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NORTH, J.

Dec. 13.

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Dec. 18, 19,
21.LEESON *v.* GENERAL COUNCIL OF MEDICAL
EDUCATION AND REGISTRATION.

[1889 L. 2936.]

*Judicial Inquiry—Domestic Forum—Personal Interest of Member of Tribunal—
Medical Act, 1858 (21 & 22 Vict. c. 90), s. 29 [Revised Ed. Statutes,
vol. xiii., p. 371].*

The *General Council of Medical Education and Registration*, acting under the powers of the *Medical Act*, 1858, held an inquiry in which they adjudged a medical practitioner to be guilty of infamous conduct in a professional respect, and removed his name from the register of medical practitioners.

The proceedings were instituted by the managing body of a company called the *Medical Defence Union*, whose object was to protect the characters of medical practitioners and to suppress and prosecute unauthorized practitioners. Two out of twenty-nine persons who held the inquiry were members of the *Medical Defence Union*, but not of the managing body of the Union:—

Held, by Cotton and Bowen, L.JJ. (affirming the decision of North, J.), *dissentiente Fry*, L.J., that the two members had not such an interest in the matter in question as to disqualify them from taking part in the inquiry; and the Court refused to interfere with the decision of the Council.

THE *General Council of Medical Education and Registration of the United Kingdom* was constituted under the *Medical Act*, 1858 (21 & 22 Vict. c. 90), as amended by 25 & 26 Vict. c. 91, and 49 & 50 Vict. c. 48. It consisted of thirty persons, five of whom were appointed by the Queen, five were elected by the registered medical practitioners in *England*, *Scotland*, and *Ireland*, and the rest were elected by various public bodies in the *United Kingdom*. One of the duties of the *General Council* was to regulate the registration of medical practitioners; and the 29th section of the statute proceeded as follows: "If any registered medical practitioner shall be convicted in *England* or *Ireland* of any felony or misdemeanour, or in *Scotland* of any crime or offence, or shall after due inquiry be judged by the *General Council* to have been guilty of infamous conduct in any professional respect, the General Council may, if they think fit, direct the registrar to erase the name of such medical practitioner from the register."

On the 27th and 28th of November, 1889, the *General Council* held an inquiry as to the conduct of the Plaintiff, *Joseph Richard Leeson*, a duly qualified medical practitioner in *London*, on a charge preferred by the *Medical Defence Union* for infamous conduct in a professional respect.

The notice of the proposed inquiry, which was sent to the Plaintiff by the secretary of the *General Medical Council* on the 15th of November, stated the complaint against him to be as follows: "For that you, being a registered medical practitioner, do act as cover of, or by your presence, advice, or assistance, do enable one *Cornelius Bennett Harness* (an unqualified person) to carry on the business or profession of a medical electrician, and to practise as if he was duly qualified under the style of the *Medical Battery Company, Limited*, and the *Electropathic and Zander Institute*, at 52, *Oxford Street, London*, the said *C. B. Harness* publicly advertising himself as the *Medical Battery Company Consulting Medical Electrician*."

The complaint was brought and the evidence in support of it was produced by the *Medical Defence Union*. This was a company registered under the *Companies Acts*, and limited by guarantee. Its objects, so far as material to this report, were, (1.) To support and protect the character and interests of medical practitioners practising in the *United Kingdom*. (2.) To promote honourable practice, and to suppress or prosecute unauthorized practitioners. The other objects were: (3.) To assist members of the Union in proceedings against them. (4.) To promote legislative measures beneficial to the profession, and (5.) To do such things as should be conducive to the particular objects of the Union.

The Union was governed by a Council consisting of twelve members, who had general powers of managing the affairs of the Union. One of the articles was as follows: "The management of the business and the control of the Union shall be vested in the Council, who, in addition to the powers and authorities by these articles expressly conferred on them, may exercise all such powers and do all such acts and things as may be exercised and done by the Union, and are not hereby or by statute expressly directed or required to be exercised or done by the Union in

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general meeting.” And another article provided that “The objects for which the Union is established shall be carried out in the manner provided by these articles, except that the second of the objects of the Union as there set forth, so far as relates to the suppression or prosecution of unauthorized practitioners, shall not in any case be acted upon without the sanction of a unanimous resolution of the Council, confirmed by a majority of members present and voting at a general meeting.”

The meeting of the *General Medical Council* on the 27th and 28th of November, 1889, was presided over by Mr. *J. Marshall*. The *Medical Defence Union* was represented by its solicitor, and the Plaintiff by his solicitor. Certain depositions were read on both sides, and Mr. *Harness* and Mr. *Leeson* were examined, but they were not examined on oath and their evidence was not confined to such evidence as would be admitted in a Court of law. Certain pamphlets written by Mr. *Harness* were also referred to. At the close of the proceedings the *General Medical Council* announced their decision as follows:—

That the Plaintiff had committed the offence charged against him;

That the offence was in the opinion of the Council infamous conduct in a professional respect; and

That the registrar be directed to erase his name from the Medical Register.

There were twenty-nine members of the Council present. Two of them, Mr. *Teale* and Dr. *Glover*, were members of the *Medical Defence Union*, to which they subscribed 10s. a year, but neither of them was on the council of management, or had anything to do with making the complaint against the Plaintiff. The Plaintiff was not at the time of the inquiry aware of the fact that these gentlemen were members of the Union, and therefore no objection was made at the time to their taking part in the inquiry.

The Plaintiff brought the present action to restrain the *General Medical Council* from removing his name from the register of medical practitioners, and from publishing the resolutions which they had passed with respect to his conduct.

The Plaintiff now moved for an injunction in the same terms.

The motion was heard before Mr. Justice *North* on the 13th of December, 1889.

Cozens-Hardy, Q.C., and *G. Henderson*, for the Plaintiff:—

The Court no doubt will not interfere with the judicial discretion of such a tribunal as the General Council: *Ex parte La Mert* (1); *Allbutt v. General Council of Medical Education and Registration* (2), but where, as in this case, the charge made is outside the jurisdiction of the Council and is really not *bonâ fide*, but is an inquiry into the conduct of another person, namely, Mr. *Harness*, the Court will interfere.

In the first place, two of the judges were interested parties, being members of the body who were the prosecutors. That is sufficient to invalidate the inquiry.

At the inquiry certain pamphlets of Mr. *Harness* were considered; these were issued before the Plaintiff had any connection with the company and could not be evidence against him.

Everitt, Q.C., and *Muir Mackenzie*, for the Defendants:—

The cases *Ex parte La Mert* and *Allbutt v. General Council of Medical Education and Registration*, establish that where a charge of this kind, which is, as we contend, within their jurisdiction, has been honestly inquired into by a body like the General Council under statutory power, this Court cannot go into the matter, but must accept the finding arrived at.

As to the interest alleged to exist in two of the judges—they were mere members of the *Medical Defence Union*, subscribers to the fund to a small extent—they had nothing to do with the management of the Union or the prosecution of this charge. They had no personal interest in or reason for being biased in the inquiry either one way or the other.

[NORTH, J.:—In the case of the *Company of Mercers and Ironmongers of Chester v. Bowker* (3), referred to in *Dimes v. Grand Junction Canal Company* (4), a judgment was given for the *Mercers' Company* in the Mayor's Court at *Chester*: after verdict

(1) 4 B. & S. 582.

(2) 23 Q. B. D. 400.

(3) 1 Str. 639.

(4) 3 H. L. C. 759.

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and before judgment one of the members of the *Mercers' Company* became mayor, and the judgment was in consequence reversed.]

The rule is laid down by Mr. Justice *Stephen* in *Reg. v. Farrant* (1). As stated in the head-note, it is as follows:—
“Any pecuniary interest in the subject-matter of litigation, however slight, will disqualify a magistrate from taking part in the decision of a case. If a magistrate has such a substantial interest, other than pecuniary, in the result of the hearing, as to make it likely that he will have a bias, he is disqualified.”

These gentlemen had neither pecuniary nor other interest except that as members of the profession they had the same interest as other members in determining what was most beneficial to the profession.

Sebastian watched the case for the *Medical Battery Company* and *C. B. Harness*.

Cozens-Hardy, in reply.

NORTH, J. (after deciding on the construction of the letter from the solicitor of the *General Medical Council* to the Plaintiff that the statement in it was a charge that he had allowed himself to be cover to Mr. *Harness* while he was practising, as if he were a duly qualified practitioner duly registered under the Act, continued as follows):—

If that is so can I consider the matter? In my opinion it is not open to me to do so, because the suggestion that there was not a proper charge giving jurisdiction to the *General Medical Council* is not well founded. It may well be that if they were trying him for something entirely outside their jurisdiction; if, for instance, it was not for conduct under the Act, but for something totally different, it might well be that the Plaintiff would have a right to say that I ought to interfere with them; but when it is clearly a matter in respect of which they have jurisdiction, then beyond all question the matter must be left to them as being one for which they are responsible and not I. The section giving them jurisdiction says: “If any registered medical

practitioner shall be convicted in *England* or *Ireland* of any felony or misdemeanour, or in *Scotland* of any crime or offence, or shall after due inquiry be judged by the General Council to have been guilty of infamous conduct in any professional respect," they may, if they see fit, have his name erased; therefore they are the tribunal which the Legislature considers the proper one to judge of what is not a legal matter, namely, whether a member of this body has been guilty of infamous conduct in any professional respect. They have jurisdiction in that matter, and they have come to the conclusion that he has been guilty. In my opinion it is not open to me to reconsider what they have considered, or to form—much less express—any judgment upon it.

Then it was said that in this case there is an objection to their jurisdiction arising from the fact that two members of the Medical Council, a body of some twenty-five or thirty, who seem to have presided over the case, were interested, and thereby disqualified from sitting as judges; and that if this were so the opinion of the body of which they were two would not be legally arrived at. If that were the case—that they were a body disqualified in the matter—it would in my opinion be open to me to say that the name could not be erased from the register.

[His Lordship stated the course of procedure that had been taken on the inquiry and proceeded :—]

It appears that the matter had been brought before the Council in the first place by a body called the *Medical Defence Union*, which appears to be an incorporated body with a subscription of 10s. a year and a guarantee given by the members. It is a body not formed for the purpose of profit at all, but it is what its name represents, a defence union for the purpose of maintaining the character and dignity of the profession. It is quite sufficient to state two of those objects. The first is "to support and protect the character and interests of medical practitioners practising in the *United Kingdom*." The second is "to promote honourable practice and to suppress or prosecute unauthorized practitioners."

What is said as regards the prosecution by the *Medical Defence Union* is this. It has been found on inquiry that two gentlemen, members of this body, two gentlemen whose names are sufficient

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guarantee for their perfect good faith and honour in the matter, who were present at the inquiry, were subscribers, and in that sense members and guarantors of the *Medical Defence Union*, who were the prosecutors. This is the only point about which from the first I had any difficulty, because it seemed to me to be a point which the parties had a right to have dealt with at the trial of the action, and there was nothing rendering it imperative on me or right that I should decide the question now; but having come to the conclusion on other points that my judgment must be unfavourable to the Plaintiff, and this being a point of law on which I have everything before me now that can be expected to be before the Court at the hearing, I have thought it right to take it upon myself to decide this point now instead of letting the matter go to the trial. In my opinion there is nothing in it. There is no pecuniary interest in these persons. The mere absence of pecuniary interest is not necessarily sufficient, but in my opinion there is nothing whatever to make these two persons, subscribers to the Defence Union, in any way improper persons to sit on the inquiry. I have not the least doubt that if it had been suggested that they had better not sit, they would have ceased to sit at once; but I cannot say that in my opinion the whole proceeding is rendered void by their having sat there. The real point suggested against them is this, that they are members of a body to suppress and prosecute unauthorized practitioners; but they are equally members of a body to support and maintain the character and interests of medical practitioners practising in the *United Kingdom*, and they owed quite as great a duty to Mr. *Leeson* to take care that he was not removed if there was not a case for it, as they did to see that he was removed if there was a case for it. They were perfectly neutral on that point. The body of which they were members were neutral on that point, and it was their duty to be so. In my opinion the fact that these two gentlemen were members of the Union does not in the least degree invalidate the opinion to which they came.

Then it was further suggested, it was very slightly suggested, that some improper evidence had been admitted. This is a case in which the Council cannot possibly decide on legal evidence.

They cannot get legal evidence. And unless they introduced and gave weight to matters the admission of which was manifestly contrary to natural justice, it is not a case in which I should feel I could interfere at all.

[His Lordship also decided that there was no want of *bona fides* in the inquiry, and refused the motion.]

From this decision the Plaintiff appealed. The appeal came on to be heard on the 18th of December, 1889.

Rigby, Q.C., Cozens-Hardy, Q.C., and G. Henderson, for the Appellant:—

We do not dispute that where the Council has jurisdiction and the proceedings have been properly conducted, no appeal lies from their decision under 21 & 22 Vict. c. 90, s. 29. There are two cases on the subject: *Ex parte La Mert* (1), and *Allbutt v. General Council of Medical Education and Registration* (2), which establish that proposition. But we say here, first, that no charge has been laid against the Appellant which brings the case within sect. 29, and that the Council has therefore no jurisdiction. The charge is not made that the Appellant enabled *Harness* to practise as a duly qualified medical practitioner.

But, secondly, supposing the Council had jurisdiction, these proceedings were taken by the *Medical Defence Union*. Two members of the Council who took part in the inquiry were members of that Union, and they were thereby disqualified from sitting on this inquiry, where they had to discharge a judicial duty, and the decision of the Council is thereby invalidated: *Dimes v. Grand Junction Canal Company* (3). That case applies to pecuniary interest; but on the same principle a person cannot be both judge and prosecutor, and the rule is so severe that even an ordinary member of the prosecuting body, though not one of the managers of it, cannot be a judge: *Company of Mercers and Ironmongers of Chester v. Bowker* (4); *In Reg. v. Allan* (5), which was a case of conviction under the *Salmon Fisheries Act*, the con-

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(1) 4 B. & S. 582.

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victing justices were members of the prosecuting association, and one a member of the committee of it, and the conviction was held bad, on the ground that the justices were not competent judges. It is true that in that case the association was not incorporated, but there is nowhere any trace of that making any difference. *Reg. v. Milledge* (1) is another instance of the strictness with which the rule is applied. *Reg. v. Gibbon* (2) has been doubted, and it certainly goes a great length, but the case in *Strange* supports it. The rule applies not only to judicial discretion, but to any judicial act. Neither a prosecutor, nor a member of a society which prosecutes, must be a judge in the prosecution.

Everitt, Q.C., and *Muir Mackenzie*, for the Defendants:—

The articles of association shew that the members of the *Medical Defence Union* have no pecuniary interest in the matter.

[PER CURIAM:—It is not alleged by the Appellant that they have.]

The cases cited against us are cases referring to the discharge of judicial functions properly so called. Here the Council is in no sense a judicial body. If there were fraud or *mala fides*, no doubt the Court could interfere; but the act here is not judicial, the Council are not a court; they are a sort of domestic disciplinary forum. There is really no prosecution and no prosecutor. The inquiry may be promoted by any one who brings the facts before the Council. The board itself may start the inquiry of its own mere motion. Suppose it does so, and directs its officer to bring the facts before it: does it lose its powers on the ground that it is the prosecuting body? If not, how can the fact that one or two of those who sat upon the inquiry had indirectly something to do with starting the inquiry, invalidate their finding upon it? *Reg. v. Handsley* (3), and the cases there referred to, especially *Reg. v. Meyer* (4), are in our favour. If you can go behind the corporate body at all, you can go only to those who had a part in the management of it, not to every member. Where there is no pecuniary interest, a mere case of alleged bias is insufficient. There must be a substantial interest, likely to

(1) 4 Q. B. D. 332.

(2) 6 Q. B. D. 168.

(3) 8 Q. B. D. 383.

(4) 1 Q. B. D. 173.

cause a bias: *Reg. v. Farrant* (1); *Reg. v. Rand* (2); *Reg. v. Dean and Chapter of Rochester* (3). The general body of the members had no power of directing or managing such an inquiry as this; the sole discretion was vested in the Council. It must also be remembered that it was the object of the Union to defend or protect duly qualified practitioners as much as to suppress unqualified practitioners; so that these two gentlemen were as much interested in defending the Plaintiff as in censuring him: *Reg. v. Pettitmangin* (4); *Reg. v. General Council of Medical Education and Registration* (5).

With respect to the inquiry itself, the decision of the Council is not a subject of appeal to this Court, no *mala fides* or unfairness having been shewn in the proceedings: *Ex parte La Mert* (6); *Allbutt v. General Council of Medical Education and Registration* (7). This Court could not form a correct judgment on the matters in dispute, for it can only act upon legal evidence; whereas the Medical Council is not able to administer oaths, and proceeds on statements, facts, and considerations which this Court could take no account of.

Sebastian watched the case for the *Medical Battery Company* and *C. B. Harness*.

Rigby, in reply.

1889. Dec. 21. COTTON, L.J. :—

This is a motion by way of appeal from Mr. Justice *North* to restrain the Defendants, who are the *General Medical Council*, from acting on the resolution at which they arrived, which was that the name of the Plaintiff be struck off the register of medical practitioners; and to prevent them from publishing the resolution at which they arrived.

The *General Medical Council* is a body which is formed under 21 & 22 Vict. c. 90, which Act was passed for the purpose of enabling persons requiring medical aid to distinguish qualified

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(1) 20 Q. B. D. 58.

(2) Law Rep. 1 Q. B. 230.

(3) 17 Q. B. 1.

(4) 9 L. T. (N.S.) 683.

(5) 30 L. J. (Q.B.) 201.

(6) 4 B. & S. 582.

(7) 23 Q. B. D. 400.

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from unqualified practitioners. It is a body partly composed of medical men who are named by certain public bodies, partly of persons elected by the general body of qualified medical men in the country, and partly of persons named by the Queen. The Act required, and for the first time required, that there should be a register; and those only who are entered on the register can sue for and obtain payment of any money due to them for medical attendance or medical fees; and then powers are given to this body by various sections of which sect. 29 is the first and the most important one: "If any registered medical practitioner shall be convicted in *England* or *Ireland* of any felony or misdemeanour, or in *Scotland* of any crime or offence, or shall after due inquiry be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register." And that was what was done in this case by the *General Medical Council*. There is another clause, clause 40, which I ought to refer to, because it was a good deal referred to in argument. It enables criminal prosecutions to be taken against persons who falsely pretend to be registered practitioners, but the proceeding taken in this case was not under the powers of that last section, because Dr. *Leeson* was on the register at the time when this order was made by the *General Medical Council*, and was properly on the register.

Now, there have been a good many points argued here; and the first was that the matter in respect of which the *General Medical Council* here adjudicated or decided was not a matter within the powers given to them under sect. 29; and for that purpose the charge made against him, and which was brought to his notice by writing, according to the practice of the *General Medical Council*, was referred to, and it was as follows: "You, being a registered medical practitioner, do act as cover of, or by your presence, advice, and assistance, do enable one *Cornelius Bennett Harness*, an unqualified person, to carry on the business or profession of a medical electrician, and to practise as if he were duly qualified, under the style of the *Medical Battery Company, Limited*, . . ." I need not read more. It was said that

there was nothing contained in this complaint which would justify the *General Medical Council* in exercising the powers given to them by sect. 29, and there was a good deal of verbal criticism ably pressed upon us as to the effect of what is said in the notice. It was said that there is no allegation that Mr. *Harness* is practising as if he were a duly qualified medical man. It only says, "as if he were duly qualified under the style of the *Medical Battery Company*," and that all that Dr. *Leeson* was supposed to have done was that he assisted him to represent himself as a medical electrician. I cannot read it in that way. We know what a duly qualified medical man is in the Act. A person is duly qualified if he is on the register, and in that respect duly qualified to obtain the benefit of the Act as regards the privileges which are conceded to those medical men who are on the register; and I have no doubt that this notice does state that which would justify the *General Medical Council* if they were satisfied that it was supported by the facts in coming to the conclusion that an offence had been committed, coming within the words of the Act, "infamous conduct in any professional respect." That, in my opinion, is the true construction of the words of the charges which are made against him. And it was found that he had been guilty of the acts charged against him, and there was a direction to erase his name from the register.

There has been here a good deal of question as to what took place on the inquiry, and we have had the evidence which was before the *General Medical Council* brought before us. In my opinion it would be wrong to consider whether the *General Medical Council* arrived at a right conclusion on the evidence which was brought before them. The *General Medical Council* cannot, strictly speaking, take evidence. They cannot take evidence on oath. They cannot take evidence which we as lawyers have to consider as evidence. They have statements made before them in support of any complaint which is made, and also they have statements made on the other side by the medical man against whom the complaint is made, and if it is once established that the complaint made before them does involve a matter in respect of which they can exercise the jurisdiction given to them by sect. 29, then I think we ought not to look at the evidence or

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in any way consider whether they have arrived at a right conclusion. Of course, if it was alleged and proved before us that they had acted corruptly, if it was proved that there was no statement made before them on which they could reasonably and honestly arrive at the conclusion at which they did arrive, then I think we ought to consider it to see whether the fact that there was no statement which could justify the conclusion was such evidence as, if not displaced, would lead us to the conclusion that the Council had not acted honestly with respect to the charge brought before them, but had acted from some other motive. But although there were some allegations in the affidavit of the Plaintiff in this case that there was prejudice against him, that point was not pressed upon us at all by counsel, nor was it in any way supported by anything which was brought before us. Dr. *Leeson* seems to have had a most perfect consideration of his case. The complaint was brought forward in the ordinary mode required by the rules and regulations of the *General Medical Council*. He was there; he was represented by his solicitor, and he brought his own witnesses—that is to say, those who with him were to make statements in support of his contention that in his conduct he had done nothing which was infamous in a professional respect; and everything was heard, most fully heard, and considered, and then the Council arrived at the conclusion at which they did arrive. In my opinion, that being so, we cannot consider whether they are right or wrong. That must be left to them.

In my opinion, therefore, the first ground which was taken in support of this application fails, because I think there was a charge which justified the *General Medical Council* in making the inquiry under sect. 29, and there was no reason for suggesting that the proceedings were improperly conducted by them.

But then there was another point raised which occasioned rather more doubt, and which was this. It was suggested that this order made by the *General Medical Council* must be considered as made by a non-competent tribunal; for it was said that, taking the Council as acting judicially, it was so constituted on this particular occasion that any order made by it ought, having regard to the decided cases, to be considered as

a nullity. Now this appeared, that the complaint against Dr. *Leeson*—I will not call it indictment—was brought in the name of the *Medical Defence Union*, and it turns out when attention is called to the matter that two of the members of the Council who were present when the case of Dr. *Leeson* was considered were members of the *Medical Defence Union*; and it was said that they are to be considered in the light of prosecutors, and that as they were prosecutors they could not also sit as judges in the matter. It was, therefore, contended that any decision which the Council arrived at, where these two members who were incompetent to act as judges in the matter were present, must be considered as a nullity.

Of course, the rule is very plain that no man can be plaintiff, or prosecutor, in any action, and at the same time sit in judgment to decide in that particular case—either in his own case, or in any case, where he brings forward the accusation or complaint on which the order is made. To my mind it is clear here that the *General Medical Council*, in respect of the complaint against Dr. *Leeson*, were acting judicially. They were not in the ordinary sense judges, but they had to decide judicially as to whether or not the complaint against Dr. *Leeson* was well founded; and they could, if they found it was well founded, make an order which would be of great importance to him and remove him from the register, with very serious consequences. But then we have to consider this. Ought these two gentlemen, Mr. *Teale* and Dr. *Glover*, to be considered as complainants in this case?

In considering this, we must look a little at the *Medical Defence Union*. The *Medical Defence Union* was a company limited by guarantee under the Act of 1862, and one of the objects was “(1) to support and protect the character and interests of medical practitioners practising in the *United Kingdom*,” and then “(2) To promote honourable practice and to suppress or prosecute unauthorized practitioners.” Then they are “to advise and defend, or assist in defending, members of the Union in cases where proceedings involving questions of professional principle or otherwise are brought against them.” So that it was not only to prosecute those who offended against the Act but to defend

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those against whom charges were brought unreasonably. Then, if we look at the articles, we find this—that there was a Council, and the Council practically had all the powers of the company which formed the Union, except in one respect—they could not institute prosecutions against any one who was acting in violation of the law without a vote of a general meeting.

One of the articles was as follows: “The objects for which the Union is established shall be carried out in the manner provided by these articles, provided that the second of the objects of the Union as there set forth, so far as relates to the suppression or prosecution of unauthorized practitioners, shall not in any case be acted upon without the sanction of a unanimous resolution of the Council confirmed by a majority of members present and voting at a general meeting.” But we are not now considering a prosecution under the Act, and, except in that respect, there is no limit to the power of the Council, who can do everything which is not expressly or by Act of Parliament required to be done by the whole body. Neither Mr. *Teale* nor Dr. *Glover* were members of the Council, they were members of the Union by subscribing 10s. a year and by giving a guarantee, the amount of which we do not know, which was to provide any expense which would be necessary in order to carry out the objects of the association. The powers of the Council are referred to in article 36:—“The management of the business and the control of the Union shall be vested in the Council, who, in addition to the powers and authorities by these Articles expressly conferred on them, may exercise all such powers, and do all such acts and things as may be exercised or done by the Union, and are not hereby or by statute expressly directed or required to be exercised or done by the Union in general meeting.”

Now this complaint made against Dr. *Leeson* was a complaint brought forward by the Council to which neither of these two members of the *General Medical Council* belonged. They were not upon it, and they could not, having regard to the articles, exercise any control or give any direction as to what should be done by the Council in bringing forward this complaint. Then, are they, as members, in any way interested? The expenses of this complaint could not be thrown by the *General Medical*

Council on Dr. *Leeson*, the person complained of. They had no power to give any costs, and therefore, whatever might be the result of this complaint made against him, it could not in any way affect the liability of Mr. *Teale* and Dr. *Glover* to contribute to the expenses of this proceeding. Then as regards the question whether they are to be considered as complainants here, we ought to look to substance, and not, because this complaint is brought by the Council in the name of the Union, to say that a person, a member of a union, who has nothing to do and can have nothing to do with bringing forward this complaint, is to be treated as a prosecutor or as one of the persons who is bringing forward this complaint. The term "prosecutor" is sometimes objected to, but I use it for the sake of simplicity. Therefore it cannot be said that these two members were incompetent to act because they were adjudicating upon a complaint brought forward by themselves; and, as I have already shewn, there can be no pecuniary interest and no bias in that respect from any pecuniary liability which was thrown upon them or anything of that kind. Whichever way it was determined, their liability as to contributing to the expenses would be just the same. I may also observe that as regards the objects of the Union (I give no opinion as to whether it is desirable to form such unions), the objects are just as much to defend those who are improperly attacked as to bring before the *General Medical Council* any question which may reflect on the conduct of any member of the profession, so that on that ground they are not to be considered as complainants here—as persons who are bringing forward this charge—and there was hardly any contention that their position as members of the Union did actually involve a bias which would prevent them from adjudicating on this case.

Numerous cases were cited, but in the view which I take of the question before us, it is only necessary to advert to one which probably is the strongest in favour of the Appellant here: *Reg. v. Allan* (1). There certain gentlemen, riparian owners and owners of salmon fishing, and some who were outsiders, formed themselves into a body not in any way incorporated, all of

(1) 4 B. & S. 915.

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whom apparently would have equal power, and there was a committee formed which was a committee to direct prosecutions. Three magistrates were sitting on the bench when a question was brought before them, and they were members of this association. One of them was a member of the committee and had directed the prosecution. There was no doubt, therefore, that he was a prosecutor in the matter which was brought before the magistrates for decision, and therefore, having regard to the principle laid down, the conviction was bad. But the other two had nothing to do with that committee, and were only members of the association; and that was the principal point relied upon here. But the Lord Chief Justice *Cockburn* no doubt does use language which would seem to shew that, even if only those magistrates who were members of the association and not on the committee had been on the bench, the conviction would have been bad. What he said was this (1): "Certain members of that association were present as justices, and took part in this conviction; they were essentially prosecutors, being members of an association the aggregate of which were undoubtedly the prosecutors." Well, I myself do not think that the language of Judges ought to be taken without reference to the facts of the case, and although he did use that large expression, yet Lord *Blackburn*, who was on the bench too, and Mr. Justice *Mellor*, did not use language which can be even tortured into saying that if any member of the association had been on the bench at the time that would have vitiated the proceeding. What Lord *Blackburn* said was this (2): "One of the justices who joined in the conviction, being a member of the committee of the association which instituted the proceedings, was one of the prosecutors. There may be difficulty in finding magistrates in this neighbourhood who are not interested to hear such an information, but members of the association which institutes the prosecution must not act as judges upon it." There I think he puts it that the conviction was bad, because one member of the committee, who were actually prosecutors, was sitting on the bench at the time, and Mr. Justice *Mellor's* language, I think, fairly interpreted, leads to the same conclusion; but even if the Lord Chief Justice did

(1) 4 B. & S. 922.

(2) 4 B. & S. 924.

intend by the language he used to say that the conviction would have been bad if the Court included any one of the members of the association who had nothing to do with the prosecution, and could not have, and who had not been on the committee, I should not follow him in a case like this, where neither *Mr. Teale* nor *Dr. Glover* had or could have any voice at all in this prosecution, or, on the evidence, knew anything at all about it till the matter was brought before them as members of the *General Medical Council*.

In my opinion this objection, which is a most serious one, cannot prevail, and we ought to hold that *Mr. Justice North* was right in refusing the injunction.

BOWEN, L.J.:—

As to the first point raised by the appeal I shall say very little in addition to what the Lord Justice has already stated. These proceedings were in the nature of judicial proceedings, although the forum is a domestic one, and although the evidence taken before such forum differs in many respects from evidence which is adduced in a Court of Law, and in particular in the all important respect that it is not given upon oath. The only thing which the Courts can investigate when proceedings of the *General Medical Council* of this character are brought before them is whether the domestic forum has acted honestly within its jurisdiction. The jurisdiction is defined by the statute. There must be an allegation before the *General Medical Council* of infamous conduct in some professional respect, and adjudication must be arrived at after due inquiry. The statute says nothing more, but in saying so much it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard. With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of

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conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. We have seen that those conditions have been fulfilled by the inquiry and by the tribunal which institutes it. The functions of the Court of Law are at an end. It appears to me that we have no power to review the evidence any more than we have a power to say whether the tribunal came to the right conclusion. If, indeed, it could be shewn that nothing was brought before the tribunal which could raise in the minds of honest persons the inference that infamous conduct had been established, that would go to shew that the inquiry had not been a due inquiry; but if there is no blot of that kind upon the proceedings, the jurisdiction of the domestic tribunal which has been clothed by the Legislature with the duty of discipline in respect of a great profession must be left untouched by Courts of Law. It appears to me for these reasons that the view which the Lord Justice *Cotton* has expressed is the sound one, and I entirely concur with it.

Next comes a very serious question, whether or no the tribunal which adjudicated in respect of the Appellant's conduct was, in respect of two of its members, rendered incompetent by the fact that they had taken part as accusers before the Council of the person upon whose conduct they were adjudicating. As the Lord Justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial judge. If he is an accuser he must not be a judge. If he has a pecuniary interest in the success of the accusation he must not be a judge. Where such a pecuniary interest exists, the law does not allow any further inquiry as to whether or not the mind was actually biased by the pecuniary interest. The fact is established from which the inference is drawn that he is interested in the decision, and he cannot act as a judge. But it must be in all cases a question of substance and of fact whether one of the judges has in truth also been an accuser. The question which has to be answered by the tribunal which has to decide—the legal tribunal before which the controversy is waged—must be: Has the judge whose impartiality

is impugned taken any part whatever in the prosecution, either by himself or by his agents? I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint was being alleged by the Council of a society to which they subscribed, and to which they in law belonged as members, did not at once retire from the Council. I think it is to be regretted, because judges, like *Cæsar's* wife, should be above suspicion, and in the minds of strangers the position which they occupied upon the council was one which required explanation. Whatever may be the result of this litigation, I trust that in future the *General Medical Council* will think it reasonable advice that those who sit on these inquiries should cease to occupy a position of subscribers to a society which brings them before the Council. But having said that, I come back to the point which we have to decide, whether these two gentlemen took any part whatever in the prosecution either by themselves or by their agents. It appears to me, in spite of the cloud which the ingenuity of the Appellant's Counsel raised upon the point, that the true answer must be here upon the facts—and it is a question of fact—in the negative. I think, although they were members of the incorporation whose Council brought this complaint before the *General Medical Council*, they did not themselves take any part and could not have taken any part whatever in the prosecution, and that the prosecution was not conducted really by the Council of the Union as their agents. The Council of the Union was supreme in the matter, and I think that they stand clear, upon the facts being investigated, of all suspicion whatsoever.

For those reasons, treating the latter part of the case as one which depends upon an inference of fact, and regretting as I do that there should be colour for the suggestion that has been made, and that a controversy should accordingly have arisen which required to be carefully considered, and with the care which we have brought to bear upon it, nevertheless I think that as a matter of substance and of fact these gentlemen were not accusers on this particular occasion.

The appeal, therefore, in my judgment, must be dismissed with costs.

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Two questions have been argued before us. The first was a question whether the charge which was laid before the *General Medical Council* was one which was within the jurisdiction of that Council. Now with all that has been said by my learned Brothers on that part of the case I entirely concur; I shall add nothing to what they have so fully and clearly expressed.

Then comes the second question, whether having regard to the fact that two members of the Council were subscribers to what is known as the *Medical Defence Union*, the Council as constituted was competent or incompetent to determine the charge. Now there, again, there are subordinate questions in which I entirely agree with my learned brethren. Like them, I cannot for one moment yield to the argument which was addressed to us by the leading Counsel for the *General Medical Council* that they were not acting judicially in the performance of their duties on the occasion in question. The nature of the proceeding and the effect of the proceeding seem to me to be very strong to shew that it must be judicial, because the result was to deprive Dr. *Leeson* of rights which before that were vested in him as a duly qualified medical man on the register of the Council. Further than that, the language of the statute, if it be necessary to refer to that, is in my judgment equally clear; it requires a due inquiry. It requires a judgment. It requires that that judgment shall find him guilty. Now “inquiry” and “judgment” and “guilt” are all words which express and which are relevant to judicial proceedings, and therefore, although this body proceeds by different rules of evidence from those on which the Courts of Law proceed, I cannot for a moment doubt that the Council were proceeding judicially; nor can I help adding that the manner in which the Council has proceeded on this inquiry, as on all other inquiries, shews that the Council are fully aware that they are performing judicial duties, and that they endeavour to perform them in a very admirable manner.

Then it was urged before us that the *Medical Defence Union* were not in fact complainants. It was said that the Council could proceed without any prosecutor or person acting before it, that they might proceed *mero motu*. That is quite true,

but it is equally true that in this case they did not proceed *mero motu*, but they proceeded in this manner. They allowed the solicitor and the honorary secretary of the *Medical Defence Union* to appear before them in the character of complainants, a course which seems to me to have been a very convenient one to pursue; and it is not unworthy of remark that at the very same meeting of the Council at which these proceedings were taken against Dr. *Leeson*, rules in respect of the procedure at such inquiries were passed by the Council, which divided them into two classes of cases. One of these classes was where the inquiry is brought before the *General Medical Council* by a complainant, and the complainant appears personally or by counsel or solicitor; then a certain order of procedure was enacted, and that order of procedure followed very nearly the procedure before a Court, and it gave the complainant an opportunity to state his case, and produce his proofs; then the accused was to be invited to state his case and to produce his proofs; and then there was an opportunity given for a reply in certain cases. The second class of cases was where no complainant appeared. There the Council proceeded simply by reading the complaint and calling on the accused practitioner to state his case and to produce his evidence. It is evident, therefore, that the *Medical Defence Union*, either as a whole or by their executive, were proceeding as complainants and as *quasi* prosecutors in this inquiry. No doubt the *Medical Defence Union* acts through its Council, through its executive body, and this proceeding was taken by the executive body, and they were represented, as I have already stated, by their solicitor and their honorary secretary. They acted in fact as prosecutors, producing the evidence and stating the case, and urging what was to be said for the prosecution or *quasi* prosecution.

Now, to that Union two of the members of the *General Medical Council* which sat upon this case, and who, therefore, took part in this decision, were subscribers, and it must be taken that this prosecution—I call it a prosecution for the sake of brevity—this proceeding was within the objects of the Union. It appears to me that subscribing to a Union of this description implies two things. It implies a general sympathy with the objects of the

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Union, and it implies, secondly, a confidence in the discretion of the executive body who have to carry on the business of that Union. No doubt the amount of confidence and the amount of sympathy may vary in different cases, and from time to time, with the same subscribers, but that is the natural conclusion I think one arrives at when one finds a person subscribing to an association for carrying on prosecutions. Now, that in my opinion makes the subscriber to an association of this kind what has been called a virtual prosecutor—of course he is not an actual prosecutor; he is not before the tribunal *in propria personâ*, he has not even given instructions to the solicitor who appears, but he has shewn his sympathy with and his confidence in that body who are acting in this respect. I cannot think that a body of subscribers to a Union of this description could form a satisfactory body of judges to determine on proceedings taken by the Union itself. I cannot shut my eyes to the fact, which Judges know as well as everybody else, that there are in this country numerous associations formed for the purpose of carrying on prosecutions in respect of alleged violations of the law of various kinds. They may be sometimes in respect of violations or alleged violations of rights of fishery in a river, as in the *Tees Case*, or they may relate to violations or alleged violations of the laws which restrain cruelty towards animals, or to violations or alleged violations of the ecclesiastical laws. Subscribers to those associations indicate their sympathy with the general proceedings of the body in carrying on those prosecutions, and I think they come within the description which has been given of virtual prosecutors.

To my mind this point is determined by authority. I do not say authority binding on us, but authority which I think deserves the utmost respect and consideration. I mean the case to which Lord Justice *Cotton* has referred of *Reg. v. Allan* (1). In that case there was a voluntary association of persons which consisted of two classes—ordinary members who were the owners of riverside property or occupiers of the rights of fishing in the *Tees* and its tributaries; secondly, honorary members who might be desirous of promoting the objects of the association by con-

tributing to its funds, and who were, as I understand, not riparian proprietors or owners of rights of fishing in the *Tees*. That body acted, as most of these bodies do, through a committee, and that committee was not only to make bye-laws and rules and regulations, but they were the persons to engage and dismiss watchers, and in the event of proceedings under the Act being considered necessary, they—that is, the committee—were to instruct the secretary to enforce its provisions, and the secretary and treasurer were, subject to the approval of the committee, to determine what proceedings should be taken against any person acting in contravention of the law. The ordinary members, therefore, and the honorary members had nothing whatever to do with instituting the prosecutions or appointing watchers. The person who laid the information in that case was a watcher of the association, therefore engaged and liable to dismissal not by the general body but by the committee. The magistrates who sat on the bench to hear that complaint were three. Mr. *Allan* was an ordinary member and the owner of property having a frontage to the river; Mr. *Smith* was not only an ordinary member but he was an active member of the committee, and had been concerned in a resolution which authorized the committee to take proceedings for the recovery of such penalties as in their opinion had been incurred at the defendant's locks, and, lastly, Mr. *Pease*, who was not an ordinary member, but only a subscribing member of the association. Those were the three justices.

Now in what way did the Court deal with the application to quash the conviction on the ground of the magistrates being the virtual prosecutors? The Lord Chief Justice *Cockburn* said (1): "It is impossible to hold consistently with the principles which have been established by decided cases, and are founded in the very essence of justice, that these magistrates were competent judges upon the occasion in question." Observe, he does not hold that one magistrate is disqualified, but he holds that all three were disqualified according to the essential principles of justice. Then he says: "Certain members of that association were present as justices"—again dealing with them all—"and took part in this conviction; they were essentially prosecutors, being members of

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an association the aggregate of which were undoubtedly the prosecutors." Then Lord *Blackburn*—Mr. Justice *Blackburn* as he then was—in my view, notwithstanding what has been said by Lord Justice *Cotton*—took the same view. He deals no doubt in the first place with the case of Mr. *Smith*, who was a member of the committee, but he goes on to add this: "There may be difficulty in finding magistrates in this neighbourhood who are not interested to hear such an information, but members of the association which institutes the prosecution must not act as judges upon it." In other words, he says neither an ordinary nor an honorary member of this association can act as judge upon the matter. Every subscriber to that association appears to me in the view of these two learned Judges to have been disqualified from sitting as judge or acting as judge on that complaint.

I think, therefore, that that is a decision which in point of substance and principle applies to the present case. Of course it is not binding upon us, but in my view that decision is right, and I think that it ought to be upheld and applied to the present case. I think that it is a matter of public policy that, so far as is possible, judicial proceedings shall not only be free from actual bias or prejudice of the judges, but that they shall be free from the suspicion of bias or prejudice: and I do not think that subscribers to associations for the purpose of carrying on prosecutions can be said to be free from suspicion of bias or prejudice in the case of prosecutions instituted by the associations to which they subscribe. It is needless for me to disclaim any intention, in arriving at that conclusion, of holding that the two gentlemen in question were in fact influenced by any bias. That appears to me a point which is not really open to us, because I put my decision on the ground of public policy, and I disclaim any right to inquire whether in fact they were or they were not biased. I need hardly say that I do not believe they were.

Lastly, it was urged that the case I have referred to is not in point, because there the association was not an incorporated one, and in the present case it was incorporated. That, in my judgment, has nothing to do with the case. Corporation or non-corporation is quite immaterial in considering the operation upon a

man's mind of the fact that he is a member of a Union for the purpose of carrying on prosecutions. I think, therefore, that we should be misled by a trivial and immaterial difference if we gave any effect to that. If the matter, therefore, had rested with me, I should have held that the decision of the *General Medical Council* in this case was invalid, and that the Council as constituted on the occasion in question was not competent to decide on it, and in so doing I think that I should best maintain the dignity and, therefore, the usefulness of the *General Medical Council*. My learned brethren are of the opposite opinion, and therefore this appeal will be dismissed with costs.

Solicitors: *R. Furber; Farrer & Co.*

M. W.

In re GILES.
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[1886 G. 1292.]

Practice—Time for Appeal—Order in Chambers—Motion to Discharge Final Order—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50 [Revised Ed. Statutes, vol. xvii., p. 86]—Rules of Supreme Court, 1883, Order LVIII., r. 15—Originating Summons—Mortgage—Priority—Rules of Supreme Court, 1883, Order LV., rr. 3, 5 A.

A motion to discharge or vary a final order made in Chambers must be brought within twenty-one days.

In re Johnson (1) approved.

Where a party moved to discharge a final order made in Chambers after the expiration of twenty-one days, and the Judge refused to hear it because it was too late, *quære*, whether the motion was made within the terms of the 50th section of the *Judicature Act, 1873*, so as to give the party a right to appeal.

The procedure by originating summons is only intended for the decision of simple questions between the plaintiff and defendant. Therefore, where a mortgagee had taken out an originating summons for foreclosure or sale under Order LV., r. 5 A, the Court refused to decide the question of priority between two mortgagees.

THIS was an originating summons taken out by the *Real and Personal Advance Company*, as Plaintiffs, transferees of a mort-

(1) 42 Ch. D. 505.

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