"intended to be read in the privacy of the chamber by married women or by those contemplating marriage, and is not intended for the publicity of the streets, or to satisfy the curiosity of the vicious." It was sold by non-professional booksellers for sixpence.)

Qualified privilege may take many forms. Probably the most important form is the wide class said by the judges to be made pursuant to a common and corresponding duty and interest. The example most commonly given is that of an employer giving a reference for a former employee. The former employer gives a reference as a matter of duty and publishes it to a prospective employer who has a common and corresponding interest in receiving it. In medical terms probably the most common example is that of the general practitioner writing a letter to a consultant or the consultant replying. Such letters would clearly be protected by qualified privilege, though a jury might well find that some of the more unnecessary comments on the patient's character were outside the protection of the privilege.

Entries in a patient's notes in a hospital or in a general practitioner's NHS practice are bound to be published to someone other than the writer at some time, and that occasion of publication

might be complained of in a libel action. The publication would be protected by qualified privilege if, but only if, the publication is to someone deemed by the trial judge to be within the ambit of the duty/interest relationship. That protection would be lost on proof by the plaintiff that the doctor was actuated by malice when he wrote the words. What is malice? The only short answer to that question is that the determination of the issue of malice may cost a lot of money.

References

- 1 Drummond-Jackson v BMA [1970] 1 WLR 688 at 698.
- 2 Dockrell v Dougall (1988) 80 LT 556.
- 3 Tolley v Foy [1931] AC 333.
- 4 Allen v Eaton (1628) 1 Rolls Abridgement 54.
- 5 Taylor v Hall (1742) 2 Stra. 1189.
- 6 Stowe v Holland (1612) 1 Bulst. 112.
- 7 Dering v Uris [1964] 2 QB 669.
- 8 House of Lords, Printed Cases, 1924, p 375.
- 9 Royal Aquarium v Parkinson [1892] 1 QB 431.
- 10 Munster v Lamb (1883) 11 QBD 588.
- 11 Medical Act 1983.
- 12 Allbutt v General Council of Medical Education and Registration (1889) 23 QBD 400.

The Gee case: the BBC settles

CLARE DYER

The most expensive libel action in English legal history ended last week when Dr Sidney Gee accepted £75 000 in settlement of his claim against the BBC; *That's Life* presenter, Esther Rantzen; the programme's assistant presenter, Gavin Campbell; and its editor, Gordon Watts. The trial had still not reached the halfway point and the BBC had not even begun to put its case, though costs had already soared well past £1 million, eclipsing the previous record for costs in a libel case, held by the Moonies' unsuccessful action against the *Daily Mail*, which ran for 101 days and clocked up costs of £750 000 in 1981. Had the trial run its course, Andrew Rankin QC, the BBC's leading counsel, estimated, it would have lasted till Christmas and cost £3 million.

In a statement in open court Michael Beloff QC, leading counsel for Dr Gee, said the BBC now recognised that the part of the programme that featured Dr Gee had dealt inadequately with certain of the important and complex issues that had been argued during the course of the trial. The BBC, he added, now acknowledged that it had been supplied with certain information about Elizabeth Day, the patient who was the subject of the broadcast, that was incorrect. It regretted that, in the course of compiling the programme, its journalists, in the guise of seeking Dr Gee's medical advice, obtained entry to his surgery and interviewed him, to the distress of Dr Gee, his staff, and his patients.

For the BBC, Mr Rankin said that all the parties were happy that a settlement had been reached in a case that was in its 87th day and in which, on present estimates, the plaintiff's case could not have been concluded until the end of the summer term and the defendants' case could well have lasted until the end of the year, thereby adding to costs that had already reached enormous and burdensome proportions.

The settlement came hard on the heels of a ruling by the judge,

Lord Justice Croom Johnson, on the question of whether or not Dr Gee was correctly described as a specialist as the word is used in the General Medical Council's booklet on professional conduct and in the BMA's *Handbook of Medical Ethics*. The judge ruled that the word "specialist" bore the same meaning as the word "consultant," and that Dr Gee was not a specialist. (A more detailed discussion of the ruling and its significance will be published in a forthcoming issue of the *BMJ*.) Lawyers acting for Dr Clemency Mitchell, Mrs Day's general practitioner and one of the two doctors sued by Dr Gee over their part in the making of the programme, are considering an appeal against the ruling. They unsuccessfully sought to call evidence as to the meaning attached to the word by the medical profession.

The ruling is relevant not only to Dr Gee's libel action against the two doctors, which is continuing, but also to the charges of professional misconduct pending against him. A hearing by the GMC's professional conduct committee was adjourned last July to allow the libel claims to proceed first. A hearing cannot now take place before the end of June, when the High Court will hear Dr Gee's application for judicial review of the charges against him.

Dr Gee's determination to clear his name has cost him dearly in lost earnings and in legal costs and fees for expert witnesses. The BBC will be paying a sum believed to be less than £500 000 towards his costs, which are thought to be nearer £700 000. Any damages he may win from the two doctors, or from libel actions still outstanding against the *News of the World* and the *Daily Express*, are unlikely to make up the shortfall.

The record for successful multiple libel actions seems to be a toss up between Dr John Bodkin Adams and Princess Elizabeth of Toro, both of whom sued a large chunk of Fleet Street—he over reports virtually convicting him of mass murder before his trial, and she over wholly unfounded allegations of sexual dalliance at Orly airport. Each won a total of £50 000 damages, with Princess Elizabeth also collecting DM 23 000 and undisclosed sums from French and Italian publications.

The Gee case has proved to be yet another of those cases in which nobody wins but the lawyers—and, in this case, the medical experts, who as a body must have received record fees.

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