

[ORIGINAL CIVIL JURISDICTION.]

1876.
March 30.

SHEPHERD (PLAINTIFF) v. THE TRUSTEES OF THE PORT OF BOMBAY.
(DEFENDANTS).

Injunction—Libel—Ultra vires—Bombay Act I. of 1873.

The Court will not grant an injunction to restrain the publication of a libel; nor to restrain, at the suit of an individual, an act of a corporate body, on the ground of such act being *ultra vires*, except where such individual has been damaged by such act in his rights of ownership, commodity, or easement.

There is no authority for the proposition that an individual is entitled to protection by way of injunction against the act of a corporation, though in excess of their powers, which affects that individual's character and reputation, whether private, professional, or commercial, which he would not have been entitled to had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the corporation had no power to do under the instrument of incorporation.

The Trustees of the Port of Bombay have the power to record their decisions and opinions with regard to matters connected with the business they have under their Act power to transact; whether such decisions or opinions are confined to statements of what they believe to be actual facts, or extend also to the giving of advice for the conduct of their successors in office with regard to such business, and whether the expression of such decisions, opinions, or advice may or may not contain statements injurious to the character or reputation of others.

Where, therefore, the plaintiff sought for an injunction to restrain the Trustees of the Port of Bombay from publishing two resolutions alleged to reflect injuriously on his character and reputation, on the ground that it was not within the powers conferred on the Trustees by Bombay Act I. of 1873 to discuss or pass resolutions affecting his character, and that the publication of such resolutions was calculated to injuriously affect him in his commercial relations with the Government,

Held that the injunction could not be granted.

Held also that though the Court, under certain circumstances, might have the power of so framing an order for injunction as to produce the effect of cancelling the minutes of a resolution recorded in the books of a corporate body, yet that it could not order the Trustees of such body to pass and record a resolution dictated by the Court.

THE plaintiff is a contractor with the Government of Bombay for the carriage of mails and passengers across the harbour of Bombay, and for this purpose runs a line of steamers, generally known as the ferry steamers. The defendants are the Trustees of the Port of Bombay, appointed under the provisions of the Bombay Port Trust Act (Bombay Act I. of 1873). The plaintiff hired one of the steamers of the defendants, named the "Dromedary", for Rs. 40 per diem, on the condition, amongst others, that he should return it to the defendants in the same

or as good order and condition as it was in when handed over to him by the defendants. The plaintiff alleged that when the steamer was made over to him it was not opened out so that he could make a thorough inspection of it, that shortly after it had been handed over to him it twice broke down, that on each occasion he had the necessary repairs made, and that while such repairs were being made the steamer had to be docked, and was consequently useless to him for a fortnight. When the plaintiff returned the steamer to the defendants they had it opened out, and a list of the defects then existing was made by the engineer to the Port Trustees, which was forwarded to the plaintiff. The plaintiff employed a firm of engineers in Bombay to make an estimate of the expense of remedying these defects, and the engineers estimated such expense at Rs. 520. The defendants meanwhile had an estimate made in the Government Dockyard, which showed that Rs. 3,000 would be necessary to remedy these defects, or rather to put the vessel in the same state as she was in at a certain date shortly before she was delivered to the plaintiff. The defendants accordingly claimed from the plaintiff the sum of Rs. 3,000 and a further sum of Rs. 560 as hire for fourteen days. The plaintiff denied his liability for the Rs. 560 as hire for the steamer during the fourteen days that it had been docked for repairs, and, though not admitting his liability in respect of the defects pointed out by the engineer of the Port Trustees, offered to pay Rs. 520, the sum named by his own engineers as the expense of remedying such defects, in full satisfaction of all claims against him by the Port Trustees. After some correspondence on the subject the offer of the plaintiff was finally accepted by the defendants at a meeting of the Port Trustees held on 10th February 1876. The resolution of the defendants accepting the offer of the plaintiff was entered on their minutes in these terms:—"Mr. Shepherd's offer of Rs. 520, in full of all claims, should be accepted; but any further transaction with him should be avoided if possible." A copy of this resolution was forwarded to the plaintiff, who on its receipt wrote to the Port Trustees, complaining that the concluding sentence seemed offensive, and asking that it should be expunged. In reply the defendants forwarded to the plaintiff another resolution, passed on 17th February 1876, in the following words:—"Mr. Shepherd should be informed that the Trustees adhere to their

1876.

SHEPHERD
 THE TRUS-
 TEES OF THE
 PORT OF
 BOMBAY.

1876.

SHEPHERD
v.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

former resolution already passed." The plaintiff thereupon filed this suit against the defendants to have the two minutes of 10th February and 17th February set aside or rectified, and for damages for libel. In his original plaint he prayed that the defendants might be ordered to annul the two resolutions, or that the same should be set aside or rectified, and that in the meantime the presidents of the two meetings at which these resolutions were passed might be restrained from signing the resolutions and from transmitting them to the Secretary to the Local Government, or in any other manner publishing them; and claimed damages for the libel Rs. 10,000.

On 2nd March, 1876, *Gill* for the plaintiff obtained a rule *nisi* for an injunction in the terms of the prayer of the plaint, and an *interim* injunction until the argument of the rule. On 4th March the defendants' solicitors informed the plaintiff's solicitors that at the time of the granting of the rule *nisi* the resolutions had been already signed and transmitted to the Secretary to the Government, and offered to give an undertaking to the plaintiff not to publish the resolutions. The plaintiff thereupon amended his plaint, and striking out the original prayer, prayed for a declaration that the defendants had acted in excess of their powers in passing, recording, signing, and sending up to Government the two resolutions of 10th February and 17th February, and that the defendants might be restrained from continuing to retain and allowing to remain recorded on their minutes these two resolutions, without passing, recording, signing, and sending up to Government some other resolution rescinding them, and claimed damages for the libel Rs. 20,000. On 16th March 1876 a notice of motion was sent by the plaintiff's solicitors to the defendants' solicitors informing them that the Court would be moved to grant an injunction in the terms of the prayer of the amended plaint, to amend the rule *nisi* accordingly, and to make absolute the rule *nisi* when so amended. The motion was made accordingly.

Gill and *Agnew Turner* for the plaintiff in support of the motion:—The Court will grant an injunction in such a case as this where the injury is irreparable, continuing, and not capable of being measured by damages. If the defendants were justified in passing the resolutions, they were not justified in recording them

on their minutes. Their doing so is a continuing injury against which the Court will grant an injunction: *Lawless v. The Anglo-Egyptian Cotton Company* (1), *Philadelphia Railway Company v. Quigley* (2). But the passing of these resolutions, still more the recording of them, was *ultra vires* of the defendants, and the Court will restrain a corporation from acting *ultra vires*: *The Corporation of Exeter v. Earl of Devon* (3), *Abrahams v. The Mayor, Aldermen and Commons of London* (4), *Richmond v. N. London Railway Company* (5), *The Midland Railway Company v. London and N. W. Railway Company* (6). The Court will grant a mandatory injunction against a corporation: *Great N. of England, &c., Railway Company v. The Clarence Railway Company* (7).

1876.

SHEPHERD
v.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

Marriott, Advocate General (Acting) and *Pigot*, *contra*:—A court of equity has no jurisdiction to grant an injunction to restrain a libel, even if injurious to property: *The Prudential Life Assurance Company v. Knott* (8), *Mulkern v. Ward* (9). By the terms of the Act under which they are constituted, the Port Trustees are bound to record their resolutions and to forward a copy of the record to Government; any such communication is clearly privileged: *Coxhead v. Richards* (10), *Amann v. Damm* (11). On the point of malice: *Whitfield v. The South-Eastern Railway Company* (12). If the plaintiff applies for an injunction against a corporation he must do so as one of the public: *Painter v. The London Brighton and South Coast Railway Company* (13). The Court has no power to restrain a libel. It has power to restrain some acts *ultra vires*; but if the recording of such resolutions as these be *ultra vires*, it can be so only on the ground that they are libellous, for the Port Trustees are by their Act directed to record their resolutions as a general rule.

(1) L. R. 4 Q. B. 262; S. C. 38 L. J. Q. B. 129.

(2) 21 How. (Rep. Sup. Ct. U. S.) 202 cited at L. R. 4 Q. B. 265 and in *Manley Smith on Mast. and Serv.* 266.

(3) L. R. 10 Eq. 232. (4) L. R. 6 Eq. 625; S. C. 37 L. J. Ch. 732

(5) L. R. 3 Ch. Ap. 679. (6) L. R. 2 Eq. 524.

(7) 1 Col. 507. (8) L. R. 10 Ch. Ap. 142. (9) L. R. 13 Eq. 619.

(10) 2 C. B. 569; S. C. 15 L. J. C. P. 278; 10 Jur. 597.

(11) 8 C. B. N. S. 597; S. C. 29 L. J. C. P. 313; 7 Jur. N. S. 47.

(12) 27 L. J. Q. B. 229. (13) 2 C. B. N. S. 702.

1876:

Gill in reply.

SHEPHERD
v.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

[GREEN, J. :—It is clear there can be no injunction to restrain a libel. I wish you to show me how these resolutions are *ultra vires* of the defendants, for it seems to me that they can be *ultra vires* only on the ground that they are libellous.]

They would have been equally *ultra vires* had they been laudatory of the plaintiff. In that case, no doubt, the plaintiff would have had nothing to complain of; and, if the other members of the community had been injured by such a resolution—for instance, as “Mr. Shepherd is the only honest man in Bombay”—they could have restrained the defendants from so acting *ultra vires* only by setting the Advocate General in motion. But in the present case the plaintiff suffers a peculiar injury in his relations with the Government by the act of the defendants. The reason for the rule, that courts of equity will not restrain a libel, is that it is no injury to property; but this act of the defendants, by rendering the Government unwilling to renew their contract with the defendant, is an injury to his property. We do not ask, and never did ask, for an injunction to restrain a libel, but to restrain an act injurious to us, which is *ultra vires* of the defendants. The powers of the Port Trustees are defined in the Port Trust Act, and nowhere do we find amongst them a power to pass resolutions commenting, whether favourably or unfavourably, on the character, conduct, or dispositions of private individuals, nor can the Court go beyond the express words of the Act and say that such a power is impliedly given.

[GREEN, J. :—It seems to me part of the business of the Port Trustees, if they are dissatisfied with the man with whom they are dealing, to record that opinion for the guidance of their successors.]

The plaintiff, not being a servant of the Port Trustees, it is a perfectly gratuitous act on their part to pass such a resolution. It cannot be within the course of the ordinary business of the Port Trustees to pass resolutions commenting on the character of others; for, so often as such resolutions were libellous, they would be breaches of the law. It may be that the act which we seek to restrain, is calumnious; but it is not because it is a calumny that we seek to restrain it, but because it is a continuing irreparable injury and

an act *ultra vires* of the defendants. The Port Trustees exist only for the purposes of the Act under which they were appointed: Kerr on Injunctions, 350. It lies on them to show how they were acting within the powers conferred on them by that Act in passing these resolutions, not on me to prove a negative.

1876.

SHEPHERD
v.
THE TRUS-
TEES OF THE
PORT OF
BOMBAY.

[GREEN, J. :—Supposing one of the collectors of port dues embezzles the money which he receives, are the Port Trustees not to record their reason for dismissing him ?]

Such a collector would be a servant of the Port Trustees, but the plaintiff is a stranger.

[GREEN, J. :—Not a mere stranger. He was a party to a contract with the defendants, and it was with reference to that contract that these resolutions were passed.]

Even in the case of a defaulting servant, the Port Trustees would not be justified in keeping the resolution on their minutes after it had served the purpose for which it was passed.

Cur. adv. vult.

On 30th March 1876 the following judgment was delivered by GREEN, J., who, after reviewing the facts stated above, proceeded:—Though the plaint, as originally framed, does (amongst other things) allege that the passing of resolutions reflecting on the character of private individuals is *ultra vires* the defendants as Trustees of the Port of Bombay, yet the scope and gist of the case there made is, that the defendants had by their said resolutions defamed the plaintiff, though such defamatory matter is not alleged to have been as yet published, and the relief sought is for damages, and in the meantime and till the hearing for an injunction against publishing such resolutions, and in particular transmitting the same to the local Government. On the same day as the original plaint was filed, viz., the 2nd instant, a rule was granted calling on the defendants to show cause why the president or presidents of the meetings of the 10th and 17th February, in the plaint mentioned, should not be restrained by injunction from signing the resolutions in question, or either of them, and why the said defendants, their servants, &c., should not in like manner be restrained from transmitting such resolutions to

1876.
 SHEPHERD
 v.
 THE TRUSTEES
 OF THE
 PORT OF
 BOMBAY.

the Secretary of the local Government, or in any other manner publishing or causing the same to be published. It was further ordered that in the meantime, and until further orders, the said defendants, &c., should be restrained from publishing, or causing to be published, the said resolutions or either of them. The rule of the 2nd March appears to have been served on the defendants on the same day. It was, however, applied for too late to restrain the signing and transmitting of the resolutions in question, as the resolution of 10th February had, it appears, after having been signed by the President, been forwarded to the Secretary to Government on the 19th February, and that of the 17th February had, after being signed as aforesaid, been transmitted as aforesaid on the 28th February. On the 4th March, but after the service of the rule *nisi*, the defendants' solicitors wrote to the plaintiff's solicitors a letter of that date, in which, after informing the plaintiff that the resolutions complained of had in the previous month, and on the dates already named, been already signed and transmitted to the Secretary to Government, they write as follows:—"With regard to the publishing of the resolutions, we beg to call your attention to the fact that it is your client who has caused them to be published by what appears to us to have been an entirely premature and unnecessary application for the injunction. The Trustees had no intention of making these resolutions public, and this fact your client might have ascertained for himself if he had made inquiry on the subject of the Trustees." The letter then proceeds to state, and it is a fact of considerable importance with regard to the existence, on the part of the Trustees, of any actual intention to injure the plaintiff's reputation, at least outside the circle of the Trustees themselves: "If he (*i.e.*, the plaintiff) saw the newspapers in which excerpts of the proceedings of the meetings of the 10th and 17th February are published, he must have seen that these resolutions were not included in them." The letter then goes on:—"The defendants are prepared to give an undertaking that they will not in any way publish, or cause to be published, the resolutions or either of them," and suggests to the plaintiff that he should desist from further proceeding with the rule which had been granted. On the 7th March the plaintiff's solicitors wrote in reply, asking that the Trustees should pass another resolution rescinding the former ones and containing some expression of goodwill to the

plaintiff, and, should that be done, the plaintiff would revert to his original offer of Rs. 520 in settlement of all matters in dispute, the defendants paying the plaintiff's costs already incurred. In the reply of the same date of the defendants' solicitors they decline to adopt the course suggested in the last letter of the plaintiff's solicitors, and state that in passing the resolutions complained of, the Trustees had not in contemplation to do the plaintiff any injury, their only object being to record their decision with reference to the matters then before them, and that in sending up the resolutions to Government they were only acting in pursuance of Section 14 of their Act. The learned Judge, having then stated the amendment of the plaint and the subsequent proceedings, continued :—

Had the present been simply an application to restrain by injunction the publication, or further publication, of matter alleged to be defamatory, there can be no question that on the authorities it is one which cannot be sustained, and the learned counsel for the plaintiff has fully admitted this. It is true that in the cases of *The Springhead Spinning Company v. Riley* (1) and *Dixon v. Holden* (2) Vice-Chancellor Malins granted an injunction when in the first-named case the defendants had by placards and advertisements sought to deter workmen from taking employment with the plaintiffs, and in the latter case where the defendant (who was solicitor for a bankrupt firm of Dixon Brothers, consisting, as the plaintiff alleged, of one Hugh Dixon and one Launcelot Dixon) had intimated his intention to publish an advertisement of a meeting of the creditors of Dixon Brothers, which advertisement contained an allegation that the plaintiff, William Dixon, was a partner of the firm of Dixon Brothers, though the defendant, as the plaintiff by his bill alleged, was well aware that the plaintiff was never a partner, and never had any interest in that firm. In the last-named case the Vice-Chancellor did not grant the injunction, as being an injunction against the publication of a libel merely, but by way of a protection of the commercial character of the plaintiff treating an injury to the commercial character and credit of a merchant as being in the nature of an injury to property. In the case, however, of the *Prudential Life Assurance Company v. Knott* (3)

1876.

SHEPHERD
2.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

(1) L. R. 6 Eq. 551.

(2) L. R. 7 Eq. 488.

(3) L. R. 10 Ch. Ap. 142.

1876.
 SHEPHERD
 v.
 THE TRUSTEES OF THE
 PORT OF
 BOMBAY.

before the Lord Chancellor and Lords Justices, the decision of Vice-Chancellor Malins in these two cases was distinctly disapproved of, and these cases may be treated as having no authority, and the Court of Appeal affirmed the principle that an injunction will not be granted to restrain the publication of injurious statements, even though distinctly affecting complainants in respect of their trade and business. The Lord Chancellor says:—"If, on the other hand, these comments do amount to a libel, then, as I have always understood, it is clearly settled that the Court of Chancery has no jurisdiction to restrain the publication merely because it is a libel. There are publications which the Court of Chancery will restrain, and those publications as to which there is a foundation for the jurisdiction for the Court of Chancery to restrain them, will not be restrained the less because they happen to be libellous." The class of cases which the Lord Chancellor may probably have had in his mind when he speaks of publications, as to which there is a foundation for the jurisdiction of the Court of Chancery to restrain, are such as where papers, documents, copies of books, &c., have come into the possession or knowledge of solicitors, agents, accountants, merchants' clerks, &c., in the course of their employment. The publication of such documents the Court will restrain, as being a breach or abuse of the confidential relation by which the power of publication or communication has come to the person sought to be restrained. To the same class may be referred the cases where the Court restrains the publication of manuscript works without the consent of the author (who is to be treated as having, previous to publication, a right analogous to a right of property in his MS.), or the publication by a receiver of a letter without the consent of the writer and sender. It is considered that by sending a letter to another the sender gives the receiver a right to read and keep it, but not to publish its contents to the world. In such cases as the foregoing there is, as the Lord Chancellor says, a foundation of jurisdiction to restrain publication, which jurisdiction will not be the less exercised by reason that the matter to be published may also be libellous. It is not, however, as I have mentioned, on the ground of any alleged jurisdiction of this Court to restrain by injunction the publication of libels as such that the learned counsel for the plaintiff attempts to sustain his application. I understood his

argument to be this. The defendants are constituted a corporation by their Act (Bombay Act I. of 1873) with certain defined trusts and powers. It is no part of the trusts and powers so vested in them to pass, record, and transmit to the local Government resolutions, which though they may concern business which the Trustees have power to transact, *also* contain observations affecting favourably or unfavourably the character or credit of persons not members or servants of the corporation. It is contended that, as the resolutions complained of are calculated to injure the character of the plaintiff in his business of contractor for the carriage of goods and passengers, and specially in respect of this that such resolutions are transmitted and brought to the notice of the local Government, with whom the plaintiff's contracts have been and are hereafter likely to be made, the plaintiff has made out a case for the exercise of the jurisdiction the Court undoubtedly has, of restraining corporations or companies created by Royal Charters or Acts of Parliament from acting in excess of the powers conferred by such Charters or Acts, when such excess causes injury to an individual or a larger or smaller portion of the public. As illustrations of the principles contended for having been applied, the following cases were cited on behalf on the plaintiff:—*The Mayor and Corporation of Exeter v. The Earl of Devon* (1), *Abrahams v. The Corporation of London* (2), *Richmond v. The North London Railway* (3), and the *Midland Railway v. The North-Western Railway* (4). It is not necessary to discuss the details of these cases, which are very different from anything to be found in the present case. The first case decided that where an Act of Parliament conferred on a corporation the power to remove obstructions to navigation of a river, paying compensation to the owner of the land where such obstruction was, the corporation were not thereby authorized to maintain a suit in equity in respect of an obstruction. The second and third cases were an example of this, that where corporations or public companies are taking lands under compulsory powers of purchase they must strictly pursue the course of proceeding marked out in the Act; and the fourth is merely a decision in the particular case that a cer-

1876.

SHEPHERD
v.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

(1) L. R. 10 Eq. 232.

(2) L. R. 6 Eq. 625.

(3) L. R. 3 Ch. Ap. 679.

(4) L. R. 2 Eq. 524.

1876.
 SHEPHERD
 v.
 THE TRUS-
 TEES OF THE
 PORT OF
 BOMBAY.

tain agreement between railway companies, as to dividing proceeds of through traffic, had a certain construction, or that, if a different construction ought to be given to it, it would be *ultra vires* of the company making such contract. There can, I think, be no doubt that, if the Port Trustees or any other corporation or public company in Bombay were to do or attempt to do any act in excess of their powers, as contained in the charter or legislative act from which they derive their being, and such act would be injurious to the rights of property of an individual, such individual would, on general principles, have a right to the protection of this Court by injunction or other appropriate relief. In none of the cases, however, that I have been able to find, has the protection of a Court of Equity, by way of injunction, in case of an assumption by an incorporated body of powers beyond those conferred upon it, been granted at the suit of an individual, except where such individual has been damaged by such excess of power in respect of his rights of ownership, or rights of commodity or easement, which for this purpose are treated as analogous to rights of ownership strictly so called. No kind of authority has been cited that an individual is entitled to protection by way of injunction against the act of a corporation, though in excess of their powers, which affects that individual's character and reputation, whether private, professional, or commercial, which he would not have been entitled to had the act complained of been committed by an individual defendant; on the ground that the act in question was one which the corporation had no power to do under the instrument of incorporation.

Even had I felt no doubt that the right to an injunction in a suit by an individual to restrain the acts of a corporation as being *ultra vires* exists, where the right of the individual alleged to have been infringed had been of character or reputation, I should in the present case have been unable to come to the conclusion that the resolutions in question were, in fact, *ultra vires*. The Act expressly gives the Trustees power to transact certain kinds of business, to hold meetings at which questions coming before them for decision are to be decided by a majority of votes, and such decision is by the Act termed a resolution. They not only have the power, but are bound to draw up and enter in a book minutes of the proceedings of their meeting; and a copy of such minutes, when signed by the president,

they are bound to transmit to the local Government. It must therefore be, not the *form* of the proceedings of the Trustees now complained of, but the *contents* of their resolution, which is to be held to be *ultra* their powers. Among the other business the Trustees have by their Act power to transact, are—the management and administration of considerable property; the receipt of rents, tolls, fees and dues; the acquisition, leasing, and selling of immoveable or moveable property; the construction of works, such as wharves, quays, docks, &c.; the appointment and removal for misconduct of officers and servants of the corporation other than certain specified officers. Now in such cases as a question of removing an officer or servant for alleged misconduct, or terminating the further prosecution of a contract to execute works, on the ground of breach by the contractor of any expressed or implied obligation, and many other cases which may be conceived, it will be necessary to discuss the conduct of an *employé* of the corporation, or one having dealings with them. The only way in which such discussion can take place is at a meeting of the Trustees, of the proceedings of which minutes are to be taken, signed, and transmitted. Can it be seriously contended that the Trustees have the power to discharge an *employé* for misconduct, or put an end to a contract on the ground of a breach of duty of the contractor, but not to record the cause of dismissal, or of the termination of the contract, because by so doing they may affect injuriously the character of individuals? It is not, of course, necessary to consider the question of the Trustees passing and recording a defamatory resolution wholly unconnected with any business which they have power to transact, as that is not the case with which we have to do here. But, in my opinion, the Trustees have, as much as any private individual, the *power* to record their decisions and opinions with regard to matters connected with the business they have, under their Act, power to transact—whether such decisions or opinions are confined to statements of what they believe to be actual facts, or extend also to the giving of advice for the conduct of successors in office with regard to such business—and whether the expression of such decisions, opinions, or advice may or may not contain statements injurious to the character or reputation of others. Of course they *may* by their expressions of a decision, opinion, or advice, if published, render themselves liable to a suit for damages on

1876.

SHEPHERD
v.
 THE TRUSTEES OF THE
 PORT OF
 BOMBAY.

1876.
 SHEPHERD
 v.
 THE TRUS-
 TEES OF THE
 PORT OF
 BOMBAY.

account of defamation, that is another and distinct question; but, in my opinion, they have the *power*, in any matter connected with or arising out of the business they are empowered to transact, to express a decision, opinion, or advice for the guidance in the future of themselves and their successors, though it may be prejudicial to the characters of others. For these reasons I am of opinion that the resolutions in question, whether well founded or not, whether warranted or wholly unwarranted by anything which the plaintiff had done or omitted to do, and whether or not rendering the Trustees liable to pay damages, were acts *intra vires* of the Port Trustees as being connected with business which it is not disputed they had powers to transact, viz., the hiring and possible sale of their steamer, the "Dromedary," and as being an expression of an opinion or advice, whether right or wrong, for the guidance of their successors in office. Taking, as I do, this view of the question on the point made as to the resolution being *ultra vires*, I must hold that the basis of the argument of the learned counsel for the plaintiff in support of his application for this injunction wholly fails.

Though the conclusions at which I have already arrived are sufficient for the disposal of this application, I may add a few observations on what appears to me the strange character of the order the Court is asked to make. It is asked in effect to order the minute book of proceedings of the Trustees to be altered by erasing or cancelling the resolutions complained of, unless the Trustees will pass and have signed and transmitted to Government a resolution rescinding them. As for the alternative of passing a rescinding resolution, that is a matter which it would be impossible for the Court to order directly. A resolution of a board is the form in which their view of facts or opinion of what ought to be done is embodied. To order the defendants in the present case to pass a resolution rescinding the resolutions of the 10th and 17th February, would be nothing less than to order them to form a certain opinion at variance with one which they have already expressed, or to express one which they do not hold. How can any Court be asked to pass such an order? Taking the other alternative, viz., that of erasing or cancelling the resolutions complained of, it is, no doubt, a matter the Court has power to

order in an indirect way. But the granting of an order in effect mandatory, though framed in words in form prohibitive only, is an exercise of a jurisdiction which the Court is generally very unwilling to resort to on an interlocutory application. It may, no doubt, be done, though in the case cited by the learned counsel for the plaintiff as an authority, *The Great North of England Railway v. The Clarence Railway* (1), the opinion of the Vice-Chancellor, in the first instance in favour, in the peculiar circumstances of the case, of making the order sought, was afterwards withdrawn by him, and on reference to the Lord Chancellor the order was refused. To induce the Court to depart from the leading principle that the object of an injunction is to prevent future injury, leaving matters as far as possible *in statu quo* till the suit in all its bearings can be heard and determined, at any rate some strong case of substantial damage to the plaintiff which would arise from simply allowing things to remain *in statu quo* must be made out. Now what in the present case is the suggestion of substantial damage to the plaintiff? It is suggested that his present and future business relations as a contractor with the local Government will be prejudiced and endangered, and thereby irreparable damage will or may be done. I cannot understand what foundation there is for such a suggestion. There might, perhaps, have been some ground for it had the plaintiff been in time with his proceedings to ask to intercept the transmission of the resolutions to Government. But they had already been transmitted before the suit was filed, any damage which could thereby ensue to the plaintiff had been done, and I cannot conceive how such damage, if any there was, could be remedied or prevented by an interlocutory order of this Court, resisted by the defendants the Trustees, for running a pen through certain resolutions as recorded in their minute book. The only effect of making such an order, if it had any effect at all in the quarter where the plaintiff apprehends prejudice will be created against him by the recorded opinions of the defendants, would have been to produce a suspension of opinion till the whole matter shall have been sifted and heard out. But exactly the same effect would, I should

1876.

SHEPHERD
v.
THE TRUSTEES OF THE
PORT OF
BOMBAY.

(1) 1 Coll. 507.

1876.

SHEPHERD
v.
THE TRUS-
TEES OF THE
PORT OF
BOMBAY.

think, be produced by the mere fact of the plaintiff bringing a suit for damages to vindicate his character which he contends has been unjustly and without just cause attacked. I am not at all surprised at the plaintiff instituting these proceedings. I should think any one who felt he had a character to lose, and that the reflection cast upon his conduct by the resolution in question was undeserved, would take proceedings. I think the action of the defendants in sending the resolutions in their entirety to the person affected by them, was a needlessly offensive one. They were well aware that the resolutions were of offensive character, as they take credit by the letter of the 6th March for not having published them in the public newspapers. It is, on the other hand, possible that the motive for sending the resolutions to the plaintiff was merely in order to let him know what the Trustees had done, and that it might not be said that they had passed and sent to Government an injurious resolution behind his back. I do not, however, wish to express any opinion whatever in this case beyond what is necessary for disposing of the matter at present before the Court, which is an application for an interlocutory injunction. Should the matter come to a hearing, there will then be opportunity of considering fully the various points of fact and law which may come to an issue. On the present occasion, I merely decide that, according to the law and practice of granting an interlocutory injunction, the plaintiff's case must fail. With the same object of reserving as much as possible the decision of the merits of this case for the hearing, I shall make the same order as to the costs of this motion as would have governed them had no special order been made, namely, that the application having failed, the plaintiff must bear his own costs, but that the costs of the defendants be costs in the cause. The order, therefore, will be that the rule *nisi* be discharged, and the *interim* order and writ of injunction be dissolved, and that the motion, notice of which is dated 16th March 1876, be refused, and the order as to costs will be as above mentioned.
