Privy Council Appeal No. 23 *of* 1963

Colin Kenneth McCoan – – – – – – – *Appellant*

v.

General Medical Council – – – – – – – *Respondent*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JUNE 1964

Present at the Hearing:
LORD EVERSHED
LORD MORRIS OF BORTH-Y-GEST
LORD UPJOHN
(*Delivered by* LORD UPJOHN)

This is an appeal from a determination of the Disciplinary Committee of the General Medical Council on the 24th July 1963 that the appellant had been guilty of infamous conduct in a professional respect and that his name be erased from the Register.

The charge against the appellant was as follows:

"That being registered under the Medical Acts,

(1) During a period beginning in July, 1959, and continuing until September 1960, you maintained an improper association with Mrs. L. F. McCoan (formerly Jesson), and on numerous occasions you had sexual intercourse with her both at her home at 154 Howard Road, Clarendon Park, Leicester, and at your surgery at 296, Clarendon Park Road, Leicester;

(2) You stood in professional relationship with Mrs. McCoan at the material times;

And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect."

At the inquiry into this charge the complainant was Mrs. L. F. McCoan, formerly Jesson, mentioned in the charge but it will be convenient to refer to her as Mrs. Jesson for she only changed her name towards the end of this sorry story. Mrs. Jesson gave evidence before the Committee and at its conclusion Mr. Leigh Taylor the solicitor appearing for the appellant admitted the facts appearing in numbered paragraphs (1) and (2) of the charge and the Committee formally found them proved under Rule 20 of the General Medical Council Disciplinary Committee Procedure Rules 1958. Mr. Leigh Taylor then called the appellant under Rule 22 and he was in due course cross-examined by Counsel for Mrs. Jesson. There was no other oral evidence before the Committee.

As there was no serious dispute as to the facts they can be stated quite shortly.

The appellant was born in the year 1900 and qualified in 1929. He went into practice with his first wife who unhappily died in 1937. Being a Territorial he was mobilised on the outbreak of war, had a fine war record and finished as a Lieutenant-Colonel in charge of a hospital ship in the Far East. He married again in 1942.

On demobilisation he purchased a practice in Leicester which was not (as he described it) in very good condition. When the National Health Service was introduced he had some 1,000 patients on his list but by the time he retired in September 1960 he and a partner had built the practice up to 7,000 patients. Moreover it is clear from a number of testimonials put in evidence on behalf of the appellant from other practitioners in Leicester, from the

Chief Constable of the City where he worked as Police Surgeon, and from other organisations for whom he worked, that he was hard working, exemplary in conduct to his patients and was generally held in high esteem in the profession. The appellant's second wife died in 1956 after a long illness and at all material times his daughter looked after him at his house in Leicester, which also served as his surgery.

It had always been the appellant's intention to retire from practice in Leicester and from the National Health Service when he was 60 and as Mrs. Jesson always knew he proposed to do so in September 1960.

Mrs. Jesson was registered as a patient of the appellant in February 1955. At the time of the inquiry she was 54. She had been married in 1932 to Mr. Jesson and had four children. He divorced her in 1949 on the grounds of her adultery and it was not disputed that since her divorce and before her association with the appellant, she had at least one similar affair with a man. Living with her in Leicester was her daughter, aged 15 in 1963, who was also a patient of the appellant. But he seems only to have attended the latter during the period 1955–1960 on one or two occasions. At one time the daughter (then 12) was concerned because she knew her mother was visiting the appellant's surgery so often that she thought she was ill and going to die; so her mother then confided in her that she was in love with the appellant. Though it was suggested that the appellant's improper association with Mrs. Jesson had some impact on the daughter, their Lordships can attach no importance to this aspect of the matter, and cannot believe that the Committee did so either.

From 1955 to 1959 the appellant treated Mrs. Jesson for three illnesses mainly of a nervous nature but their relationship was purely professional and unexceptionable in every way.

In July 1959 Mrs. Jesson felt that her health in her own words "had got so low" that she again consulted the appellant. When she did so, she felt, as she said, that he was a magnet and she was drawn towards him.

She could not sleep because of this feeling but thought she might overcome it if she could have some sleeping tablets and get some sleep for two or three nights. So she went to the appellant and told him she could not sleep, then broke down and wept on his shoulder. He kissed her on the lips, not as she said, in a brotherly way, and then he said "I am sorry" to which Mrs. Jesson, on her own evidence, said " you need not be ". This kiss, the appellant said, was entirely unpremeditated, and they then arranged to meet again, this time at her house and though nothing was said, it was clearly only for the purpose of having sexual intercourse.

It was clear on the evidence, and Mrs. Jesson was perfectly frank about it, that far from resisting these advances she welcomed them.

The arrangement made for meeting again turned out to be inconvenient to Mrs. Jesson because her daughter was going to be home from school so she went to the appellant's out-patients appointment one morning, not for treatment but to tell him of this. She waited her turn in the usual way and when she saw him in the surgery there was some attempt at sexual intercourse.

After this for over a year, that is from August 1959 to September 1960, they enjoyed together a purely physical satisfaction in sexual intercourse; nearly always at his surgery, though once in his bedroom upstairs. At first this happened about once a week and later on about twice a week. He visited her house for the same purpose about once in six weeks, not more often because, as he candidly said, his car was too well known in the district.

These meetings between them were entirely clandestine and solely for the physical act of sexual intercourse; they never went out together or enjoyed any normal social contacts together. Marriage was never mentioned until Mrs. Jesson's possible pregnancy was discussed as mentioned later and it was recognised that the appellant would be retiring in September 1960 and leaving the district. It is quite clear that this was a case of two mature persons, one of 60 the other of 51 both single who mutually enjoyed the physical sexual act and demanded no more of each other.

In August 1960 the appellant thought that Mrs. Jesson might be pregnant a view which this experienced mother of four children never shared but a urine test provided (wrongly as it turned out) some confirmation of this view. The appellant really panicked, for marriage was out of the question for two reasons, first because he did not love her in the sense of marrying her and secondly (and on the evidence probably more important) because he would lose an income from his late wife's estate if he remarried.

Mrs. Jesson was in love with him by this time but she certainly knew that the appellant had no intention of marrying her and losing this income from his wife's estate.

Mrs. Jesson went to stay with a friend in Coalville who said that if Mrs. Jesson changed her name she could go there to have her baby. It was agreed between the appellant and Mrs. Jesson that she should change her name to McCoan. Then the appellant prepared draft letters to be exchanged between them purporting to give an innocent explanation for this change of name. These draft letters were so inept to explain Mrs. Jesson's change of name in any way which any adult would accept, that the only explanation appears to be that the appellant completely lost his head or possibly hoped to protect himself as a professional man later. These draft letters however were never signed or exchanged and their Lordships do not think they are of any importance and though much time was taken up in the inquiry upon them, they cannot think that they played any part in the ultimate determination of the Committee.

However by Deed Poll dated 10th October 1960 Mrs. Jesson changed her name to McCoan. By this time she was wearing a wedding ring which the appellant had told her to buy. During this period the appellant paid to Mrs. Jesson the not ungenerous sum of £1,250 in connection with her suspected pregnancy.

In October Mrs. Jesson visited a gynaecological specialist and on her second visit in the middle of October he told her that she was not and never had been pregnant at any material time.

The appellant proceeded with his plans for leaving Leicestershire. His daughter was getting married and this delayed his departure. He had sexual intercourse with Mrs. Jesson for the last time some time in October when she was well aware that he was leaving and there was no question of matrimony. He then decided to take an appointment in the Royal Fleet Auxiliary Department as a ship's surgeon. He departed and from 18th December 1960 until 4th April 1962 he served as a ship's surgeon in the Far East. The Admiralty gave him a very good report.

Until 1961 Mrs. Jesson made no complaint of the appellant's conduct whatever but unhappily, starting with a letter written by her probably in March 1961, she wrote a most vitriolic series of letters to him in the Far East. Their Lordships do not propose to review this correspondence because it shows only that Mrs. Jesson was making some fancied and wholly unproved charges that the appellant immediately before leaving Leicester had, to put it briefly, besmirched her name in the district. It was for this alleged reason only that Mrs. Jesson threatened to report the conduct of the appellant to the General Medical Council.

When the appellant returned from the Far East he saw Mrs. Jesson twice. She made the astonishing proposal that the appellant should marry her and then divorce her for non-consummation which the appellant declined. She again threatened to report him to the General Medical Council and in due course did so.

In these circumstances Mr. MacDermot for the appellant, has urged that his conduct did not amount to infamous conduct as recently defined by Lord Jenkins delivering the judgment of their Lordships Board in *Felix v. General Dental Council* [1960] A.C. p.704 at p.720. Looking at all the circumstances of this case he submitted that the conduct of the appellant though reprehensible was not infamous in a professional respect. He does not suggest any defect in the conduct of the inquiry.

He points out that there was no injury to the public for the association was successfully clandestine. That there was no element of seduction nor was the association adulterous nor intended ever to lead to matrimony.

He points out truly that the complaint was laid for some reason wholly extraneous to the misconduct charged; that the misconduct had ceased long before the charge was laid and that there was no danger of any repetition for the appellant was anxious to continue as a naval surgeon where he would have no chance of coming into contact with patients of the opposite sex.

The unhappy termination of the relationship, it was urged, was not the subject of any charge and could not properly be taken into account.

It was suggested that the appellant had not abused his position for the visit to the surgery when sexual intercourse took place for the first time was not on a professional occasion.

Finally reliance was placed on the appellant's long and otherwise unblemished service to medicine to which their Lordships have already referred.

Their Lordships have weighed all these points as no doubt did the Committee.

One of the most fundamental duties of a medical adviser, recognised for as long as the profession has been in existence, is that a doctor must never permit his professional relationship with a patient to deteriorate into an association which would be described by responsible medical opinion as improper. It is for this reason that the Medical Acts have always entrusted the supervision of the medical advisers' conduct to a committee of the profession for they know and appreciate better than anyone else the standards which responsible medical opinion demands of its own profession.

Sexual intercourse with a patient has always been regarded as a most serious breach of the proper relationship between doctor and patient and their Lordships do not see how the finding of the Committee, on the facts of this case, that the appellant was guilty of infamous conduct in a professional respect can be successfully challenged before their Lordships.

Mr. MacDermot then submitted that in any event the Committee were wrong to erase the appellant's name from the Register.

It is clear from section 33(1) of the Medical Act 1956 that where the Committee finds a practitioner guilty of infamous conduct in a professional respect, it has a discretion whether or not to punish that conduct by erasure of the practitioner's name from the Register. The Act, curiously enough, permits no other form of punishment such as reprimand or suspension for a period. It is equally clear that where the Committee exercises its power to erase, a right of appeal to their Lordships' Board is given by section 36(3) both against the finding of infamous conduct and the decision to erase. The powers of the Board to correct the determination of the Committee on the hearing of such an appeal are in terms unlimited, but in principle, where a professional body is entrusted with a discretion as to the imposition of the sentence of erasure their Lordships should be very slow to interfere with the exercise of that discretion. There appears to be no authority directly in point under the Medical Acts but their Lordships have been referred to some analagous authorities in the cases of professional misconduct of solicitors.

Their Lordships are of opinion that Lord Parker C. J. may have gone too far in *In re a Solicitor* [1960] 2 Q.B. 212 when he said that the appellate Court would never differ from sentence in cases of professional misconduct but their Lordships agree with Lord Goddard C. J. in *In Re a Solicitor* [1956] 3 A.E.R. 516 at 517 when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.

No general test can be laid down, for each case must depend entirely on its own particular circumstances. All that can be said is that if it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified.

Their Lordships think it right to say that in their opinion the Committee could not have been accused of showing undue leniency to the appellant if they had decided to permit his name to remain on the register in all the circumstances of this case which their Lordships do not think it necessary to re-state. Their Lordships have specially in mind his long unblemished record and his desire to finish his professional life as a ship's doctor on a naval vessel.

However the Committee, who have such great experience in these matters reached a contrary conclusion, and decided to erase his name from the register; their Lordships do not feel that this is a case where they could properly interfere with that conclusion. For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed.

The appellant must pay the costs of the appeal.

(90189) Wt. 8052/97 150 7/64 Hw.

In the Privy Council

COLIN KENNETH McCOAN

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD UPJOHN

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