upon to preside at meetings to deal with business affairs of this kind. The law throws upon them a right and a proper protection, and if they act conscientiously and in the discharge of their duty they cannot be visited with any consequences of a mistake; they cannot be held liable in damages. No damages here can be suggested. Now, gentlemen, the serious point is this: A gentleman in the position of Sir James Crichton-Browne, who comes away from his leisure and his holiday to take part in a meeting of this kind, to discharge the difficult task, as it was in this case, of keeping order and keeping the proceedings going, he, I say, has a right to the protection of the courts where he has discharged his duty honestly, even if you do think that he has made a mistake. If he made a mistake it was a mistake that any man, not a trained Post Office official, or a trained lawyer, might make. He had a bye-law before him to say that a letter must be registered, and he had to construe that, and deal with that bye-law, and the letter which was presented to him for his decision was a letter which bore on its face that it was not registered, and the receipt presented to him was a receipt that bore on its face that it was a mere receipt for an express delivery. Did he make a mistake? Suppose he did. It would be most dangerous,

in the interests of all people who are called upon to exercise those duties, who come willingly to place their services at the disposal of their fellow-citizens, if a jury were to hold them liable for the consequences, even of a mistake. But, gentlemen, you cannot hold him liable for the consequences of a mistake, *unless you hold that Sir James Crichton-Browne was actuated by some malicious motive. Malicious means corrupt.* And, gentlemen, I ask you without hesitation (and I ask you to remember, in considering your verdict, the importance it is to all people who have to exercise functions such as those which Sir James Crichton-Browne is called upon by Her Majesty's Charter to exercise) to find your verdict for him.

Mr. SCARLETT: May it please your Honour, gentlemen of the jury, I shall be extremely brief in addressing you now upon this case, because you were good enough to listen to me at considerable length when I opened the case to you an hour or two ago. But before I go further, and while the thing is quite fresh in your memory, I must take issue with what my learned friend said at the close of his observations. He said "malicious meant corrupt." I do not exactly know what "corrupt" means, or how far it goes. That is not the definition of malice. Malice is defined in law to be an indirect motive. That is all. If a man in his action has an indirect motive, then he is acting (in law) maliciously, and that is what it is that you have to find, that Sir James Crichton-Browne was acting from an indirect motive when you say he was acting maliciously, and not that he was acting corruptly, which, in a general sense, would mean he had a monetary interest or some other interest which would lead him in an opposite direction from his duty. You have to find he was actuated by some indirect motive, and not the pure and sole motive that he should have in the discharge of his duty. Now, gentlemen, just generally and briefly to review the position of this case. My friend is entirely in error when he takes this point on behalf of Sir James Crichton-Browne, and says, "Here he is coming forward as a philanthropist; and it is a cruel thing to attack him when he is so philanthropic! Gentlemen, there is no philanthropy about it. This is an Institution and an Association which, as I told you at the outset, is now a chartered Association for the combination of Nurses—a self-governing Institution of Nurses—as a profession. A solicitor's profession is not a philanthropic profession—at least, I have never heard it called so. A barrister's profession, in a sense, may be called a philanthropic one on many occasions.

Mr. MUIR MACKENZIE: Is that your experience? It is not mine. (Laughter.)

Mr. SCARLETT: I am sorry to say it is. A physician's and a surgeon's may be said also to be a philanthropic profession on certain occasions. But, gentlemen, their associations which govern them are bodies for self-government of the profession; and the charter which was granted in respect of this Association is a charter in effect for the self-government of this profession of Nursing.

Mr. MUIR MACKENZIE: It does not say so.

Mr. SCARLETT: I think it does. The opening words of the charter are these: They are very short, and I will just tell you what they are, "That, in 1887," it begins, "a Society was established in London called the 'British Nurses' Association,' which has, since its establishment, been joined by more than 3,000 Nurses, each one of whom has been engaged for three years

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