

Eng. Rep.]

GARDNER V FREEMANTLE—*Re TILL, Ex parte PARSONS.*

[Eng. Rep.]

they shall be empowered at once to suspend from such member the use and advantages of the club before the expiration of the time within which it may be permitted him to resign in pursuance of such recommendation.

52. The committee shall, if possible, hold an ordinary meeting in every week, or oftener, if necessary, to transact current business, and to audit the accounts. Three of the committee shall form a *quorum* on the days of meeting.

[The facts are here fully set out.]

Sir R Baggallay, Q. C., and Locock Webb, for the plaintiff.—Your Lordship laid down, in *Hopkinson v. The Marquis of Exeter*, 16 W. R. 266, L. R. 5 Eq 63 that such a discretion as that here affected to have been exercised by the defendants must not be a capricious or arbitrary discretion. In the present case the defendants have exercised their discretion most arbitrarily. They make inquiries, and find that the plaintiff's charges are substantially true, and then tell the plaintiff that they will not go into the question. Then they turn round and call on the plaintiff to substantiate his charges, and call on him to resign before he has had time to do so. Moreover the plaintiff had quite sufficient ground for bringing his charges. They were, in fact, true. When two gentlemen made a conspiracy to play tricks on a third, each must be held responsible for the acts of the other. The facts show that the committee did not exercise an impartial discretion. The formalities required for expelling a member also were not fully performed; the notices are insufficient in not giving information that proceedings were to be taken under rule 45. They ought also to have been sent to all the members of the committee, as the members not summoned, though not sufficiently numerous to have turned the decision, might have persuaded the others to vote differently.

Jessel, Q. C., Wickens, and Kekewich, for the defendants, were not called upon.

LORD ROMILLY, M R.—I should like very much to hear counsel for the defendants, but I think it would be a useless waste of time, as the view I at present take of the case is probably that which they would wish me to hold. I repeat over again that I assent to the expressions which Sir Richard Baggallay has cited. I point out that these clubs are formed entirely for social purposes, and there must be some paramount authority to keep up their objects. In some cases this Court will interfere with the exercise of that paramount authority, but only where there is a moral culpability, as if the decision is arrived at from fraud, personal hostility, or bias. But in cases of this description all that this court requires is to know that the persons who were summoned really exercised their judgment honestly. The Court will not consider whether they did so rightly or wrongly.

In the present instance the rule says that "in case the conduct of any member, either in or out of the club-house, shall, in the opinion of the committee, be injurious to the character and interests of the club, the committee shall be empowered to recommend such member to resign." It is not, if the conduct is really injurious, but if it is injurious in the opinion of the committee: then all that the Court requires

is that the committee shall form their opinion in a *bona fide* way. There is no power in this Court to control the judgment or opinion of the committee.

[The learned Judge then discussed the merits of the case.]

There is no moral culpability in that from beginning to end. The committee think without going into the merits of the case, that it is best for one gentleman to withdraw from the club. It is impossible for me to form any opinion upon it, nor is it necessary for me to do so. But I am satisfied that the gentlemen who sat in judgment on this matter came to a sound judgment. And if you see that they have seriously examined the case, this Court cannot go a step further. I am satisfied that I should wrongly apply the functions of this Court if I were to sit in judgment on a set of gentlemen expressly selected for this purpose, who think it better that this gentleman should cease to be a member. Then, Mr. Locock Webb takes an objection which Sir Richard Baggallay did not take, that there were two members who never came and were not summoned. I can, therefore, dispense with that, and make no order upon this motion.

Sir R. Baggallay.—Does your Lordship hold that the notices give sufficient intimation of the object of the special meetings of the committee?

LORD ROMILLY, M R.—I am of opinion that the notices were sufficient. There is nothing said on the notice except "Mr. Gardner's case." But I think that was sufficient, for, as Mr. Douglas says, most of the members of the committee knew what it was about. The costs will be costs in the cause.

BANKRUPTCY.

Re TILL—Ex parte PARSONS.

Deed of assignment—Solicitor's lien—Court cannot impound.

The Court has no power to retain a deed which has been produced by a witness merely out of courtesy and to facilitate proceedings.

P., a witness, having alien upon a deed, was asked by the Court to produce it. The deed was, upon its production, impounded by the Court.

Held, an appeal, that the Court had no power to retain the deed, even though it might be fraudulent.

[Dec. 19, 1870.—19 W. R. 325.]

This was an appeal against an order made in the County Court of Nottingham to the effect that a certain deed of assignment executed by the bankrupt should be impounded, under the following circumstances:—

On the 7th of September, 1870, shortly before the adjudication of bankruptcy, a deed of assignment to one Wild of some unfinished leasehold premises, executed by the bankrupt, was held by Parsons as Wild's solicitor.

Upon the 20th of September Parsons and Wild were each served with a summons to attend before the registrar of the county court for examination under the bankruptcy which had in the meantime taken place.

Wild, during his examination by Cranch, the trustee's solicitor, being asked to produce the deed, stated that it was in the possession of Parsons; an application was then made to Parsons for it, and he, after informing the Court