[HIGH COURT OF AUSTRALIA.]

GRAHAM . . . . . APPELLANT;
PLAINTIFF,

AND

SINCLAIR AND OTHERS . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1918.

SYDNEY, *August* 14.

Barton, Isaacs and Rich JJ.

Club—Expulsion of member—Proprietary club—Company conducting club—Cause of action—Action for tort—Resolution expelling member without hearing—Void act of directors.

A company had been formed for the purpose of establishing and conducting a club for nurses, and accordingly established and conducted such a club. The directors of the company, without hearing the plaintiff and notwithstanding her request to be heard, purported by resolution to suspend her from membership of the club, and, by their direction, the secretary of the company informed the plaintiff of the suspension, and stated that she could no longer be accommodated at the club. The plaintiff brought an action against the directors personally to recover damages, alleging that they had wrongfully suspended and expelled her from the club.

Held, that as the plaintiff was not afforded an opportunity of defending herself, the resolution of the directors was a void act, and did not affect her rights as a member of the club, and that as there was no evidence of active resistance by the directors to the exercise by the plaintiff of her rights as a member of the club, the plaintiff was properly nonsuited.

Decision of the Supreme Court of New South Wales: *Graham* v. *Sinclair*, 18 S.R. (N.S.W.), 75, affirmed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court by Ellen Graham against Russell Sinclair, Eric Sinclair, Mabel Newill, Alice Watson

and George C. Smith, in which the plaintiff by her declaration alleged that she was a duly qualified nurse and a member and shareholder of the Nurses' Club Ltd., and lawfully entitled to have and enjoy all the privileges of membership and all business advantages in her calling of nurse and all professional benefits which arose or might arise from time to time in the usual course from regular membership of the Nurses' Club Ltd.; that the defendants "purporting to act as directors of the Club illegally contriving well knowing the premises did wrongfully and maliciously suspend and expel the plaintiff from the aforesaid Club and cause her name to be removed from the list of members thereby depriving the plaintiff of all benefits rights privileges and advantages which she had by membership thereof and further wrongfully prevented her from entering on the Club's premises whereby the plaintiff has suffered much loss and has been prevented from following in the usual way her lawful business in her profession of a nurse and her standing and position have been affected and damaged and the plaintiff has lost all the privileges benefits professional and business advantages which she gained or may gain as a member of the Nurses' Club Ltd." The plaintiff claimed £1,000 damages.

By their defence the defendants pleaded not guilty, and for a second plea said that "it was a term of membership of the said Club that every member should be bound by all rules by-laws and regulations of the Club and at the time of the committing of the supposed grievance in the declaration mentioned it was a rule of the said Club that the committee of the said Club might when in their opinion necessary to do so suspend any member and promptly refer the incident for the decision of and confirmation of the directors and the defendants were the directors at the time and the committee were of opinion that it was necessary to suspend the plaintiff and they accordingly suspended her and promptly referred the incident for the decision and confirmation of the defendants as such directors and the defendants as such directors confirmed the suspension of the plaintiff which is the supposed grievance in the declaration sued for."

The plaintiff joined issue on these pleas.

The Nurses' Club Ltd. was a company registered under the

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Companies Act 1899, with the objects, among others, of establishing, maintaining and conducting a Club for the accommodation of such members of the Company as might be trained nurses and their friends and to provide a Club house and other conveniences. The Company had established and conducted a Club, and the plaintiff was a member of the Company and of the Club. By the articles of association the directors were empowered to make by-laws in relation to the Club, which should be binding on all members of the Club, in respect of certain specified matters. Under this authority the directors purported to make a rule (No. 8) providing that the committee of the Club "may, when in their opinion necessary to do so, suspend any member, and promptly refer the incident for the decision and confirmation of the directors."

Evidence was given for the plaintiff to the following effect:— On 18th July 1917 a resolution was passed by the directors that a letter be sent to the plaintiff asking her to hand in her resignation of membership of the Club, and a letter to that effect was accordingly sent by the secretary of the company to the plaintiff. In reply the plaintiff wrote on 22nd July to the secretary asking to be informed of the reasons for the request for her resignation. In reply the secretary referred the plaintiff to rule 8, above set out. On 30th July the secretary wrote informing the plaintiff that on and after 1st August no accommodation could be provided for the plaintiff at the Club. On 14th August the plaintiff wrote asking whether she would be given a chance to defend herself, and stating that she was ready and willing to reply to any charge made against her. On 15th August a resolution was passed by the directors in these terms: "It was resolved that the house committee having suspended Miss Graham a formal letter be sent to Miss Graham confirming this." On 16th August the secretary wrote to the plaintiff as follows:— "At a meeting of the house committee held on 14th inst. you were suspended as a member of the Nurses Club Ltd.; such suspension was confirmed at a meeting of directors on 15th inst. I am therefore instructed to inform you that you must not further use the Club. Please hand in your latch and wardrobe keys." On 14th September the solicitors for the Company wrote to the plaintiff requesting the plaintiff to desist from frequenting the Club premises

and at once to deliver up the keys, and stating that otherwise the directors intended to take extreme measures.

At the close of the evidence for the plaintiff she was nonsuited, and on motion to the Full Court a new trial was refused : *Graham* v. *Sinclair* (1).

From that decision the plaintiff now appealed to the High Court.

Moriarty, for the appellant. The appellant had contractual rights as a member of the Club. The directors, by the resolution confirming the suspension of the appellant, procured the Club to deprive her of those rights. That resolution was illegal and wrongful, because the appellant was not afforded an opportunity of being heard in her defence. The directors were in a quasi-judicial position, and their suspension of the appellant was in breach of their duty and was an actionable wrong for which they may be sued in tort. Where a person by a wrongful or illegal act interferes between two others who are bound by a subsisting contract, the person who interferes is guilty of an actionable wrong (*Brisbane Shipwrights' Provident Union* v. *Heggie* (2)). Where for the purpose of producing a certain effect an action, force or agency is adopted which is known to be effectual to produce that effect, that is sufficient proof of an interference (*May* v. *Wood* (3)). The resolution passed by the directors and the letters written by the authority of the directors to the plaintiff amount to such an interference with the plaintiff in the exercise of her rights as a member of the Club as is actionable. [He also referred to *Gray* v. *Allison* (4) ; *D'Arcy* v. *Adamson* (5) ; *Mill* v. *Hawker* (6) ; *Baird* v. *Wells* (7) ; *Allen* v. *Flood* (8) ; *Quinn* v. *Leathem* (9) ; *Read* v. *Friendly Society of Operative Stonemasons* (10) ; *Meyers* v. *Casey* (11) ; *Glamorgan Coal Co.* v. *South Wales Miners' Federation* (12) ; *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (13) ; *Smithies* v. *National Association of Operative Plasterers* (14) ; *Larkin* v. *Long* (15).]

(1) 18 S.R. (N.S.W.), 75.
(2) 3 C.L.R., 686, at p. 696.
(3) 172 Mass., 11, at p. 15.
(4) 25 T.L.R., 531.
(5) 29 T.L.R., 367.
(6) L.R. 9 Ex., 309.
(7) 44 Ch. D., 661.
(8) (1898) A.C., 1.
(9) (1901) A.C., 495.
(10) (1902) 2 K.B., 88.
(11) 17 C.L.R., 90, at p. 114.
(12) (1903) 2 K.B., 545 ; (1905) A.C., 239.
(13) (1903) 2 K.B., 600.
(14) (1909) 1 K.B., 310.
(15) (1915) A.C., 814, at p. 842.

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Monahan, for the defendants, was not called upon.

BARTON J. I think that the decision of the Supreme Court ought not to be and cannot be disturbed. I am not going to take up time in discussing a case which appears to me to be so clear. The plaintiff's rights, whatever they may be and if she has any at all against these defendants, are contractual. They are not such rights as she can assert in an action framed as this is, and if she could assert them I do not think that she has proved any breach of contract. At any rate the evidence which she has given cannot be said to be proof of the declaration, which is one for a tort. Whatever may be done in another jurisdiction does not concern us on the present appeal. It is sufficient to say that the mere passing of the resolutions by the directors and the writing of the letters by their orders are no proof of an actionable wrong, either by themselves or under the circumstances which Mr. *Moriarty* has pointed out. The appeal must therefore fail.

ISAACS J. I agree that the appeal must fail, but I wish to say a few words about the aspect in which the appeal appears to me. The action is brought against individuals who are directors of a limited company called the Nurses' Club Ltd. That company is registered as a joint stock company under the *Companies Act* 1899. One of its objects as stated in the memorandum of association is to establish a Club for the accommodation of certain of the members of the Company and their friends. It has established a Club ; and certain by-laws and so-called rules have, under the authority of the Company's articles, been framed by the directors of the Company in connection with that Club. Those by-laws and rules provide for membership of the Club as distinct from membership of the Company. The plaintiff was a member not only of the Company but also of the Club, to which a separate subscription had to be paid. In connection with the Club there is a house committee which, according to the rules, has power to suspend a member and then refer the incident in respect of which the suspension occurred to the directors of the Company for their decision and confirmation. The committee had suspended the plaintiff and had referred the

matter to the directors, who confirmed the decision, but without hearing the plaintiff and notwithstanding her request to be heard. In my opinion that was utterly wrong; it was void. It may be called unlawful, but the word "unlawful" is used in two senses: it may mean simply unauthorized by law and therefore void, or it may mean that the act is one which exposes the person who does it to an action or to punishment. This act of the directors was unlawful in the sense of being void. The term "void" was used in *Innes* v. *Wylie* (1) by Lord *Denman* C.J. in summing up to the jury. That was an action for an assault by preventing the plaintiff from going into a room. He was a member of a society, and he was expelled without proper notice of the charge against him and under circumstances which Lord *Denman* thought rendered the expulsion invalid. He said: "I think that the removal is altogether a void act, and I am therefore of opinion that the plaintiff is still a member of the society." As to one of the defendants, a policeman who was charged with having committed the assault, the learned Chief Justice asked the jury whether he actively stopped the plaintiff from entering the room or was merely passive. The jury found for the plaintiff, and on that the plaintiff got damages. A new trial was refused because the jury found that there was an active interposition by the policeman which was illegal. But the resolution of the directors in this case is not an act which, of itself, stopped the plaintiff from getting into the Club house. It was a declaration of the mind of the corporation, and under the circumstances I agree with the Supreme Court that it was void. But the directors did nothing more, except that the secretary of the Company under direction communicated to the plaintiff the fact of the resolution, and stated she could no longer be accommodated at the Club. The question is whether an action lies against the directors personally. This Club, which in a sense is distinct from the Company, is the property of the Company. In *Halsbury's Laws of England*, vol. IV., p. 409, par. 869, it is pointed out that in the case of an incorporated proprietary club the company is distinct from the club, and takes the place of the proprietor, and it is laid down in *Baird* v. *Wells* (2) that in the case of a proprietary club the proper course, where a

(1) 1 Car. & K., 257, at p. 263.

(2) 44 Ch. D., 661.

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member has been prevented from having the advantages of the club that have been contracted for, is to sue the proprietor for breach of the contract. What the damages would be, I do not know. That was the view taken by the learned Chief Justice at the trial in the present case, and it strikes me as being the correct view. But in any case the defendants have done no act of interference with the plaintiff. The writing of the letters by the secretary at the direction of the directors, besides being a letter of the Company itself, was not an actual interference with the plaintiff's right to enter the Club.

The whole foundation of the plaintiff's case is that the resolution of suspension was invalid and of no effect. The circumstances stated in the declaration might in certain cases afford ground for going to a Court of equity for relief, but that course has not been taken, and the Supreme Court has held that it could not be taken. The action seems to me, therefore, to be levelled against persons who have done the plaintiff no wrong, and, that being so, the nonsuit was properly entered.

RICH J. I agree that the act of the directors was a void act. Regarded as a case of tort, I am unable to see any evidence of actionable wrong on the part of the defendants. If the case could be regarded as one of contract, the contract was between the plaintiff and the Company and not the directors.

Appeal dismissed.

Solicitor for the appellant, *H. E. McIntosh.*

Solicitor for the respondents, *H. R. Waring.*

B. L.