*Privy Council Appeal No.* 52 *of* 1959

**Dudley Ernest Lyncoln Wager Felix** - - - - - *Appellant*

*v.*

**The General Dental Council** - - - - - - - *Respondent*

FROM

## THE DENTAL DISCIPLINARY COMMITTEE OF THE GENERAL DENTAL COUNCIL

## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH MAY, 1960

*Present at the Hearing :*
LORD KEITH OF AVONHOLM
LORD JENKINS
LORD MORRIS OF BORTH-Y-GEST

[*Delivered by* LORD JENKINS]

This is an appeal under section 29 of the Dentists Act, 1957, from a determination of the Disciplinary Committee of the General Dental Council, made on the 12th November, 1959, under sections 25 and 26 of the same Act, that the appellant had been guilty of infamous or disgraceful conduct in a professional respect and that his name be erased from the Register.

The appellant is a native of Sierra Leone and received his early education there. He is and was at all material times a dentist registered under the Dentists Act, 1957, and his name is and was at all material times included in the Bristol National Health Service list. He is twenty-nine years of age, and having qualified as a licentiate in dental surgery at Glasgow in 1955 began practising on his own account in August 1957.

The determination under appeal was the outcome of an inquiry held by the Disciplinary Committee on the 11th and 12th November, 1959, with respect to the following charge against the appellant :—

" That being a registered dentist :—

(1) Having accepted Miss Ann Mathews of 623 Portway, Shirehampton, Bristol, in or about February, 1958, as a patient under the National Health Service (General Dental Services) Regulations, you wrongfully claimed fees for three fillings which had not been done.

(2) Having accepted Mrs. Alkmina Moger of 2 Hallards Close, Lawrence Weston Bristol, in or about April, 1958, as a patient under the terms of the said Regulations, you wrongfully claimed fees for two fillings when only one filling had been done.

(3) Having accepted Mrs. Beryl Dennis of ' Appletreewick ', Barracks Lane, Shirehampton, Bristol, in or about April, 1958, as a patient under the terms of the said Regulations:

(i) you wrongfully certified on Form E.C.17 that sixteen fillings were required to render the patient dentally fit, when in fact thirteen of these fillings were unnecessary :

(ii) you wrongfully claimed fees for four fillings when only three fillings had been done.

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

In the course of the inquiry paragraph (2) of the charge was amended by the insertion of the words " in one tooth " between the words " two fillings " and " when only . . .".

At the conclusion of the inquiry the Disciplinary Committee determined (*a*) that the facts alleged against the appellant in each paragraph of the charge had been proved; (*b*) that as regards paragraph (1) (Miss Mathews) and paragraph (3) (i) and (ii) (Mrs. Dennis) the appellant had, in relation to the facts proved, been guilty of infamous or disgraceful conduct in a professional respect; but (*c*) that as regards paragraph (2) of the charge (Mrs. Moger) the appellant had not, in relation to the facts proved, been guilty of such conduct; and on these findings the Disciplinary Committee directed that the name of the appellant should be erased from the Register.

To make the details of the charge intelligible, it is necessary to refer briefly to two forms on which a dentist on the National Health service list is required to record with respect to each patient the treatment needed in order to make the patient dentally fit, and the work actually done. These forms are prescribed by the National Health Service (General Dental Services) Regulations, 1954 (S.I. 1954 No. 472). Under paragraph 5 in Part I of the First Schedule to these Regulations a dentist is required to keep a Dental Record in respect of each patient, in which he records the treatment given and the date or dates on which it is given. He is also required to keep in respect of each patient the dental estimate form (E.C.17) as to which instructions are given in paragraph 7 of the same part of the same Schedule. This form is somewhat complicated. For the present purpose it is enough to say that a new patient should be required to sign part 10 signifying his or her willingness to undergo treatment, the dentist being then required to examine the patient and record the condition of the teeth on a chart (Part 1 of the form) and also to set out in column 1 of Part 2 the whole of the treatment in his opinion required to make the patient dentally fit, and if the patient is not willing to undergo the whole of such treatment to set out in column 2 of Part 2, particulars of such part of that treatment as the patient is willing to undergo. The dentist should also insert in column 1 of Part 2 his charges for the treatment proposed in accordance with a prescribed scale. Then (subject to approval of the estimate by higher authority when required by the Regulations, which did not require it in the cases now under review) the dentist proceeds to do (as the case may be) the whole of the work specified in column 1 of Part 2, or so much of that work as is specified in column 2. On completion of the work the dentist certifies such completion in Part 7 of the form, specifying the amount claimed for it, and the patient certifies in Part 11 that to the best of his or her belief the work has been done. Finally the completed form is submitted by the dentist for payment, and its accuracy is obviously of great importance.

The appellant admits that he accepted the three ladies named in the charge as his patients under the terms of the National Health Service (General Dental Services) Regulations as alleged in the charge, and that in the case of Miss Mathews (whose treatment began on 28th February, 1958) he submitted form E.C.17 claiming fees for sixteen fillings when only thirteen had been done; and that in the case of Mrs. Dennis (whose treatment began on the 15th April, 1958) he submitted form E.C.17 claiming fees for four fillings when only three had been done; and that in the case of Mrs. Moger (whose treatment began on or about the 21st April, 1958) he submitted form E.C.17 claiming fees for two fillings when apparently only one had been done. But in the case of Mrs. Moger (as appears from the amendment to paragraph (2) of the charge) the claim was made in respect of two fillings in one tooth, and the appellant explained in his evidence at the inquiry that the treatment in this instance began with two cavities, which merged into one in the course of the appellant's operations, and that the need for a corresponding alteration in form E.C.17 was overlooked. It would seem that the Disciplinary Committee accepted this explanation as affording sufficient ground for

acquitting the appellant of infamous or disgraceful conduct in the case of Mrs. Moger. Be that as it may, they did in fact so acquit him, and accordingly this part of the charge must not be held against him in the present appeal.

The three cases with which their Lordships have so far dealt, now reduced to two by the Disciplinary Committee's decision in the case of Mrs. Moger, may conveniently be referred to as the cases of "over-charging". The appellant's defence in regard to them is to the effect that while he admits the fact of overcharging he denies that it was done with any fraudulent or dishonest intent or with a view to obtaining remuneration to which he was not entitled; and attributes the mistakes admittedly made to carelessness on his own part and on that of his receptionist, to whom he entrusted the keeping of his records of the treatment carried out for the patients concerned without adequate supervision or checking.

There remains the more serious matter raised in paragraph 3 (i) of the charge to the effect that the appellant wrongfully certified on form E.C.17 with respect to Mrs. Dennis that sixteen fillings were required to make the patient dentally fit when in fact thirteen of such fillings were unnecessary. As regards this head of charge (which may conveniently be referred to as the case of wrongful certification) the appellant admitted that on the 10th June he submitted form E.C.17 in respect of Mrs. Dennis certifying that sixteen fillings were required to render the patient dentally fit; but it was not in dispute that he had in fact filled three of them, and as to the remaining thirteen he has throughout maintained the opinion that old fillings in ten of them which had been previously filled were defective and needed replacement, and the other three were charted as suspect and requiring (or likely to require) attention.

Prior to the present inquiry, the matters complained of in the charge had been investigated by an entirely different body, namely the local Dental Service Committee constituted under the National Health Service (Service Committees & Tribunal) Regulations, 1956 (S.I. 1956 No. 1077). There were in fact two such investigations, the first of which held on the 23rd July, 1958, dealt with the matters concerning Mrs. Dennis now alleged in paragraph 3 (i) and (ii) of the charge. The recommendations of the Dental Service Committee on that occasion were to the following effect:—

(i) That the Minister of Health be asked to authorise the Executive Council to withhold the sum of £500 from the appellant's remuneration.

(ii) That until further notice the appellant should, before commencing any treatment, other than an examination or emergency treatment, be required to submit for prior approval to the Dental Estimates Board estimates in respect thereof.

(iii) That the appellant be paid fees only in respect of the work found to have been satisfactorily completed.

The second investigation by the Dental Service Committee was held on the 13th October, 1958, and dealt with the matters alleged in paragraphs (1) and (2) of the present charge. The recommendations made by the Dental Service Committee on that occasion were to the following effect:—

(i) That the Minister be asked to authorise the Executive Council to withhold the sum of £500 from the appellant's remuneration.

(ii) That the appellant be severely censured and warned that, in the event of a further breach of the Terms of Service, the Council might consider making representations to the Tribunal (namely, the Tribunal constituted under Section 42 of the National Health Service Act, 1946) that his continued inclusion in the Bristol Dental List would be prejudicial to the efficiency of the service.

The Minister of Health subsequently approved the recommendation of the 23rd July, 1958, but in respect of the recommendation of the 13th October, 1958, reduced the amount to be withheld from £500 to £200.

In the course of the present inquiry reference was made to the investigations held by the Dental Service Committee, and to the outcome of those investigations in the shape of the recommendations to which their Lordships have alluded, and documents relating to these investigations have been included in the Record prepared for the purposes of the present appeal. It is not in dispute that these investigations were held by the Dental Service Committee and that these recommendations resulted; but this in their Lordships' view carries the matter no further. The appellant's conduct was admittedly careless, and it is perhaps not surprising that the Dental Service Committee should have regarded it as involving breaches of the appellant's terms of service as a dentist on the National Health Service list, and as calling for severe measures. But the question which the Disciplinary Committee had to decide in the present inquiry was whether in relation to the matters complained of in the charge as proved or admitted before them the appellant had been guilty of infamous or disgraceful conduct in a professional respect.

The outcome of the Dental Service Committee's investigations having been communicated to the General Dental Council the Registrar to that body by letter dated the 30th July, 1959, informed the plaintiff that he was liable to be summoned before the Disciplinary Committee on a charge of infamous or disgraceful conduct in a professional respect within the meaning of section 25 of the Dentists Act, 1957, on grounds set out in the letter which raised the cases of Mrs. Dennis, Mrs. Moger and Miss Mathews and of another patient whose case has not been pursued in the present proceedings, and asked the appellant for any explanation or observations he might wish to make. That letter elicited a reply from the appellant dated the 1st August, 1959, which contained the following passages on which Mr. Widgery (appearing as Solicitor to the Council) placed some reliance:—

> "I am filled with much humiliation and mortification by this, as I have never in my life been so bluntly accused of stealing. Indeed, I am very deserving of the fine which has been imposed upon me, as a result of gross carelessness of failing to check all National Health forms and keeping accurate records.
>
> I must explain that, as a young practitioner, I had at the time of these cases, very little experience, in fact under a year's experience of the Health Service. I made the rather serious mistake of leaving all forms and records to the entire care of my receptionist. Although she cannot be held responsible for mistakes made in my surgery, her marked irresponsibility was discovered when these cases were brought to light, and she was in consequence instantly dismissed. These mistakes did not only result in very bad charting, but it also resulted in the claiming of fees for work not done, and also in the not claiming of fees for work done.
>
> . . . . . . . . . .
>
> I am sincerely ashamed of myself that my recklessness has occasioned such suspicion. I am very sorry indeed that this is so, and can assure you, that since this happened, everything possible is being done to ensure that it does not happen again."

The only witness before the Disciplinary Committee on the appellant's side was the appellant himself.

In his examination in chief (Record page 27) there is this passage with respect to the receptionist and the case of Miss Mathews:

> "Q. How old was the assistant you first had? A. She was 16.
>
> Q. Is she still with you? A. No.
>
> Q. When did she cease to be with you? A. She was instantly dismissed after the Bristol Executive Council found the errors on the charting.
>
> Q. You appreciate do not you that you are responsible yourself for any errors? A. Yes; I do appreciate that.

Q. Let us take these matters one by one. First of all, with regard to Miss Mathews, it is said that in the E.C.17 which you sent in you claimed for fillings in 4 lower right and 7 lower left when there was no cavity. Is that right? A. Yes ; that is quite correct.

Q. How did that come about? A. These three teeth in question were charted as suspicious, and during treatment of the patient I decided to keep those teeth under observation as the patient was to have a six monthly appointment for a check up, and I instructed my nurse and put it down in the record card that these teeth should be obliterated from the E.C.17.

Q. Did you check the E.C.17 before it was sent in? A. No I did not.

Q. Why not? A. Because I was extremely busy and I had trained my nurse. I hoped she was doing everything exactly as I had told her. I had a very busy practice and could not do the paper work and see to patients as well."

It will be observed that the appellant here refers to three teeth in answer to a question concerning two (i.e. 4 lower right and 7 lower left) but it would seem from later answers that there was a third tooth (i.e. 7 upper right) which, or a suspected cavity in which, should likewise have been "obliterated from the E.C.17 ".

As regards Mrs. Moger, the appellant (at page 28 of the Record) after explaining how two cavities might be made into one during treatment continued

"That is what happened in Mrs. Moger's case, and my inefficient secretary was warned but failed to alter the card in connection with the teeth.

The CHAIRMAN: Did that happen or did you think that is what happened? A. That is the usual thing that happened.

Q. How did you know you told your secretary to alter the card? A. That is the usual thing I do.

Q. Do you remember who wrote on the E.C.17 in this case? A. The nurse.

Q. How did you do it?
A. I call it out.

Mr. NOBLE: Was that the girl of 16? A. Yes the same girl."

"Mr. BRODRICK: At any rate, in either of those two cases, Miss Mathews or Mrs. Moger, did you intend to claim for fees to which you were not entitled? A. Definitely no. I did not deliberately have any fraudulent intent."

As to the overcharging in the case of Mrs. Dennis the appellant (Record page 29) explained that she came to him the day before he was due to go on holiday and that he did three fillings in teeth 4, 6, and 7 upper left and told the receptionist which teeth he had done, implying that he left it to her to make the appropriate entries in the patient's record card. On his return from holiday he received an official letter asking him to forward the E.C.17. He then took the patient's record card and found that it showed that he had done fillings in teeth 4, 5, 6 and 7 upper right, and proceeded to fill in the E.C.17 as the record card showed.

In the cross-examination of the appellant on the cases of overcharging (Record page 35) this passage occurs: —

"Q. Am I right in thinking that in the case of Miss Mathews you are admitting that you wrongfully claimed for three fillings which had not been done? A. Yes.

Q. And in the case of Mrs. Moger am I right in thinking you admit that you wrongfully claimed fees for one filling which you had not done? A. Yes.

Q. In the case of Mrs. Dennis is it right that you wrongfully claimed fees for four fillings when in fact you had only done three? A. Yes.

Q. Your explanation is that you left all the charting to a young girl of 16? A. Yes.

Q. You were too busy doing the work? A. Yes ; I was very busy indeed.

Q. You left all this to this young person? A. Whom I had trained, yes.

Q. Do not you think that was a very unwise thing to do? A. Yes ; I appreciate that now.

The CHAIRMAN: I think we shall expunge that last line as to what he thought of his activities."

As to the case of wrongful certification, also concerning Mrs. Dennis, it appears that Mrs. Dennis was not satisfied that all the treatment prescribed for her by the appellant was necessary, and consulted her doctor who referred her to another dentist Mr. J. G. James; and that, the case having come to the notice of the Dental Estimates Board, they asked the appellant for Mrs. Dennis's E.C.17. The appellant, according to his evidence, entered on the E.C.17 the four fillings erroneously entered on Mrs. Dennis's record card as having been done and sent off the card as requested making no claim for payment except for the four fillings which should have been only three, the fourth being the subject of the case of overcharging alleged with respect to Mrs. Dennis. Actually, it would seem that the E.C.17 as sent to the Board showed sixteen fillings in column 1 of part 2 of the form (which as above explained is designed for showing the treatment which in the opinion of the dentist is necessary) of which three had actually been done by the appellant, leaving thirteen remaining to be done of which ten had been filled before Mrs. Dennis came to him and the remaining three had no fillings in them. The appellant maintained throughout his evidence on this part of the case that the old fillings in the ten teeth which had been previously filled were defective and needed attention while the three which had never been filled were suspect and likely to require attention. Consideration of this part of the case is complicated by the fact that it seems to have been the plaintiff's practice to enter in column 1 of part 2 of the E.C.17 not merely work necessary to be done but work likely to be found necessary on further investigation, and in the latter case to delete the relevant entries from column 1 in the event of the work being found superfluous. In other words, he treated the entries in column 1 as provisional and finalised them when the treatment was completed by reference to the work actually done. Thus if Mrs. Dennis's treatment had gone to completion the appellant before certifying for his remuneration would have struck out of column 1 any work which in fact had been found unnecessary. But the treatment was never completed because the Dental Estimates Board called in the E.C.17, and the appellant sent it to them just as it was, including the suspect cases. This practice was not warranted by the Regulations, and in fact involved a misuse of column 1 which might well lead to confusion. The more important question, however, is whether, given this misapprehension on the appellant's part as to the use of column 1, he honestly believed that these thirteen teeth either needed or were likely to be in need of treatment. The appellant's evidence, if accepted, makes it clear that he did honestly so believe. Mr. James (who has already been mentioned) and Mr. Vernon Howarth, the two dentists who gave evidence for the Council on the case of wrongful certification, disagreed with the appellant but admitted that the matter was one of opinion and certainly did not say that no dentist could honestly be of the opinion expressed by the appellant.

As to the scope of the appellate jurisdiction conferred on their Lordships by section 29 of the Dentists Act, 1957, Mr. Widgery, Q.C. (for the General Dental Council as respondents in the appeal) accepted a submission made by Mr. Norman Richards Q.C. (for the appellant) to the effect that such an appeal is an appeal by way of re-hearing, to which the same principles apply as are applicable to an appeal to the Court of Appeal against the decision of a judge of the High Court sitting as

a judge of fact at first instance, and accordingly their Lordships find it unnecessary to refer to the authorities cited by Mr. Norman Richards in support of this proposition. In this connection their Lordships were properly reminded of the principle that an appellate court should not lightly differ from the finding of a trial judge on a question of fact and that " it would be difficult for it to do so where the finding turned solely on the credibility of a witness ": see *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370 at page 373; and note the distinction drawn by that case between the finding of a specific fact (which prima facie is a matter for the judge of first instance) and the drawing of inferences from the facts specifically found which, subject to the weight properly due to the opinion of the trial judge, is a matter on which the appellate court may properly regard itself as free to form its own view.

Thus in the present case a finding by the Disciplinary Committee that the appellant claimed fees for work which had not been done, and as to the circumstances in which he did so would be a finding of specific facts which the appellate tribunal should prima facie accept: whereas a finding that on the specific facts so found the appellant was in relation to the matter in question guilty of infamous or disgraceful conduct in a professional respect would be in the nature of an inference from the specific facts found, and as such more readily open to review.

Their Lordships would add that the question whether in relation to a given matter a dentist has been guilty of infamous or disgraceful conduct is in their opinion a question of mixed fact and law, the question of law being whether on the facts proved or admitted the dentist has been guilty of infamous or disgraceful conduct within the meaning of section 25 of the Act of 1957.

In applying the above principles to the present case their Lordships are put in some difficulty by the circumstance that beyond finding the facts alleged in each paragraph of the charge proved the Disciplinary Committee gave no reasons for its determination. Their Lordships are thus left without any express guidance as to the view of the facts upon which the Disciplinary Committee proceeded.

Their Lordships have also found some difficulty with regard to the precise meaning and effect of the adverb " wrongfully " which appears in each paragraph of the charge and in the questions put to the appellant in the passage from his cross-examination quoted above. Each paragraph of the charge states the act complained of and states that it was " wrongfully " done. It may thus be argued that, in finding the facts alleged in each paragraph of the charge proved, the Disciplinary Committee have found that in each case the act complained of was not only done but was " wrongfully " done, and that this without more would suffice to convict the appellant of infamous or disgraceful conduct. The word " wrongfully " is however of wide and uncertain import. It can be regarded as adding nothing to the acts complained of, which were plainly wrongful in the sense that the appellant ought not to have done them. On the other hand it may be regarded as imputing an unspecified degree of culpability of an undefined character ranging from mere carelessness to fraud or dishonesty; it clearly cannot be held that every act which can be characterised as " wrongful " in one sense or another is infamous or disgraceful. The Disciplinary Committee clearly recognised this in the case of Mrs. Moger, where they found the facts alleged to have been proved including the allegation that the overcharge was made wrongfully, but nevertheless acquitted the appellant of infamous or disgraceful conduct in Mrs. Moger's case. Their Lordships think that the solution is to be found in sub-paragraph 10 (2) of the General Dental Council Disciplinary Committee (Procedure) Rules, 1957 (S.I. 1957 No. 1265). That sub-paragraph provides:—

> " (2) Where in a case relating to conduct the Committee have found that the facts or any of them alleged in any charge have been proved to their satisfaction (and have not on those facts recorded a finding of not guilty) "—as they did in Mrs. Moger's case—" the

Committee shall forthwith consider and determine whether in relation to the facts found proved as aforesaid the respondent is guilty of infamous or disgraceful conduct in a professional respect. . . ."

This shows that the inquiry is to be carried out in two stages, the first directed to finding whether the primary or specific matters of fact alleged, including any facts bearing upon the question of culpability or "wrongfulness" have been proved, and the second to determining whether on the facts so found the respondent has been guilty of infamous or disgraceful conduct.

Mr. Widgery argued that the proved or admitted fact that the overcharging took place (no matter how it came about) sufficed to raise a prima facie case with respect to the overcharging in the cases of Miss Mathews and Mrs. Dennis, on which the Disciplinary Committee were warranted in finding the appellant guilty of infamous or disgraceful conduct unless he tendered an explanation which the Disciplinary Committee found acceptable; and Mr. Widgery invited us to infer that the Disciplinary Committee did not accept the appellant's story to the effect that he relied on the receptionist to make the proper entries or corrections in the documents.

Their Lordships cannot accept this submission. It appears to them that the matter fell to be judged by reference to the evidence as a whole including the appellant's explanation of the way in which the cases of overcharging arose. It further appears to their Lordships that inasmuch as the findings of the Disciplinary Committee on the cases of overcharging contained nothing to indicate that it did not accept the appellant's evidence as true, and inasmuch as the solicitor in conducting the Council's case did not challenge the truth of the appellant's explanation in cross-examination or otherwise, but on the contrary relied upon it as involving gross carelessness on the appellant's part, and inasmuch as the cases of overcharging were never put as cases involving fraud or dishonesty on the part of the appellant as distinct from carelessness or negligence, the Disciplinary Committee must be taken to have accepted the appellant's explanation as true, and to have held that the appellant's conduct in relation to the cases of overcharging with respect to Miss Mathews and Mrs. Dennis amounted, on his own explanation of it, to infamous or disgraceful conduct.

The question then is whether on this view of the facts the Disciplinary Committee was justified in finding the appellant guilty of infamous or disgraceful conduct.

Their Lordships find this meaning assigned to the word "infamous" in the O.E.D.:—

> "2. Deserving of infamy: of shameful badness, vileness, or abominableness; of a character or quality deserving utter reprobation."

(One of the strongest adjectives of detestation.)

The meaning assigned to the word "disgraceful" is hardly less extreme:—

> "2. Full of or fraught with disgrace; that brings disgrace upon the agent; shameful, dishonourable, disreputable."

It must of course be remembered that in the present case the words "infamous or disgraceful conduct" should be construed in conjunction with the words "in a professional respect"; and we were referred in this connection to the well-known case of *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750 where an injunction was sought by a medical practitioner against the defendant council from allowing his name to remain struck out from the medical register kept by the defendant council under the Medical Act 21 and 22 Vic. c. 90. By section 29 of that Act the name of any medical practitioner judged after due inquiry by the council "to have been guilty of infamous conduct in any professional respect" was liable to be erased from the register. The plaintiff's name having been so erased he brought his action for an injunction to the effect above mentioned, claiming that the proceedings

leading to the erasure of his name were void on the ground (inter alia) that there was no evidence on which the council could reasonably find that the plaintiff had been guilty of " infamous conduct in any professional respect ". This contention was rejected by Collins J. (as he then was) and the Court of Appeal, and at pages 760, 761 of the Report Lord Esher said this:—

> " 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 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."

It should be noted that the conduct there in question was very different from the conduct with which the present case is concerned, and was on the face of it quite plainly of an infamous, or for that matter disgraceful, character; and the jurisdiction which the Court was asked to exercise was the limited jurisdiction exercisable by way of control of the proceedings of a domestic tribunal, as distinct from the full appellate jurisdiction invoked in this case.

Granted that in accordance with Lord Esher's definition of " infamous " conduct in a professional respect the full derogatory force of the adjectives " infamous " and " disgraceful " in section 25 of the Act of 1957 must be qualified by the consideration that what is being judged is the conduct of a dentist in a professional respect, which falls to be judged in relation to the accepted ethical standards of his profession, it appears to their Lordships that these two adjectives nevertheless remain as terms denoting conduct deserving of the strongest reprobation, and indeed so heinous as to merit, when proved, the extreme professional penalty of striking-off.

To make good a charge of " infamous or disgraceful conduct in a professional respect " in relation to such a matter as the keeping of the prescribed dental records it is not in their Lordships' view enough to show that some mistake has been made through carelessness or inadvertence in two or even three cases out of (to quote the figures in the present case) 424 patients treated during the period in which the mistakes occurred whether the carelessness or inadvertence consisted in some act or omission by the dentist himself or in his ill-advised delegation of the making of the relevant entries to a nurse or receptionist and omitting to check the forms to see that she had done as she was told. To make such a charge good there must in their Lordships' opinion (generally speaking) be some element of moral turpitude or fraud or dishonesty in the conduct complained of, or such persistent and reckless disregard of the dentist's duty in regard to records as can be said to amount to dishonesty for this purpose. The question is to some extent one of degree, but in their Lordships' view the cases of overcharging with which this appeal is concerned clearly fall short of the degree of culpability required.

As to the case of wrongful certification, their Lordships cannot regard the appellant's misuse of column 1 of part 2 of the form E.C.17 as

amounting to infamous or disgraceful conduct. With respect to the treatment alleged to have been unnecessary, the evidence (as their Lordships have already observed) showed that, according to the appellant, he honestly believed it to be necessary (or likely to be found necessary) while the dentists who disagreed with him did not claim that the opinion expressed by the appellant was one which no dentist could honestly hold. In this state of the evidence their Lordships think it would be wrong to impute to the Disciplinary Committee an implied finding to the effect that the appellant did not honestly hold that opinion. An honestly held opinion, even if wrong, in their Lordships' view plainly cannot amount to infamous or disgraceful conduct.

Mr. Widgery very fairly admitted so far as the cases of overcharging alone were concerned the Disciplinary Committee would hardly go the length of erasing a dentist's name merely on account of three such cases (involving in the present proceedings a total, including Mrs. Moger, of £5 7s. 7d. out of total payments of some £1,915).

The record before their Lordships contains passages suggesting that there may have been other cases of overcharging besides those included in the charge—see in particular the appellant's letter of the 1st August, 1959, referred to above ; but it was the duty of the Disciplinary Committee to judge the matter simply by reference to the cases alleged in the charge, or in other words "*secundum allegata et probata*". This plainly appears from the language of Rule 10 (2) of the General Dental Council Disciplinary Committee (Procedure) Rules, 1957, to which reference has already been made. It was therefore right for the Disciplinary Committee to confine their consideration of the charge to the matters specifically alleged in the charge ; and their Lordships taking the same course find themselves unable to hold that the appellant was rightly found guilty of infamous or disgraceful conduct in relation to the facts alleged.

For these reasons their Lordships are of opinion that this appeal should be allowed and that the determination of the Disciplinary Committee should be discharged, and will humbly advise Her Majesty accordingly. The General Dental Council must pay the costs of the appeal.

(39135) Wt. 8109—53 75 5/60 D.L.

**In the Privy Council**

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DUDLEY ERNEST LYNCOLN WAGER FELIX

*v.*

THE GENERAL DENTAL COUNCIL

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DELIVERED BY LORD JENKINS

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