

position, and remember what he knew—not what he knew now—when he took the step he did. He made inquiries, and swore an information in which he said she was a person deemed to be insane, and without sufficient means of support.

Questions for Jury.

His Honor proceeded to say that he was going to ask the jury these questions:

"Did the defendant take reasonable care to inform himself as to the true facts of the case?"

"Did he honestly believe the case which he laid before the magistrate?"

"And, unless the plaintiff has satisfied you that you should answer one or other of these questions in the negative, then the defendant is entitled to a verdict."

"I am also going to ask you a further question, which only becomes material if you find against him on one of the other questions: Was he actuated by malice?"

What the Defendant Could Not Do.

"The jury had to look at the matter from the point of view of the defendant at the time he laid the information. As far as possible, the jurymen should put themselves in the defendant's position, and then say how far he acted as a reasonable man, and how far he acted in good faith. It is for you to say whether, as a reasonable man, he should have rested content with Dr. Leahy's opinion and the facts he knew, or whether he should have taken further steps to ascertain additional facts. He could not see the plaintiff. He could not have her examined again by a doctor, and the object of his proceedings was to have her examined by a doctor in order that the authorities might have opinion on which they could act. If you come to the conclusion that he honestly believed she was insane, and took reasonable care to inform himself in connection with that part of the case, then what about her means?"

Her Means of Support.

"Defendant took it upon himself to state that she was without sufficient means of support. He knew she had no money. She came to the convent without any, and went away without any. He knew she went without clothes. He knew she had been to Thompson's house, and that the Thompsons said she had left there; but they did not know where she had gone, she having, according to them, 'come on her own and gone on her own.' Neither he nor the police, with all the inquiries they were prosecuting, could get any information about her. She simply disappeared. What further inquiries could he have made to satisfy himself that she was being well looked after? Who was there to give him information of that sort. Why should he go to Archdeacon Pike, who had already refused information to others?"

"Why was he to assume that the unknown people with whom she might be were prepared to do everything possible in her interest? The people acting against him had not shown him any great example of charity in their opinions of him and his associates, and I do not know that he was called upon to exhibit a monopoly of charity towards them concerning their motives and intentions. I have tried to put myself in the defendant's position—to get his ecclesiastical character—treating myself as an individual who had been put in a position in which I was morally responsible for the welfare of a woman who acted as the plaintiff."

If Her Mother Asked Him?

"Supposing the plaintiff's mother had arrived in New South Wales at that time, and had gone to the Bishop and questioned him, what would he have had to say, if she asked him 'where is my daughter?' He would have to say 'I do not know.' If she asked him whether her daughter had left the convent, he would say 'yes,' and asking the circumstances, would find that the girl had left in her nightdress and barefooted. 'Well, what became of her?' the mother would ask; and then he would say, she went to Thompson's. 'Is she there yet?' 'They say she is not, but has gone, they do not know where.' Would the mother not then say, 'why, for all you know she is in a water hole.' And what answer would the Bishop have had, on the information then in his possession? So that question I leave to you. I am assuming here, of course, that he would have told the mother the girl was out of her mind,

or that he believed she was insane. That is the case from the defendant's point of view.

What Were the Bishop's Motives?

"The case for the plaintiff is that the Bishop was not actuated by the motives he says actuated him—that is to say, the only motive that would justify a man in his position acting as he did, namely, a desire to have a person he believed to be insane and without support properly attended to and her case properly inquired into. If he acted from some other motive—some indirect motive—then that is what the law calls malice. That is another question, and I am going to ask you: Has the plaintiff satisfied you that the defendant was actuated by malice? It is put to you that he was very anxious to get her out of the custody of the people with whom she then was—suggested, apparently members of the Orange Lodge. I do not think there is anything in the evidence showing that at that time anyone connected with the Orange Lodge had her. We do not know whether the Thompsons were Protestants or not. Of course, if you come to the conclusion that the Bishop knew, or had reason to know, that she was being well and properly cared for, then you will draw the conclusion, probably, that he had some other motive than the motive he claims actuated him in taking the steps he did."

No Suggestion of Sending Her Back.

"Mr. Shand based a large part of his argument upon what took place at Wagga between the defendant, Dr. Leahy, and Sheehy in proceedings which were sought to be taken before the magistrate there, and upon the fact that the Bishop did not disclose to the magistrate who granted the order in Sydney that these proceedings had taken place at Wagga. These are matters for your very serious consideration. It occurs to me that no one can have supposed that the result of the proceedings would have been to restore the plaintiff to the convent. The effect of the information would not be to direct her return there, but to ascertain if she was sane or insane."

"The law required two things to be established, and no unnecessary obstacles were put in the way of people who honestly take steps to have inquiries made in these cases. But before a verdict could be given against defendant, plaintiff must show that defendant acted without reasonable care, and was actuated by malice."

His Honor concluded his direction to the jury at about 10 minutes to 3 p.m.

The jury then retired.

Verdict for Defendant.

On returning into Court at 9.45 p.m. his Honor asked the foreman of the jury whether they had agreed on a verdict, and the reply was "Yes."

His Honor: Are you unanimous, or is it by a majority?

The foreman: By a majority on the first two questions, and we are unanimous on the last question.

His Honor (reading from the paper containing the answers to the questions handed to him by the foreman): The gentlemen of the jury answer each question "No."

Mr. Flannery: On these answers I will ask your Honor to enter a verdict for the defendant.

Mr. Shand: I submit that you cannot enter that verdict. Your Honor should direct the jury that in answering "No" to the first and second questions malice follows in law. Your Honor should direct the jury now to return a verdict for the plaintiff and assess damages.

Mr. Flannery: I am not to be taken as assenting to that proposition in law.

His Honor (addressing the jury): Have you taken into consideration, gentlemen, the question whether, if the defendant did not honestly believe the case which he laid before the magistrate, he could have acted in good faith without malice?

The foreman: I think so, your Honor.

His Honor: You have discussed that? Yes.

His Honor: I understand that by a majority you find that the defendant did not honestly believe the case which he laid before the magistrate?

The foreman: Yes.

His Honor: Have you considered whether, in that case, he could have acted in good faith—that he could have acted from a proper motive in laying the information?