

decisions of the Court of Appeal and of your Lordships' House in the *Swindon* case (*cit. sup.*), and by *Ormerod v. Todmorden Mill Company*, 1883, 11 Q.B. Div. 155. The intended use of the water in this case by the Railway Company was reasonable enough from their point of view, but such use would have been in excess of their rights, and an infringement of the rights of other persons in the position of the defendant. I am of opinion, therefore, that the appeal should be allowed, and that the judgment of Holmes, L.J., should be restored, and that the Railway Company should pay the costs here and below.

Judgment appealed against reversed, and judgment of Holmes, L.J., restored.

Counsel for the Plaintiffs and Respondents—S. Ronan, K.C.—S. T. Evans, K.C.—John Leach. Agents—W. Webb & Co.

Counsel for the Defendant and Appellant—M. Drummond, K.C.—D. S. Henry, K.C.—P. Law Smith. Agents—Greene & Underhill.

HOUSE OF LORDS.

Monday, May 16, 1904.

(Before the Lord Chancellor (Halsbury), Lords Davey, James of Hereford, and Robertson.)

MITCHELL v. ANDREWS AND OTHERS.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Friendly Society—Friendly Societies Act 1896 (59 and 60 Vict. cap. 25), sec. 68 (1)—Expulsion of Member—Action of Damages for Wrongous Expulsion—Competency—Jurisdiction.

The Friendly Societies Act 1896, sec. 68 (1) enacts—"Every dispute between a member . . . and the society or branch, or an officer thereof, . . . shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties, without appeal, and shall not be removable into any court of law, or restrainable by injunction." . . .

A member of a friendly society having been summoned to answer a charge of malingering while in receipt of sick pay, had, at the hearing before the arbitration committee, a charge of fraud made against him, and was on it summarily expelled. The rules of the society prescribed the mode in which a charge could be made against a member, but the charge was not made as provided in the rules. The member brought an action of damages against the trustees of the society. *Held* that the jurisdiction of the courts was not excluded.

Mitchell brought an action of damages against Andrews and Others, the trustees of a friendly society, for his wrongful expulsion from the society. It appeared that he had been summoned to answer before an arbitration committee of the society a charge of malingering while in receipt of sick pay. At the hearing a charge of fraud was advanced against him, and after he had retired as requested, the committee proceeded to examine this charge, and summarily expelled him. The Judge of the County Court of Carmarthenshire, before whom the action came, held that he had jurisdiction to hear it. The defendants applied for a writ of prohibition, which the Judge (DARLING, J.) refused. This decision was affirmed by the King's Bench Division (LORD ALVERSTONE, C.J., WILLS and CHANNELL, JJ.), and on appeal by the Court of Appeal (COLLINS, M.R., STIRLING and MATHEW, L.J.J.)

The defendants appealed.

At the conclusion of the appellants' argument their Lordships gave judgment.

LORD CHANCELLOR (HALSBURY)—In this case I feel, as I have no doubt that all your Lordships do, the extreme inconvenience of allowing disputes between friendly societies and their members to come into a court of law. I feel very strongly the force of what Mr Lawrence said, namely, that we must not insist upon a minute observance of the regularity of forms amongst persons who naturally by their education and opportunities cannot be supposed to be very familiar with legal procedure, and may accordingly make slips in what is mere matter of form, without any interference with the substance of their decisions. I should be anxious myself, as I have no doubt that all your Lordships would be, to give every effect to their decisions. On the other hand, there are some principles of justice which it is impossible to disregard, and after giving every credit to the desire on the part of this arbitration court to do justice, I think it manifest that they proceeded far too hastily in this case; and without imputing to them any prejudice or any desire to do wrong, I think that the mode in which the whole question was raised and was disposed of was so slipshod and irregular that it might lead to injustice. It is quite possible that if the case, instead of being disposed of in the summary way in which it was disposed of, had been considered by them somewhat more maturely, and not while their minds were inflamed against the conduct of the respondent, they might not have taken the extreme measure which they did take. At all events, treating it as a question raised in a court of law, we cannot say that this charge was a charge which was ever made against the respondent. It came up in the course of the investigation, and they then and there proceeded to deal with it in his absence, and to pronounce a verdict upon it, not having heard him except in the summary way alleged by themselves. He had been told to retire, and he was called in, not for the purpose of further

investigation, not for the purpose of hearing what he had to say upon the matter, but simply to be told that the result of the investigation was that he was expelled. That appears to me to be a course of procedure which as a matter of substance it is impossible to support. When one looks at what the course of procedure must necessarily be to justify expulsion, it is pointed out that there is a rule which certainly does justify expulsion, but with the express proviso that the charge has been made as provided by the rules. In this case the charge was never made as provided by the rules, and if no power is given under the rules to expel a member except upon a charge made and tried according to the rules, there is no power to expel in a case like this. It seems to me that under these circumstances it would be undesirable to go into the questions which were raised in *Paliser v. Dale*, January 11, 1897, L.R. [1897], 12 B. 257, because in my opinion this most important principle ought to be brought home to the minds of these courts, presided over as they are by comparatively uneducated men, that some of these forms are matters of substance, and that they must summon a man, and give him time to consider what he has got to do, and give him the charge against him in writing. These are all matters of substance, and not mere matters of form. They are the foundation of the subsequent litigation between the parties, and if they were neglected in this case, it appears to me that there was no jurisdiction to entertain the charge at that time. It is a remarkable thing that when the secretary wrote to inform the respondent of his expulsion he put into his letter that which shows clearly enough what in his mind was necessary in order to establish the charge, because he states in plain terms that the charge was made against the respondent by an officer by the direction of an arbitration committee, and that it was investigated, and that he was found guilty. I do not impute to the secretary any intention of writing what was false when he wrote that, but it was inaccurate. It shows, however, that he knew what the regular course of procedure ought to have been, but he did not pursue it. The result, in my opinion, is that the arbitration committee had no jurisdiction to entertain this question, and under those circumstances I think that the County Court had jurisdiction to do what it did, and therefore this appeal must be dismissed, and I move your Lordships accordingly.

LORD DAVEY—I desire to associate myself, if I may properly do so, with the observations which were made by the Lord Chancellor at the commencement of his judgment as to the importance of upholding these domestic tribunals of friendly societies, and not lightly interfering with the decisions given by them, and also of not expecting from them that minute and exact observance of regulations which one would expect in the ordinary courts of law. But this is not, in my opinion, a question of irregularity or informality; it is a ques-

tion of substance. It is a serious thing to expel a man from a society of which he has been a member, and to which he has paid his subscriptions for a long period of years; and although such a power is necessary for the due administration and harmonious and proper working of the society, and a power for that purpose is therefore properly given by the rules, it ought always to be exercised in accordance with the conditions imposed by the rules. I need not repeat what has been said pointing out that in this case the rules expressly provide that expulsion shall only take place on a charge properly made according to the rules. It is not contended that this charge was properly made according to the rules, but it is said that it may be regarded as a mere informality which might be set right. But it was an informality which went to the root of the jurisdiction, and the omission to follow the directions of the rules for preferring charges has had the unfortunate effect of making the resolution which was come to for the expulsion of the respondent, in my opinion, altogether invalid and null and void. Therefore I think that the County Court was properly appealed to to set aside that resolution.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I entirely agree in what has been said by my noble and learned friends. The Act of 1896 has not given *carte blanche* to the tribunals of these societies to pronounce decisions which shall be exempt from examination in courts of law. The decisions protected from review are constitutional decisions—decisions pronounced according to the rules which are, as we know, registered under the Friendly Societies Act. Now, the rules required written notice of a charge, such as the one with which we are dealing here. In proceedings involving the grave issue of expulsion the importance of this safeguard stands out as salient. What happened in this case shows what may take place if this rule be disregarded. This respondent, called upon to answer a minor accusation, is, on the trial of that charge, then and there accused of another and graver charge, and then and there expelled. This invasion of his rights most clearly transcends the class of irregularities, and calls for the intervention of the Court.

Appeal dismissed.

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