yearly tenants, and when the Mahárájá replied that they were to take possession, and ordered it, to be given to them, he, in their Lordships' opinion, intended that they should hold the agraháram at the increased rent, in the same manner as they had done before the attachment. And it was admitted by the appellant's counsel that the Mahárájá had power to do this. Their Lordships will, therefore, humbly advise Her Majesty to dismiss the appeal, and to affirm the decree of the High Court dismissing the suit.

Solicitor for the appellant—*R. T. Tasker.*

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

1886. Jan. 14, 26.

GOMPERTZ (PLAINTIFF), APPELLANT,

and

GOLDINGHAM AND OTHERS (DEFENDANTS Nos. 1, 2, 4, 7, and 8), RESPONDENTS.*

*Club—Expulsion of member by committee—*Audi alteram partem.

G, having been expelled from a club by the committee on the ground that he had published a certain pamphlet which was considered to be a libel by the committee, sued the members of the committee for damages and to have his name replaced on the list of members. It was proved that, in considering G's conduct with reference to the publication of the pamphlet, the committee took into consideration certain letters which G had written to certain members of the committee and that his expulsion was partly for printing the pamphlet and partly for writing the letters:

Held, that as the decision of the committee was arrived at *boná fide*, the Court had no right to decide whether the pamphlet was or was not a libel.

Held, further, that as G had no opportunity for defending himself on the charge of writing the letters, his expulsion was illegal.

APPEAL from the decree of W. F. Grahame, Acting District Judge of Cuddapah, in Suit No. 12 of 1884.

The plaintiff sued the defendants for Rs. 500 damages for removing his name from the list of members of the Bellary Club, and to obtain an order that his name should be restored to the said list.

The defendants were the committee of management of the club.

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* Appeal No. 82 of 1885.

GOMPERTZ *v.* GOLDINGHAM.

Defendants 2—7 pleaded, *inter alia*, that the plaintiff was expelled from the club for publishing and circulating, in the form of a printed pamphlet, correspondence between himself and the committee, prefaced by remarks of a very objectionable character, such conduct being, in the opinion of the committee, calculated to disturb the order and harmony of the club and injurious to its interests and character.

The suit was dismissed with costs.

Plaintiff appealed.

The facts nécessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.)

Mr. *Norton* for appellant.

Mr. *Branson* for respondents.

Judgment was delivered by

COLLINS, C.J.—After setting out the evidence in detail, the judgment proceeded as follows:—

At the hearing of this appeal, the counsel for the appellant abandoned the appellant's claim for damages and abandoned also the third, fourth and sixth grounds of appeal, and he rested his contention that this appeal ought to be allowed on four grounds—

(1) That the committee which expelled him from the club was not duly constituted as directed by Rule V.

(2) That the action of the committee was illegal and without reasonable and probable cause and otherwise than *boná fide*.

(3) That the appellant had no opportunity of explaining his conduct.

(4) That the committee expelled him, not for printing and publishing the pamphlet only, but for printing and publishing the pamphlet and for writing the letters of the 13th February to Major Chard and Colonel Smith.

Rule 5, s. 1, provided that the affairs of the club shall be managed by a committee of seven members, to be elected as vacancies occur, or annually at a general meeting held on the third Friday in February. Section 4 provides that immediately on a vacancy occurring in the committee, a general meeting shall be called by the Secretary to elect a fresh member. Reading the two sections together, we cannot say that the words in s. 1 may not bear the construction suggested for the respondents that the words "or annually at a general meeting held on the third Friday

in February" suggest only an alternative. It must also be noted that there is no provision made for the re-election of out-going members as is usually the case when an annual election is made compulsory. Furthermore, the practice of the club has been in accordance with that construction, and, as the words are capable of bearing it, it must be accepted as the true construction. The first contention therefore cannot be supported. We have now to consider the other objections taken by the appellant, and it must be borne in mind that we have no right to sit as a Court of Appeal upon the decision of the members of a club duly assembled. We refrain from passing any opinion whether or not the preface of the pamphlet contained a libel. If two-thirds of the committee came honestly to the conclusion that the publication and circulation of that pamphlet was injurious to the character of the club or likely to disturb the harmony of the club, they had the power to decide whether the offender, *i.e.*, the publisher and circulator of that pamphlet, merited expulsion, and we are far from saying that it is impossible that reasonable men could not come to the conclusion at which the committee arrived in this case, and we have no doubt that they acted as they believed in the interest of the club and in perfect good faith. But before they could expel they must hear the accused. "No proceeding," says Lord Denman in the case of *Innes* v. *Wylie* (1), "in the nature of a judicial proceeding can be valid unless the party charged is told he is so charged, is called on to answer the charge, and is warned of the consequences of refusing to do so."

The late Chief Baron Kelly, in *Wood* v. *Wood* (2), lays down this rule of law thus: "The committee are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem* that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence." This rule is not confined to strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate "upon matters involving civil consequences to individuals." And, again, in *Dawkins* v. *Antrobus* (3), Brett, L.J., says: "If a decision is come to depriving a gentleman of his position on such a charge

(1) 1 C. & K., 263. (2) L.R., 9 Ex., 196. (3) 17, Ch. D., 615.

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as must be made out here, viz., that he has been guilty of conduct injurious to the character and interests of the club, in my opinion there would be a denial of natural justice if a decision was come to without his having an opportunity of being heard." We are of opinion that Mr. Gompertz had ample notice of the charge made against him with regard to publishing and circulating the pamphlet. The proceedings at the meeting of the 23rd February 1884 made it clear to him that if he did not retract the statements contained in the pamphlet and apologise for the circulation of the same, the committee of the club would take action under Rule 6. There is also his statement to the Honorary Secretary that if he felt an apology was necessary, he would submit it to the Committee the following day. He did write a letter, dated 24th February 1884, which the committee decided to be insufficient. He had also the letter of the 25th February 1884 from the committee, which tells him in express terms that unless he retracts the libellous insinuations contained in the printed pamphlet and apologises for having made and circulated the same, his name will be removed from the club. He takes no notice of this communication and his name is accordingly removed. We are therefore of opinion that he had ample notice that the committee of the club objected to the publication of the pamphlet in question, and that if he did not withdraw the statement and apologise, they would exercise the powers conferred on them by the club under Rule 6. Mr. Gompertz says that he sent no answer to the letter from the committee, of the 25th February, because he thought that letter was extremely insolent and that silent contempt was the only possible reply. But it is urged that the appellant was not expelled for publishing and circulating the pamphlet only. It is said that the letter to Major Chard from the appellant, dated 15th February 1884, and also the letter to Colonel Smith, of the same date, had a great effect on the minds of the Committee and contributed materially to plaintiff's expulsion, and that appellant had no notice of that fact and was never called upon to explain or to withdraw those letters. We find that on the 18th February 1884 the Committee were considering two grounds of complaint against appellant—his conduct in relation to the letter put in by Major Chard complaining of the "gross rudeness" on the part of the Honorary Secretary, and also Mr. Gompertz's libel contained in the printed pamphlet.

Mr. Goodrich, a member of the committee, says in his evidence that the letter written by plaintiff to Major Chard (Exhibit I) was a part of the whole case and was taken into consideration in dealing with appellant's conduct all through; "we considered on the 25th February that if any single member of the club persisted in any line of conduct when called upon to abandon that line of conduct by almost every other member present at the General Meeting of the club, his membership cannot conduce to the harmony of the institution." The effect of the appellant's letter to Colonel Smith was apparently very unfavourable to the appellant, for Colonel Smith says: "I see the paper shown me (the pamphlet). I received a similar one on my return from the camp of exercise on the 19th February this year, I received a letter from plaintiff along with this paper. I tore up the letter and the paper, as I thought it was such a damned piece of impertinence in the gentleman who sent it to me. I recollect I was addressed as then being a member of the committee. I do not recollect the contents of the letter. I thought it to be a piece of impertinence. The letter was impertinent in addressing me in that manner in connection with the pamphlet as regards the affairs of the club. The impression that the letter and pamphlet were calculated to produce on me was most unfavorable as regards the plaintiff's conduct in the first instance. I see Exhibit I. This is the letter to Major Chard. The committee took the letter into consideration before the General Meeting." And Major Chard says, in his evidence, "we took into consideration the libellous language especially in the preamble of this the appellant's pamphlet *and in the letter addressed to me*, and the two opportunities we had given him to retract and apologise." Major Chard was then asked what was the purpose of the letter, and the answer was to influence him as a member of the committee. "I consider (he says) the whole of plaintiff's conduct as against preserving the harmony of the club. The committee expelled the plaintiff after due consideration of the plaintiff's conduct." Surely the appellant ought to have been told the effect these letters were having upon the mind of some at least of the members of the committee. The evidence of these three gentlemen makes it clear to us that the appellant was expelled partly for printing and circulating the pamphlet and partly for writing these letters to Major Chard and Colonel Smith, and there is no evidence to show that his attention was directed to

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anything but the pamphlet. The learned counsel for the respondents drew our attention to the fact that the appellant knew that his letter to Major Chard was laid before the committee, but that is not enough. Now, bearing in mind the rule of law so clearly laid down in *Innes* v. *Wylie* (1) by Lord Denman, C.J., and in *Wood* v. *Woad* (2) by Kelly, C. B., we have come to the conclusion that the appellant had no opportunity of defending himself against this particular charge. Indeed, as far as we can judge, he did not know that the writing of these letters was a part of the charge against him. We believe that the committee were acting according to the best of their judgment, but they have made a mistake, and they have expelled the appellant from the Bellary Club partly on a charge which, if they had considered the matter, they would have found had never been brought to the appellant's notice. Upon this ground and this ground alone, we are of opinion that the appellant is entitled to succeed in his appeal. We therefore reverse the decision of the Lower Court and declare that the appellant was wrongfully expelled by the defendants and we order the defendants to restore his name to the list of members of the Bellary Club.

We have now to consider the question of costs, and we bear in mind that the third point taken by the counsel for the appellant and the only point on which he succeeds was taken for the first time at the hearing of this appeal. It does not seem to have been brought to the notice of the Officiating District Judge. We think it right under all the circumstances of the case to order that each party pay their own costs in the District Court, but, as the appellant has succeeded in the appeal, we give him the costs of the appeal.

(1) 1 C. & K., 263. (2) L.R., 9 Ex., 196.