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IN RE THOMAS. JAQUESS v. THOMAS.

Lindley, L.J.

down by Lord Mansfield in *Holman* v. *Johnson* (1), and recently acted upon by this Court in *Scott* v. *Brown* (2), has never been applied, and, in our opinion, ought not to be applied, to the exercise of the jurisdiction of the Court over its own officers. We may, however, add that there is no proof that either Jaquess or Thomas was to share the estate if recovered, and that it did not concern Thomas where Jaquess got money from. Thomas was not employed to raise money for Jaquess, and Thomas's payment was not conditional on money being illegally raised. This really disposes of the appeal, which must be dismissed with costs.

Appeal dismissed.

Solicitors for appellant: *Wontner & Sons.*
Solicitor for respondent: *Rolt.*

M. W.

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[IN THE COURT OF APPEAL.]

ALLINSON *v.* GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION.

Medical Practitioner—General Council of Medical Education and Registration—Removal of Name from Register—Power of Court to review Decision—"Infamous conduct in a professional respect"—Judicial Inquiry—Domestic Forum—Personal Interest of Member of Tribunal—Medical Act (21 & 22 *Vict.* c. 90), *ss.* 28, 29.

By the Medical Act (21 & 22 Vict. c. 90) the General Council of Medical Education and Registration were established, one of their duties being to keep a register of medical practitioners. By s. 29: "If any registered medical practitioner 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." The General Council, acting under the foregoing section, held an inquiry into the conduct of the plaintiff, a medical practitioner who was on the register. It was proved that he had published a great number of advertisements in newspapers, which contained reflections upon medical men generally and their methods of treating their patients, and advised the public to have nothing to do with them or their drugs. The advertisements also recommended the public to apply to the plaintiff for advice, and stated his address and the amount of the fee which he charged. The Council judged

(1) Cowp. 343. (2) [1892] 2 Q. B. 724.

that the plaintiff had been "guilty of infamous conduct in a professional respect," and directed his name to be erased from the register:—

Held, that there was evidence upon which the council could reasonably hold that the plaintiff had been guilty of infamous conduct in a professional respect, and that, this being so, the Court could not review their decision:

Held, further, that, if it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful and dishonourable by his professional brethren of good repute and competency, it is open to the council to find that he has been "guilty of infamous conduct in a professional respect."

The inquiry was instituted at the instance of the committee of a society called the Medical Defence Union, whose objects were "to support and protect the character and interests of medical practitioners; to promote honourable practice; and to suppress or prosecute unauthorized practitioners." One member of the council who took part in the inquiry had been a member and a vice-president of this society, and as vice-president was an ex-officio member of the committee. He had, however, never attended any of the meetings of the committee, and until after he had been elected a member of the council he did not know that proceedings were being taken against the plaintiff. He was elected a member of the council on May 3, and on the same day he sent in his resignation of his membership of the Defence Union. By the articles of association of that society any member might withdraw by giving two months' notice of his intention so to do, "and upon the expiration of such notice he shall cease to be a member." The inquiry was held on May 28:—

Held, that such member of the council was not disqualified from taking part in the inquiry.

APPEAL by the plaintiff against the refusal of Collins, J., at the trial of the action without a jury, to grant an injunction to restrain the defendant council from allowing the plaintiff's name to remain struck out from the medical register kept by the council, under the provisions of the Medical Act, 21 & 22 Vict. c. 90.

At the meeting of the council on May 28, 1892, the council considered the following charges which had been made against the plaintiff, Mr. Thomas Richard Allinson, by a society called the Medical Defence Union, viz., "That being a registered medical practitioner, and a licentiate of the Royal Colleges of Physicians and Surgeons of Edinburgh, he systematically seeks to attract practice by a system of extensive public advertisements containing his name and address and qualifications, and invitations to persons in need of medical aid to consult him professionally, the advertisements so systematically published by him being themselves of a character discreditable to a professional

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man." After hearing the plaintiff the council resolved: "(1.) That in the opinion of the council, Thomas Richard Allinson has committed the offence charged against him; (2.) that the offence is, in the opinion of the council, infamous in a professional respect; (3.) that the registrar be directed to erase the name of Thomas Richard Allinson from the medical register." In pursuance of these resolutions the plaintiff's name was erased from the register. One of the members of the council present at this meeting was Dr. G. H. Philipson, who had, under the provisions of the Medical Act, 1886, been appointed by the University of Durham to be a member of the council for the term of five years from May 3, 1892.

The Medical Defence Union was a society registered under the Companies Act, 1862, as a company limited by guarantee. The objects of the Union as defined by the memorandum of association were (inter alia) "to support and protect the character and interests of medical practitioners practising in the United Kingdom; to promote honourable practice; and to suppress or prosecute unauthorized practitioners." Dr. Philipson was a member of this Union. He was appointed a vice-president of the Union, and as such he became under the articles of association an ex-officio member of the council of the Union, in which by the articles the management of its affairs was vested. Dr. Philipson had never attended any of the meetings of this council, and did not reside in the place at which they were held. The articles of association contained the following clause: "Any member may withdraw from the union by giving two calendar months' notice in writing of his intention so to do, such notice to be addressed to the secretaries at the registered office of the Union, and upon the expiration of such notice he shall cease to be a member." Dr. Philipson on May 3, 1892, upon his election as a member of the defendant council, gave notice in writing of his intention to withdraw from the Union. He was not aware that proceedings were being taken by the Union against the plaintiff until he had taken his seat as a member of the defendant council.

It was proved before the defendant council that the plaintiff had been in the habit of inserting advertisements in newspapers,

in which his name and address were stated. These advertisements contained reflections upon medical men generally and their methods of treating their patients, and advised the public to have nothing to do with them or their drugs. The advertisements contained a series of answers to real or imaginary correspondents as to the proper treatment of different complaints, and there were recommendations to apply to the plaintiff for advice, the amount of the fee charged by him for advice being stated. Certain works on medical subjects written by the plaintiff were also mentioned, and their prices.

The following are specimens of the advertisements:—

"In this our nineteenth century of boasted civilization the drug doctors are not so successful in the cure of disease as were the ancients nearly 2000 years ago. Then the healers relied mostly on diet and baths, not having found out the poisonous drugs now employed. A patient is now fed up with useless and disease-producing animal broths, meat-extracts, or so-called beef tea, which contains most of the refuse which the kidneys would have thrown out if the animal had lived. The patient is usually dosed with poisonous drugs which upset his stomach, derange the other organs, greatly lessen his chance of recovery, and lengthen the duration of his illness."

Under the head of "General Advice," "Strictly avoid all drugs, medicines, pills, powders, potions, lotions, gargles, inhalations, ointments, salves, &c. Do not paint with iodine, nor use caustic, blisters, poultices, plaisters, liniments, nor splints. Do not take cod liver oil, pepsine, maltine, chemical food, or any patent medicine, no matter how much advertised."

And, in answers to correspondents, "Professional poisoners, for I can call doctors by no truer name." "Send a postal order for 5*s.*, with a stamped directed envelope, and I will send you private postal advice that will benefit you." It was also proved that the plaintiff had formerly published a pamphlet or leaflet entitled "How to avoid Vaccination," in which he suggested a method by which the effect of vaccination (which he considered an injurious operation) might be avoided by washing off the lymph immediately after the operation had been performed. Objections were made to this publication by the Colleges of

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Physicians and Surgeons of Edinburgh, and the plaintiff then undertook that he would discontinue the publication of the leaflet. After he had given this undertaking he did not himself any longer publish the leaflet. It had, however, become the property of a society called the Anti-Vaccination Society, which continued to publish it, and the plaintiff in some of his advertisements recommended his correspondents to purchase the pamphlet, and informed them where it was to be obtained.

The following is a specimen of these advertisements:—

"I do not issue the leaflet 'How to avoid Vaccination.' It belongs to the Anti-Vaccination Society. Send 2*d.* for it to Mrs. Young, 77, Atlantic Road, Brixton."

The writ in this action was issued on June 1, 1892, claiming an injunction in the terms above mentioned. The plaintiff alleged that Dr. Philipson was, by reason of his connection with the Medical Defence Union, disqualified from acting on the defendant council in reference to the charges made by the union against the plaintiff, and also that there was no evidence upon which the defendant council could reasonably come to the conclusion that the plaintiff had been guilty of "infamous conduct in a professional respect." The plaintiff alleged that the defendants had not really erased his name on this ground, but because he had adopted certain theories of medicine—a ground prohibited by s. 28 of the Act.

At the trial Collins, J., held that there was evidence upon which the defendants could reasonably come to the conclusion that the plaintiff had been guilty of infamous conduct in a professional respect, and that Dr. Philipson was not disqualified from acting on the council. Judgment was accordingly given for the defendants.

Coleridge, Q.C., and *Schultess Young*, for the plaintiff. In dealing with the question whether the name of a medical practitioner should be erased from the register, the Council are acting in a quasi-judicial capacity, and if any member of the Council has any pecuniary interest in the matter, or has or can even reasonably be suspected of having any bias, or is in effect acting both as prosecutor and judge, the decision of the Council is void:

Allbutt v. *General Medical Council of Education and Registration* (1); *Leeson* v. *General Medical Council of Education and Registration.* (2) The present case is clearly covered by the judgment of Fry, L.J., in *Leeson's Case.* (2) He differed from the majority of the Court. But the judgment of Bowen, L.J., also covers the present case. If there is something which "might give a bias" to one of the judges, that is sufficient to invalidate the decision: *Reg.* v. *Meyer* (3); *Reg.* v. *Gaisford* (4); *Reg.* v. *Fraser* (5); *Partridge* v. *General Medical Council of Education and Registration.* (6) [LOPES, L.J., referred to *Reg.* v. *Farrant.* (7)] *Reg.* v. *Henley* (8); *Temperton* v. *Russell.* (9) Dr. Philipson was evidently an active member of the prosecuting body, though he did not know anything about the prosecution of the plaintiff until the matter came before the Council.

Upon the merits, there was no evidence before the defendant Council upon which they could reasonably find that the plaintiff had been guilty of "infamous conduct in a professional respect," within the meaning of s. 29 (10) of the Medical Act. The defendants really erased the plaintiff's name because he had adopted certain theories of medicine, and that is the very thing which

(1) 23 Q. B. D. 400.
(2) 43 Ch. D. 366.
(3) 1 Q. B. D. 173.
(4) [1892] 1 Q. B. 381.
(5) 9 Times L. R. 613.
(6) 25 Q. B. D. 90.
(7) 20 Q. B. D. 58.
(8) 61 L. J. (M.C.) 135.
(9) 41 W. R. 565.
(10) Sect. 28: "If any of the said colleges or the said bodies at any time exercise any power they possess by law of striking off from the list of such college or body the name of any one of their members, such college or body shall signify to the General Council the name of the member so struck off; and the General Council may, if they see fit, direct the registrar to erase forthwith from the register the qualification derived from such college or body in respect of which such member was registered, and the registrar shall note the same therein: Provided always, that the name of no person shall be erased from the register on the ground of his having adopted any theory of medicine or surgery."

Sect. 29: "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."

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is forbidden by s. 28. The plaintiff holds what may be called fanatical opinions about the use of meat and alcohol and drugs, and he has written a pamphlet adverse to vaccination. This is the real reason why the defendants have erased his name. He undertook not to continue the publication of that pamphlet, and he has fulfilled his undertaking. The publication has been continued, not by the plaintiff, but by the Anti-Vaccination Society, whose property the pamphlet has become. The "infamous conduct" mentioned in s. 29 must be conduct infamous per se; but every kind of infamous conduct will not be sufficient. It must be infamous conduct connected with the practice of the man's profession.

Reid, Q.C., and *Muir Mackenzie*, for the defendants. With regard to the disqualification of a member of the council, the principle is clearly settled. Any pecuniary interest, however small, necessarily disqualifies. The Court will not inquire into the amount of the interest. If there is no pecuniary interest, the question is one of substance and fact—whether the Court thinks that the interest is so substantial that it is likely to have biassed the person who is acting judicially.

[LORD ESHER, M.R. Is not the question this—whether it can be reasonably supposed that he might be biassed?]

That test is sufficient for the defendants in the present case. But it is submitted that the Court ought to be able to come to the conclusion that the person in question was in fact biassed: *Reg.* v. *Farrant.* (1) In *Reg.* v. *Fraser* (2) the test is put too high.

[LORD ESHER, M.R. *Reg.* v. *Farrant* (1) seems to have been adopted in *Leeson's Case.* (3)]

A possibility of bias which is not real is not sufficient. There must be a probability of bias, not a mere possibility. It is a question of fact in each case, whether the position of the man was such that he was likely to be biassed—whether reasonable men would entertain a suspicion that he was likely to be biassed.

[DAVEY, L.J. Is not the true principle that which was stated

(1) 20 Q. B. D. 58. (2) 9 Times L. R. 613.
(3) 43 Ch. D. 366.

by Mellor, J., in *Reg.* v. *Allan* (1), "It is highly desirable that justice should be administered by persons who cannot be suspected of improper motives"?]

Dr. Philipson resigned his membership of the Defence Union on May 3, and the inquiry did not take place till May 28.

With regard to the merits of the case, there was some evidence before the council upon which they could reasonably hold that the plaintiff had been guilty of "infamous conduct in a professional respect," and therefore their decision cannot be reviewed by the Court. "Infamous conduct in a professional respect" means professional infamy—infamous conduct as a professional man. Unprofessional conduct is not necessarily infamous. A breach of a professional rule would not be enough. "Infamous conduct" must be conduct such as would make honourable men shun the person who had been guilty of it.

Coleridge, Q.C., in reply. The question is, Did the plaintiff honestly believe that the treatment which he recommended was the best mode of curing the diseases of mankind? If a man honestly believes what he says, there is no infamy in his making money by means of it.

LORD ESHER, M.R. The grounds of the plaintiff's claim to an injunction are two: First, that Dr. Philipson, one member of the Medical Council who adjudicated upon his case, was disqualified from so acting, and that that rendered the judgment not only illegal, but void. Secondly, that there was no evidence upon which the council could reasonably find that the plaintiff had been guilty of "infamous conduct in a professional respect." It is admitted that, if either of these objections can be maintained, the decision of the council was illegal and void, and in either case I presume the plaintiff would be entitled to the relief which he asks. Was, then, Dr. Philipson, who took part in the decision of the council, in a position which made his participation illegal as being against public policy? If he was, his participation certainly rendered the decision wholly void. It is said that he was incapacitated from taking part in the decision, because he was or might be biassed, and the first question we

(1) 4 B. & S. 915.

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have to decide is, whether Collins, J., was right in holding that Dr. Philipson was not disqualified. That he had any pecuniary interest in the matter is not suggested; but it is said that he might have had a bias. We are bound to act upon the decision of this Court in *Leeson* v. *General Council of Medical Education and Registration.* (1) It may be that some of us (I am not one) would have preferred that that case should have been decided according to the view of Fry, L.J.; but we are bound by the decision, and all we have to do with that case is to discover rightly what it did decide, and whether the decision embraces the present case. I think that in that case the majority of the Court decided, that where a person who has taken part in the judicial proceedings, or, you might say, has sat in judgment on the case, has any pecuniary interest in the result, however small, the Court will not inquire whether he was really biassed or likely to be biassed. The Court will say at once, It is against public policy that a person who has any monetary interest, however small, in the result of judicial proceedings should take part in them as a judge. The Court will inquire no further, but will say at once that he is disqualified. But *Leeson's Case* (1) also decides that there are other relations to the matter of a person who is to be one of the judges which may incapacitate him from acting as a judge, and they held that the crucial question is, as Bowen, L.J., said, whether in substance and in fact one of the judges has in truth also been an accuser. What is the meaning of that? The question is to be one of substance and fact in the particular case. What is the fact which has to be decided? If his relation is such that by no possibility he can be biassed, then it seems clear that there is no objection to his acting. The question is not, whether in fact he was or was not biassed. The Court cannot inquire into that. There is something between these two propositions. In the administration of justice, whether by a recognised legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position

(1) 43 Ch. D. 366.

that he might be suspected of being biassed. To use the language of Mellor, J., in *Reg.* v. *Allan* (1), "It is highly desirable that justice should be administered by persons who cannot be suspected of improper motives." I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one "of substance and fact," and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed. I think that for the sake of the character of the administration of justice we ought to go as far as that, but I think we ought not to go any further. I take that to be the rule for the application of the test laid down in *Leeson's Case.* (2) Could, then, Dr. Philipson be reasonably or substantially suspected of bias in this case? This depends in each case upon the relation of the impugned judge to the matter upon which he has to adjudicate.

Now, the relation of Dr. Philipson to the matter was this. He had been a subscriber to and a member of a society called the Medical Defence Union, a society formed for the defence of the honour of the medical profession, and to protect that honour against the improper conduct of any individual member of the profession. Dr. Philipson had been a vice-president of the society, and by reason of his being a vice-president he was ex officio a member of the committee to which was intrusted the authority to complain of the conduct of any medical man and to take proceedings in relation to it. He was only ex officio a member of the committee; he never in fact acted as a member of the committee. Moreover, before the plaintiff's case came on for hearing he had resigned his membership of the society altogether, so that, if it was a good resignation, he was when the case was heard not only not a subscriber, he was not a vice-president, and he was not an ex-officio member of the committee.

(1) 4 B. & S. 915, at p. 926. (2) 43 Ch. D. 366.

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He had nothing to do with the matter. It was suggested by Mr. Coleridge on behalf of the plaintiff that, although Dr. Philipson did resign his membership, his resignation was not an accomplished fact until the end of two months after he sent it. But it seems to me that, though that may be technically so, yet the substance of the thing is that he had resigned his membership. He might perhaps have repented before the end of two months, but he did not. His resignation dates from the time when he sent it, for otherwise the two months did not begin to run. Therefore he resigned when he did resign, and he resigned so as not to act, and with the determination not to act, as a member of the committee, and he never did act again. Under these circumstances, it seems to me impossible that any reasonable person should think that he was biassed, or that in substance and in fact he could be liable to be even suspected of bias. There is nothing upon which to found a suspicion. The first objection, therefore, falls to the ground. I do not go into instances which were given during the argument, and which would make the proposition absurdly large under some circumstances. I take the decision in *Leeson's Case* (1), and say that it must be proved to the satisfaction of the Court which is asked to interfere that in substance the relation of the impugned judge to the matter was such as I have described. The first ground of objection therefore fails.

As to the second ground of objection, it is admitted that, if there was no evidence upon which the council might fairly and reasonably say that the plaintiff had been guilty of "infamous conduct in a professional respect," they went beyond the jurisdiction given to them by the Act in entertaining the case and proceeding to adjudicate upon it. If there was no such evidence, they ought to have declined to interfere. Was there, then, any evidence which justified the council in finding the plaintiff guilty of "infamous conduct in a professional respect"? I adopt the definition which my brother Lopes has drawn up of at any rate one kind of conduct amounting to "infamous conduct in a professional respect," viz.: "If it is shewn that a medical

(1) 43 Ch. D. 366.

man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency," then it is open to the General Medical Council to say that he has been guilty of "infamous conduct in a professional respect." The question is, not merely whether what a medical man has done would be an infamous thing for any one else to do, but whether it is infamous for a medical man to do. An act done by a medical man may be "infamous," though the same act done by anyone else would not be infamous; but, on the other hand, an act which is not done "in a professional respect" does not come within this section. There may be some acts which, although they would not be infamous in any other person, yet if they are done by a medical man in relation to his profession, that is, with regard either to his patients or to his professional brethren, may be fairly considered "infamous conduct in a professional respect," and such acts would, I think, come within s. 29. I adopt that as a good definition of at any rate one state of circumstances in which the General Medical Council would be justified in finding that a medical man had been guilty of "infamous conduct in a professional respect." Was there, then, evidence in the present case of such conduct? It seems to me that this question must be solved thus. Taking the evidence which was before the Medical Council as a whole, did it bring the plaintiff within the definition which I have read? Was the evidence, taken as a whole, reasonably capable of being treated by the council as bringing the plaintiff within that definition of "infamous conduct in a professional respect"? I cannot doubt that it was. It seems to me that it may be fairly said that the plaintiff has endeavoured to defame his brother practitioners, and by that defamation to induce suffering people to avoid going to them for advice, and to come to himself, in order that he may obtain the remuneration or fees which otherwise he would not obtain. If on the whole that which he has been doing could be reasonably construed as amounting to that, it comes, in my opinion, within the definition I have read, and the council were justified in saying that the plaintiff had been guilty of "infamous conduct in a professional respect."

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The second ground of objection, therefore, also fails, and in my opinion the judgment of Collins, J., was right, and the appeal must be dismissed.

LOPES, L.J. I am of the same opinion. That an accuser must not be also a judge is in accordance with public policy and natural justice, and is a principle too well-established to require any comment. A person who has a pecuniary interest in the result of an accusation cannot adjudicate on it. The inference at once arises that he is interested. But when no pecuniary interest exists or is even suggested, it is, to use the words of Bowen, L.J., in *Leeson's Case* (1), "a question of substance and of fact whether one of the judges has, in truth, also been an accuser." Again, adopting the words of Bowen, L.J., "Has the judge whose impartiality is impugned taken any part whatever in the prosecution, either by himself or by his agents"? And Cotton, L.J., said in the same case, 43 Ch. D., at p. 381, "Then, as regards the question whether they are to be considered as complainants here" (that was a case very similar to the present, the General Medical Council being concerned in it, and also the Medical Defence Union), "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." These words are very applicable to the present case, and the result which I deduce from that case is, that in such cases the proper question to be asked is this: whether there is any reasonable—any real or substantial—ground for suspecting bias. Now, let me apply that to the present case. Was there any reasonable ground in substance and in fact for suspecting any bias in Dr. Phillipson? He was a subscriber to the Medical Defence Union. He had been a vice-president, and as vice-president he was ex officio a member of the committee which, on behalf of the union, instituted complaints such as the present. He never acted on that committee, and at the time

(1) 43 Ch. D. 336.

when this inquiry took place he had resigned his membership of the union. It was urged that his resignation did not take effect, or was not completed, for a period of two months. But I think that, in effect, he had resigned his membership. It must also be recollected that the evidence shews that he had never heard of the plaintiff's case before the inquiry. In these circumstances, I think the learned judge was quite right in coming to the conclusion that there was no reasonable ground in substance or in fact for suspecting any bias in Dr. Philipson. If that is so, the first objection taken by Mr. Coleridge fails.

Then I come to the question of "infamous conduct in a professional respect," and, in my opinion, if there was any evidence on which the council could reasonably have come to the conclusion to which they did come, their decision is final. If, on the other hand, there was no evidence upon which they could reasonably arrive at that conclusion, then their decision can be reviewed by this Court. It is important to consider what is meant by "infamous conduct in a professional respect." The Master of the Rolls has adopted a definition which, with his assistance and that of my brother Davey, I prepared. I will read it again: "If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency," then it is open to the General Medical Council to say that he has been guilty of "infamous conduct in a professional respect." That is at any rate evidence of "infamous conduct" within the meaning of s. 29. I do not propound it as an exhaustive definition; but I think it is strictly and properly applicable to the present case. Assuming it to be a definition of "infamous conduct" sufficient for the purpose of the present case, was there any evidence before the Medical Council which justified them in coming to the conclusion that the plaintiff had been guilty of infamous conduct in a professional respect within that definition? It appears to me that there was abundant evidence upon which they might find as they did. A very large number of advertisements have been brought to our notice which can only lead, I think, to one conclusion, viz., that the plaintiff was doing all he could to deter the public from consulting medical men—his professional brethren—to

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induce the public to distrust them and their remedies, and to come to him, holding himself out as the one person who could give them that relief and that assistance which they desired. In my opinion, if that were the whole of the case it would be amply sufficient to justify the action of the council. But there is another matter, to which the Master of the Rolls has not alluded, viz., the plaintiff's conduct with regard to the pamphlet on Vaccination. It appears to me that his conduct in that matter comes distinctly within the definition which I have given. The facts, shortly stated, are these: In 1887 or 1888 he published a pamphlet against vaccination, which met with great disapproval, and he promised to withdraw it, and, so far as he was concerned, it appears that he did withdraw it from circulation. But it had passed from his hands into those of the Anti-Vaccination Society, and he, knowing that, advises his patients to consult that society, being perfectly aware what advice they would get, viz., to adopt a method of effacing the effects of vaccination. In fact, he was indirectly advising those who consulted him to violate the law by which the legislature has thought it desirable to enforce vaccination. On both these grounds I think there was ample evidence to justify the council in coming to the conclusion that plaintiff had been guilty of "infamous conduct in a professional respect."

DAVEY, L.J. Nothing can be more important than to maintain intact the principle that a man shall not be a judge in his own cause, and to preserve every tribunal which has to adjudicate upon the rights or status or property of any of Her Majesty's subjects from any suspicion of partiality. Speaking for myself, if I were at liberty to discuss the judgments of the Lords Justices in *Leeson's Case* (1), I confess that my mind would go rather with the judgment of Fry, L.J. It appears to me that it states a general principle, easy of application to the circumstances of any particular case; whereas I find a difficulty in extracting from the judgments of Cotton, L.J., and Bowen, L.J., the exact principle which ought to be applied; and, moreover, they seem to me to leave too much to the inferences which have to be drawn from the circumstances of the particular case, whereas it

(1) 43 Ch. D. 366.

seems to me that the rule ought to be above and beyond the circumstances of any particular case, whether the facts suggest bias or not. I think the true rule was laid down by Mellor, J., in *Reg.* v. *Allan* (1), to which my Lord has already referred. But we are bound by the judgments of the majority of this Court in *Leeson's Case* (2), and I adopt them in the sense in which they have just been explained by the Master of the Rolls and Lopes, L.J. Applying, then, to the best of my power, the principle which is to be evolved from those judgments, I am of opinion that there is no ground for holding that Dr. Philipson was disqualified from taking part in the decision of the present case. I must add that, even if I were to adopt the judgment of Fry, L.J., or the words of Mellor, J., in their most extreme application, I should come to the conclusion that Dr. Philipson was not disqualified. What are the facts? Dr. Philipson was a vice-president of the Medical Union, and as such he was, according to the constitution of the society, a member of their council; but he did not reside in the place at which the meetings of the council were held, and he did not attend any of them, and it appears that he was not even aware of the prosecution of the plaintiff until after he had taken his seat as a member of the defendant council. That shews that Dr. Philipson was not party or privy to what has been called the prosecution of the plaintiff. Still he might be held to be disqualified, if a member of the council of the union were as such disqualified. But then comes a fact to which I attach much more importance than was apparently attached to it by the learned judge of the Court below, viz., Dr. Philipson's resignation. The inquiry into the plaintiff's conduct having been held on May 28, Dr. Philipson had, on May 3, to the best of his power, and so far as he was concerned, ceased to be a subscriber to or a member of the union. He had severed his connection with the union so far as he could; and the mere fact that by their rules two months must elapse before his resignation was complete does not seem to me to make any difference. It seems to me that it would be a straining at gnats to hold that, under these circumstances, whatever rule you adopt, Dr. Philipson was disqualified

(1) 4 B. & S. 915. (2) 43 Ch. D. 366.

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ALLINSON v. GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION.

Davey, L.J.

from taking part in the decision of the plaintiff's case. On the second point, I agree with the other members of the Court that there was evidence upon which the council might reasonably and properly infer that the plaintiff was endeavouring to discredit and defame the medical profession generally, and to shake the confidence of the public in other medical men, with a view to his own pecuniary advantage. The question is not whether the plaintiff is right or wrong in his views on the subject of medicine and hygiene. He may be right, notwithstanding his differences from the majority of his professional brethren. He may be in the position of Athanasius contra mundum. But there are different modes of stating one's opinions and views, and a man may be actuated by different motives in enforcing his views and opinions upon the world. In the present case the language in which the plaintiff has thought fit to express his views, and the circumstances under which and the surroundings with which his advertisements were issued, coupled with the notices to which our attention has been drawn, recommending his own works and his own advice, seem to me, when taken together, to be evidence from which the Medical Council might reasonably hold that his conduct was "infamous in a professional respect." I adopt the definition of Lopes, L.J., which has been approved by the Master of the Rolls, as at any rate a standard by which those words may be applied. There is also the plaintiff's conduct with regard to the leaflet on Vaccination after he had undertaken not to publish it. I repeat, in order that there may be no mistake about it, I do not think that Mr. Coleridge was well founded in saying that on the evidence before them the council must be taken to have condemned the plaintiff on the ground of his particular opinions on the subject of medicine or hygiene. We have not to say whether the council were right or wrong in the inference which they drew. All we have to say is, whether there was evidence on which they might, as reasonable men, have come to their conclusion. In my opinion, there was.

Appeal dismissed.

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W. L. C.